

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12606 (BLS)

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In the Matter of:

VERASUN ENERGY CORPORATION, et al.

Debtors.

- - - - -x

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

April 13, 2009

2:41 PM

B E F O R E:

HON. BRENDAN L. SHANNON

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: JENNIFER PASIERB

1 Motion of Debtors for Order Under 11 U.S.C. Sections 105(a) and  
2 363(b) Authorizing the Debtors to Pay Certain Secured Claims in  
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## P R O C E E D I N G S

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THE CLERK: All rise.

THE COURT: Please be seated. Ms. Perlman, good afternoon.

MS. PERLMAN: Hello, how are you, Your Honor?

THE COURT: You know, you sell everything and hardly anybody shows up after that.

MS. PERLMAN: I know, we're not used to this. And we only have one matter on the agenda today.

THE COURT: I noticed.

MS. PERLMAN: We're here today on the debtors' motion to pay certain secured claims, more specifically to pay the secured claims of the remaining nonrolled note holders. As you may recall, the debtors, prior to the petition date, issued 210 million dollars of senior secured notes. These notes were secured by a first lien on substantially all of the assets of VeraSun and the VeraSun subs. I don't have my handy-dandy color-coded chart, but the middle silo --

THE COURT: I have it committed to memory.

MS. PERLMAN: -- on that chart. I'm sure, as we all do. We should get T-shirts printed at the end of all this.

THE COURT: I'm okay with that. I don't get deal toys anymore.

MS. PERLMAN: The accounts receivable inventory and cash were the only assets that did not secure the notes, and

1 those secured the UVS facility. In December of 2008, this  
2 Court entered the final VeraSun DIP order which approved  
3 approximately 196.6 million in postpetition financing to be  
4 provided by certain of the senior secured note holders. From  
5 that money, 93.6 million was new money, and 103 million was  
6 rolled up prepetition senior secured notes. This left  
7 approximately 107 million dollars of nonrolled prepetition  
8 senior secured notes.

9 Pursuant to the sale order, at the closing of the  
10 sale of the VeraSun assets to Valero, the debtors paid the  
11 obligations owed to UVS as well as the obligations under the  
12 VeraSun DIP including the obligations owed to the rolled note  
13 holders. The debtors, however, still have a secured obligation  
14 of 107 million plus accrued interest and expenses owing to the  
15 nonrolled note holders. The 107 million dollars is accruing  
16 interest at a rate of 9.875 percent per annum, which is  
17 approximately 10.5 million dollars a year or between 8 and  
18 900,000 dollars a month. These claims are oversecured. Their  
19 collateral was sold for 350 million dollars. We made a payment  
20 to the DIP holders from this money of 205 million dollars  
21 leaving 145 million dollars. In addition, there are some  
22 remaining assets that provide security that have not been sold.

23 The debtors are seeking authority to pay the  
24 principal, the accrued interest at the nondefault rate, and the  
25 reasonable expenses of the trustee because it will enable the

1 debtors to stop accruing additional interest on these claims  
2 and stop reducing any recovery for unsecured creditors. As the  
3 motion states, the debtors discussed this motion with the  
4 creditors' committee prior to filing it, and they have  
5 supported the relief requested in this motion.

6 THE COURT: Okay. Anyone else wish to be heard?

7 MR. SCHAFFER: Your Honor, Eric Schaffer. I'm here  
8 on behalf of Wells Fargo as indentured trustee. Your Honor, in  
9 response to the debtors' motion, which we were very pleased to  
10 see, we filed a statement of claim. It does include the three  
11 elements that have been recited: the principal, the interest,  
12 and the reasonable fees and expenses. As the Court has seen,  
13 it also includes what we refer to as the make-whole premium --

14 THE COURT: Right.

15 MR. SCHAFFER: -- the change of control premium, and  
16 default interest. Your Honor, I'm not here today to object to  
17 somebody saying we'd like to pay you the bulk of your claim.  
18 And in conversations with counsel for the debtor and the  
19 committee, we are agreeable, for purposes of today, to having  
20 the Court enter an order. Indeed, we are very pleased if the  
21 Court would do so. We don't want to waive the remainder of our  
22 claim, and it's my understanding that the debtor and the  
23 committee think it's appropriate that we should simply file a  
24 proof of claim for the difference. We're prepared to do that  
25 if that's what the Court thinks makes sense.

1 THE COURT: Okay. Mr. Botter.

2 MR. BOTTER: Good afternoon, Your Honor. The  
3 committee did consent to the filing of the motion and consent  
4 to the relief requested, but that consent was limited, of  
5 course, to just payment of principal and the interest at the  
6 nondefault rate and the fees and expenses. The committee is  
7 obviously not consenting to the payment and will contest the  
8 payment of the other amounts.

9 We're fine with the filing of a proof of claim, and  
10 that will just tee up the claims objection process to deal with  
11 the other amounts that are being claimed.

12 THE COURT: I want to make sure I understand. There  
13 are amounts that are not in dispute and you're okay with those  
14 being paid out right now.

15 MR. BOTTER: Correct, Your Honor.

16 THE COURT: You will hold in abeyance the question of  
17 a make-whole premium and default rate interest. You'll figure  
18 out what that nut is and will deal with it through claims  
19 administration order if the parties will negotiate.

20 MR. BOTTER: That is correct, Your Honor.

21 THE COURT: Okay.

22 MR. BOTTER: It is the -- we are not objecting to the  
23 payment of the principal in the 107 and change million dollars  
24 amount, the nondefault interest, and the fees and expenses that  
25 are uncontested.

1           THE COURT: Let me ask one question. One of the  
2 primary bases that the debtor proffered for seeking the relief  
3 is that the interest stops today. Does that then -- while this  
4 issue's held in abeyance, is the interest still stopping and  
5 we'll figure out whether or not you're entitled to a further  
6 nut? Or -- I mean, I think I want to understand whether or  
7 not, if this matter gets disposed from now, do we have interest  
8 on interest, or some sort of debate about that?

9           MR. SCHAFFER: Well, Your Honor, let's start just  
10 with the default interest. You may recall from last January  
11 that the payment that was due on December 15 was not made until  
12 January 15. The default interest arising from that was a  
13 little over fifty thousand dollars per diem on that. Continues  
14 to run. We're not waiving that. It would be an element in our  
15 proof of claim.

16           Similarly, we would look at the change of control in  
17 the make-whole and say that they are to be calculated in  
18 accordance with the indenture. We reserve all rights; of  
19 course, everyone reserves all rights to object to our claim.

20           THE COURT: Okay. Mr. Botter?

21           MR. BOTTER: Your Honor, it's hard for me to  
22 understand how default interest could continue to accrue on a  
23 principal that's been paid off of a date certain. So I'm not  
24 sure I understand what Mr. --

25           MR. SCHAFFER: It's the default interest on the

1 default interest, under the terms of the --

2 THE COURT: So it's an interest on interest question.

3 MR. SCHAFFER: Yes, Your Honor. And --

4 MR. BOTTER: Your Honor, we'll obviously contest that  
5 in the context that of the claims objection process. With  
6 respect to the make-whole and the change of control, putting  
7 aside our arguments that we will make --

8 THE COURT: Sure.

9 MR. BOTTER: -- that they are not to be paid at all,  
10 I think those premiums are calculated based upon set numbers.  
11 I'm not sure that interest would apply in that situation.

12 MR. SCHAFFER: No, those are formulaic.

13 THE COURT: Those are hard numbers.

14 MR. BOTTER: Correct.

15 THE COURT: Okay.

16 MR. SCHAFFER: And with regard to the default  
17 interest, the per diem is, I think, \$17.25 a day. So, I don't  
18 think --

19 THE COURT: You can afford that.

20 MR. SCHAFFER: -- we'll spend a lot of time fighting  
21 that one.

22 THE COURT: Okay. All right, that's fine. I had no  
23 issue or concern with the relief. I have had an opportunity to  
24 review the motion, and it certainly the economics of it make  
25 abundant sense to me. The only question, obviously, from --

1 the only issue that I had or concern that I had, and it was  
2 obvious from my question was whether or not we needed to deal  
3 with, perhaps, the remaining issue promptly, and I will allow  
4 the parties to make their decision on how quickly they want to  
5 tee that up. Obviously, my calendar's available to you as you  
6 need. But otherwise, the relief itself makes abundant sense  
7 and seems to me to be a productive result for all interested  
8 constituencies, and I would be prepared to approve and  
9 authorize the relief. Do you have a form of order?

10 Mr. Wright?

11 MS. PERLMAN: Your Honor, we do. We have modified it  
12 slightly as a result of the filing of the statement of the  
13 claim to clarify --

14 THE COURT: What's getting paid.

15 MS. PERLMAN: -- what is being paid.

16 THE COURT: Sure.

17 MS. PERLMAN: And the trustee has requested a change  
18 from our change, so we'll submit it under certificate --

19 THE COURT: Okay.

20 MS. PERLMAN: -- no objection.

21 THE COURT: I'll look for the order under  
22 certification, and we'll get it entered and on the docket  
23 promptly. Ms. Perlman, is there anything further today?

24 MS. PERLMAN: That is all on our agenda today.

25 THE COURT: This case has gotten so much easier.

1 We'll stand in recess. Thank you, counsel.

2 MR. BOTTER: Thank you, Your Honor.

3 MR. SCHAFFER: Thank you, Judge.

4 (Proceedings concluded at 2:50 p.m.)

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Motion for Relief  
Approved

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

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April 29, 2009

Signature of Transcriber

Date

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typed or printed name