

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
VERASUN ENERGY CORPORATION, .
et al., . Case No. 08-12606(BLS)
Debtors. . (Jointly Administered)
. Dec. 3, 2008 (10:41 a.m.)
. (Wilmington)

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

Proceedings recorded by electronic sound recording;
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1 THE CLERK: All rise.

2 THE COURT: Please be seated. Good morning. Are
3 you ready to proceed?

4 MS. CLEGHORN: Good morning, Your Honor. Megan
5 Cleghorn of Skadden, Arps, Wilmington, on behalf of the
6 debtors. With me today is Mr. Pat Nash and Lisa Diaz. Mr.
7 Nash will be addressing Your Honor today.

8 THE COURT: Very good.

9 MS. CLEGHORN: Thank you.

10 THE COURT: Mr. Nash, good morning.

11 MR. NASH: Good morning, Your Honor. Thank you very
12 much for the time here this morning.

13 THE COURT: Happy to oblige.

14 MR. NASH: More importantly, thank you very much
15 yesterday for, if not encouraging, at least nudging us to use
16 the time. It will not surprise Your Honor to hear that we in
17 fact needed every minute of it.

18 THE COURT: I thought your odds of getting back
19 yesterday afternoon were rather slim.

20 MR. NASH: At some point this morning, Your Honor, I
21 turned to one of my colleagues in the conference room and
22 said, Thank God we're at 10:30 and not 10 o'clock. Well,
23 where we were at yesterday, Your Honor, with respect to the
24 DIP financing is, what was left unresolved was the DIP
25 financing order with respect to the West LB interim financing

1 at ASA, the UBS cash collateral order, the VeraSun bondholder
2 DIP financing order, and the Agstar orders with respect to
3 the US Bio subsidiary, and what was largely left open, as
4 Your Honor knows, is the issue of the budget with respect to
5 each of those facilities and then this confirming type
6 language with respect to the intercompany claims.

7 THE COURT: Are those the intercompany allocations?

8 MR. NASH: With the intercompany allocations, that's
9 right, Your Honor. So where we are at today, where we are
10 at, at this moment, Your Honor, is agreement with respect to
11 each of those orders with one caveat with respect to the UBS
12 blackline that you've seen and that other parties in interest
13 have seen, and that is appropriately so. The Committee
14 pointed out, which from the debtors' perspective was an
15 oversight, that the adequate protection claim under 507 with
16 respect to the use of cash collateral does not expressly
17 state in the order that you've seen that it does not look to
18 avoidance actions, the proceeds of avoidance actions. UBS
19 has agreed, and we will make clear and file under
20 certification or whatever the appropriate procedure, we will
21 make that clear on the record - in the order, consistent with
22 my statements on the record that UBS's adequate protection
23 claim will not be satisfied by the proceeds of avoidance
24 actions.

25 THE COURT: Okay.

1 MR. NASH: And UBS's willingness to accept that
2 modification, Your Honor, is predicated upon the fact that
3 that is in fact consistent with all the other cash collateral
4 and financing orders. So with respect to UBS and their cash
5 collateral order, Your Honor, I believe that we are finished
6 with that one - Oh, the other point, Your Honor, the lien
7 investigation period in the UBS order is 60 days. It will be
8 increased to 90 days, again, to be consistent with the other
9 orders that Your Honor has entered or will enter.

10 THE COURT: Okay.

11 MR. NASH: With respect to the budget, I'm pleased
12 to report, Your Honor, that the budget has been amended with
13 agreement, and that we are including Aiken Gump in the budget
14 - the Committee counsel, in the budget at \$500,000. We also
15 have a footnote in the budget that speaks to the ability to
16 roll forward and look back with respect to any unused
17 amounts.

18 THE COURT: Sure.

19 MR. NASH: I'm also pleased to report that each of
20 West LB, the VeraSun bondholders, and Agstar have agreed to
21 the mechanism by which there will be a junior lien, junior to
22 the existing liens at each of the silos to secure the
23 repayment of any intercompany allocations that are unpaid.

24 THE COURT: Okay.

25 MR. NASH: Your Honor has seen and other parties in

1 interest have seen blacklines with respect to the Agstar
2 order -

3 THE COURT: I have them, thank you for getting them
4 over this morning.

5 MR. NASH: And with respect to the bondholder order,
6 what you have not yet seen, Your Honor, is a blackline with
7 respect to the West LB order.

8 THE COURT: Okay.

9 MR. NASH: It's on its way over to Court. West LB,
10 I think it's fair to say, literally duped the intercompany
11 lien language from the other two orders. So, as soon as that
12 gets over here, we'll have it, people can look at it.

13 THE COURT: Okay.

14 MR. NASH: The one further change that we need to
15 make with respect to those orders deals with each of these
16 lenders' desire to go back to Skadden, Arps at the conclusion
17 of this hearing and add additional language to make even more
18 clear just how junior and silent that intercompany lien is.
19 That is the only change that we envision making to each of
20 the three DIP financing orders. With that, Your Honor, I
21 guess the other issue that was left open, and I have no doubt
22 that there are probably people in the courtroom who will wish
23 to be heard -

24 THE COURT: Sure.

25 MR. NASH: - or reserve their rights with respect

1 to the orders. In particular, Your Honor, we have the issue
2 of the Indenture Trustee. We have the Indenture Trustee's
3 objection to the secured bondholder DIP financing. The
4 Indenture Trustee, also, Your Honor, has a number of requests
5 for changes and modifications to the DIP credit agreement and
6 to the DIP financing order. I would characterize those as
7 not being the type of cleanup or confirmatory or reservation
8 of rights type comments that I believe that you will get, no
9 doubt, perhaps, from other people in court here this morning.
10 I would view the Indenture Trustee's objections, certainly
11 with respect to certain aspects of the order, to be the type
12 of objections that we will probably be asking Your Honor to
13 overrule in connection with our request that you overrule the
14 objection. So, depending upon how Your Honor would like to
15 proceed, I would be prepared at this time to - Well, we could
16 either hear people reserve rights as to the other three
17 orders. If it pleases the Court, I could speak to, briefly,
18 three to five minutes, in support of the entry of the DIP
19 finance order, a closing argument if you will, following
20 along with the close of the evidence yesterday, followed by
21 the Indenture Trustee, I'm sure will like to get up and speak
22 briefly if not longer than briefly in support of its
23 objection.

24 THE COURT: What's my alternative? What I'm asking
25 is, I followed your comments, I'm just not exactly sure where

1 you're intending to go from here because I certainly
2 appreciate and respect the amount of effort the parties have
3 put in over the last 24 hours to get to this point, and I've
4 had a chance very quickly to go through the materials and
5 it's very helpful that you sent over the blacklines. Is it
6 your intention to go back, finalize some of the word-smithing
7 you've described and then come back or that you'd be sending
8 them under certification? Do I have - If I understand what
9 you're saying about where the Indenture Trustee is, I think
10 what I need to do is pull out the proposed form of final
11 order and the DIP credit agreement. If he raises issues on
12 each on a sort of line-by-line basis, and you want me to
13 either sustain or overrule his objection, then we can do
14 that. But that's kind of what it sounds like you're doing,
15 because he's got, I think, a global issue about the roll-up.
16 I assume that that dispute remains out there, and I guess
17 there's also discreet points in the transaction that he is
18 unsupportive of.

19 MR. NASH: That's correct, Your Honor, so, perhaps,
20 to the extent - What we could do, Your Honor, is, I could
21 address very briefly the global issue of the roll-up.

22 THE COURT: Okay.

23 MR. NASH: Perhaps the Indenture Trustee then
24 responds. If Your Honor indicates that you are willing to
25 approve the financing and approve the roll-up, it may then

1 make sense for us to break and meet with the Indenture
2 Trustee to review the Indenture Trustee's line-by-line item
3 comments, which of course are only relevant to the extent
4 that we would otherwise be approving the financing.

5 THE COURT: I think that might actually make more
6 sense to deal with those sort of global issues and then
7 again, I don't want to foreclose anybody's right to go
8 through on a line-by-line basis the proposed form of order
9 and the DIP credit agreement, but it did seem to me that
10 there were larger issues that were the subject of discussion,
11 and I certainly reserved deliberately Mr. Schwartz' rights to
12 make his argument from yesterday until today, and you know,
13 those issues may have expanded or they may have contracted,
14 but I felt that they would be flux and that yesterday was
15 probably not the best time to try to close the book on it,
16 so, why don't we turn - Let's do this, before we turn to
17 those, I'd like to dispose of those matters that are not the
18 subject of dispute. Are there any orders that are - A number
19 of these came over and some of them were under certification,
20 some were under notice of filing, and I just didn't want to -
21 I brought the stack out essentially that you gave me. I've
22 been through all of them, but I didn't want to sign anything
23 until I had heard from folks because I had sense of how
24 quickly this was moving. If you don't mind, I'm going to
25 walk through the stack that you gave me, and I'm going to ask

1 whether or not it's appropriate for entry at this point.

2 I've been through all of them. The first one that I have is
3 the proposed order approving joint stipulation resolving
4 emergency motion of Agstar Financial Services, PCA, for
5 adequate protection. Has that issue been resolved?

6 MR. NASH: Yes, it has, Your Honor.

7 THE COURT: Okay. Anyone wish to be heard regarding
8 the Agstar matter? Mr. Gwynne?

9 MR. GWYNNE: Your Honor, the Agstar motion has not
10 been resolved and in fact hasn't even been scheduled for a
11 hearing. Yesterday, Your Honor said that wasn't going
12 forward, and that was our understanding. We did see the
13 stipulation but there are issues with it, and we think we
14 maybe could resolve them in a week, 10 days at the most. And
15 I'll explain what they are generally. First of all, we have
16 under the interim order a junior adequate protection lien,
17 junior to the DIP liens and junior to the lien of UBS but
18 senior to any other lien then existing or hereafter granted.
19 It's in page 6 of the term sheet attached to the interim
20 order. The adequate protection lien that they're asking for,
21 it appears they may be asking to come ahead of the lien that
22 we have under the interim order which governs until a final
23 order is entered, which governs from then on. That's one
24 issue. Another issue is, in the ordinary course of business,
25 the debtors, the BioEnergy, US BioEnergy debtors transferred

1 inventory to VeraSun Marketing. VeraSun Marketing sold that
2 inventory when it collected accounts receivable. It then
3 paid for the inventory, and I understand from debtors'
4 counsel the way it works is VeraSun Marketing had railcars
5 that pulled right up into the US BioEnergy plants and picked
6 up the ethanol and then took it away. The debtors have
7 agreed not to continue doing business in that way, and it's
8 not our position that we can force them to continue doing
9 that. Our junior lien, obviously, is more valuable to the
10 extent the inventory goes to VeraSun Marketing because if the
11 clock stopped, debtor wasn't able to sell its assets or for
12 some reason the clock stopped and we had inventory on hand in
13 addition to some receivables, we would have a lien on that
14 and because our lien is a priority lien behind only the DIP
15 and UBS it would come ahead of the intercompany lien. So,
16 that does affect us, but we're not - we don't take the
17 position we can force the debtor to continue doing that, but
18 I've raised issues with debtors' counsel about the specifics
19 for what they're going to do. He said, We're no longer going
20 to transfer title to VeraSun Marketing, have VeraSun
21 Marketing do the sales. The sales now are going to be direct
22 by the US BioEnergy debtors. But at the same time he told
23 me, VeraSun Marketing is still - the same thing. Everything
24 else is happening. They're still going in with the railcars,
25 picking up the product -

1 THE COURT: It's a question of where title moves
2 though.

3 MR. GWYNNE: And right now there's not any - their
4 title is not going to move. So, now the issues, Your Honor,
5 are risk of loss, liability, indemnification. This is
6 ethanol. I mean, there could be a fire, an explosion. There
7 could be a train accident, and if VeraSun Marketing is also
8 doing this for no compensation, and we have a lien on that
9 entity's assets, we're concerned about whether it's fair to
10 that entity and whether it's appropriate to do that, with no
11 indemnification, no compensation, and unclear who bears the
12 risk of loss or the risk of an accident. So that motion is
13 far from - I raised those issues with debtors counsel, and he
14 said, Well, we'll try to work that out later, but I don't
15 think an order should be entered authorizing them to proceed
16 in that way without a hearing where those issues are
17 explained to the Court and to the Indenture Trustee because
18 they do affect us, since we have the adequate protection lien
19 on those assets. Thank you.

20 THE COURT: Mr. Nash? This is the first order I
21 picked.

22 MR. NASH: As Mr. Gwynne himself conceded, Your
23 Honor, the secured noteholders have an adequate protection
24 lien junior to UBS on the working capital. What the secured
25 noteholders do not have, by their own admission, is the

1 ability to run the debtors' business and somehow determine
2 how much working capital there is in the debtors' business
3 such that they have a junior lien on that working capital.
4 The other issue to make clear is, is that nothing is really
5 happening today. We are not resolving the motion in the
6 sense that there are no priming liens being given. There is
7 no ultimate relief being entered, other than the fact that
8 the debtors are confirming in a stipulation something that we
9 have the right to do which is an intercompany business
10 decision, and it's important for all of the parties in
11 interest in this case that Your Honor enter the stipulation
12 because if we do not have an order that results in the motion
13 no longer being pending, Your Honor, the debtors are in
14 breach of the UBS cash collateral order. Ultimately, Your
15 Honor, to the extent that the Indenture Trustee is able to
16 take a view that what it is that the debtors are doing with
17 respect to the US Bio output, to the extent that they believe
18 that the adequate protection package, which includes the
19 junior liens, is no longer sufficient to adequately protect
20 their interest in the diminution in their pre-petition
21 collateral value, if they believe that what the debtors are
22 doing is somehow not causing that adequate protection package
23 to be as robust as that which they thought it would be,
24 there's nothing in any order, Your Honor, that precludes them
25 from coming into court and filing a motion and seeking

1 additional adequate protection from this Court.

2 THE COURT: Okay. Here's what we'll do with this
3 one. We're going to reconvene - Well, actually I'll hear
4 from you, Mr Gwynne, but at some point we're going to move on
5 through some of these. I was looking for those that were
6 largely uncontested, but I'll hear your response.

7 MR. GWYNNE: Briefly, Your Honor. The debtor
8 transferred the title through VeraSun Marketing in the
9 ordinary course of business. All of Agstar's loan documents
10 authorize that. What the debtor's doing now is changing the
11 ordinary course of business without motion, without notice,
12 or an opportunity, and as I pointed out, Your Honor, and I
13 didn't hear debtors' counsel even address the concerns that
14 we raised about changing the business and VeraSun Marketing
15 basically acting as - in a gratuitous manner for another one
16 of the entities on whose assets we don't have liens on the
17 BioEnergy debtors' assets. Is that a significant concern?
18 If nothing is truly happening then it ought to be scheduled
19 for a hearing before an order is granted, and the debtor
20 ought to put on evidence as to why it's appropriate or
21 hopefully we could resolve the issue, but without something
22 even being scheduled for a hearing, I was surprised to see a
23 notice presented to the Board.

24 THE COURT: Okay, I understand.

25 MR. GWYNNE: Thank you.

1 THE COURT: All right, we're - Mr. Swett?

2 MR. SWETT: Good morning, Your Honor, thank you.
3 Brian Swett on behalf of UBS. I concur with Mr. Nash's
4 comments regarding the stipulation and the status of this
5 matter today except to the extent that his characterization
6 of the matter was that it doesn't go any further than to
7 address the pending business issue. From our perspective,
8 the stipulation also contains a very significant provision in
9 that the parties had agreed to a deadline -

10 THE COURT: December 23.

11 MR. SWETT: - by which - Yes, thank you, Your
12 Honor, December 23rd, by which Agstar would be in a position
13 of either asserting this lien or seeing its rights to do so
14 waived. It's a very significant provision from our
15 perspective because it will at least get the process going to
16 the extent that Agstar wants to assert rights, and it will
17 hopefully shorten whatever period there is of uncertainty, if
18 any, with respect to the adequacy of our protection and the
19 scope of our collateral. So, as I said, I generally concur
20 with Mr. Nash's comments. I certainly support and have
21 consented to the entry of an order approving the stipulation
22 today but do point out that further very significant
23 provision from our perspective.

24 THE COURT: Okay.

25 MR. SWETT: Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 MR. ATHANAS: Good morning, Your Honor. Joe Athanas
3 on behalf of Agstar. Unfortunately for us, what's been
4 happening so far in the case is our collateral, either
5 subject to our liens or not, that's something we'll figure
6 out later, our collateral is getting transferred away without
7 our consent. Now, needless to say, Your Honor, we don't want
8 that to continue. A promise from the debtors is nice, but
9 we'd like a court order that says it's not going to continue
10 and in the absence of that court order, we're not adequately
11 protected on our liens, our collateral is going out the door.
12 We're not going to provide any additional financing for this
13 company. I mean, we'd like to appoint a trustee or convert
14 the case or something, I mean, this is our collateral, just
15 going out the door, and I'm sure his client wants it to
16 continue as long as possible because it's going out the door
17 to his client. But, Your Honor, that's just totally
18 inappropriate and that's why this is an emergency.

19 THE COURT: I understand. Okay. We're going to
20 circle back to that one at a later point in the hearing. Mr.
21 Nash? Ordinary course professionals? Are we okay with that
22 one?

23 MR. NASH: I think we are, Your Honor, yes.

24 THE COURT: Okay. Does anyone wish to be heard
25 regarding ordinary course professionals?

1 MR. NASH: I'm standing here with my fingers
2 crossed, Your Honor.

3 THE COURT: I haven't heard anyone, but I haven't
4 looked up. Okay. Next one is the consensual final order for
5 use of cash collateral and adequate protection, and this
6 relates to US Bio Marion.

7 MR. NASH: Ready to be entered and no objections,
8 Your Honor.

9 THE COURT: Okay. Does anyone wish to be heard
10 regarding that consensual final order? Okay. Hang on a
11 second. Okay. Next one is the proposed final order for the
12 trading and sell-down procedures?

13 MR. NASH: I believe that's prepared to be signed
14 and entered, Your Honor.

15 THE COURT: I expect. Does anyone wish to be heard
16 regarding that application? Okay. I have reviewed the
17 order, and it is consistent with what was discussed
18 yesterday. Okay, I have signed that order. We'll have it on
19 the docket. The next item that I have is a proposed final
20 order authorizing use of cash collateral and providing
21 adequate protection to UBS Stanford branch, and I believe
22 that one came in under a notice of filing. Does that matter
23 remain in dispute or -

24 MR. NASH: That matter, Your Honor, we will need to
25 make the cleanup comments with respect to the Committee's two

1 concerns and attach a final budget. We'll send that over
2 under certification this afternoon.

3 THE COURT: Okay. The next item is the proposed
4 final order, and I believe this is the VSE financing.

5 MR. NASH: Same caveat, Your Honor.

6 THE COURT: All right. Okay, and so actually it
7 will be this proposed order that we're talking about when we
8 go through the various disagreements; right?

9 MR. NASH: Yes, Your Honor.

10 THE COURT: Okay, and I want to make sure I have the
11 DIP credit agreement. All right, I have that as well. All
12 right, where do we go from here?

13 MR. NASH: I believe, Your Honor, at this point it
14 may be appropriate for the debtors to speak briefly in
15 support of the bondholder DIP financing, that being the
16 overall issue of the appropriateness of the roll-up and the
17 adequate protection.

18 THE COURT: Okay. Proceed.

19 MR. NASH: Your Honor, with respect to the
20 appropriateness of the DIP financing and my argument with
21 respect thereto, I want to focus this on the three areas:
22 notice, notice of the roll-up, and notice of the DIP
23 financing. The Indenture Trustee's cross-examination
24 yesterday and argument to the extent there was any, went to
25 the adequacy of the notice and how many bondholders were

1 contacted. So, number one, I'll talk about notice. Number
2 two, I will address the necessity for and ultimately the
3 appropriateness of a roll-up, and three, I'll address the
4 sufficiency of the adequate protection that the debtors
5 propose to provide to the senior secured noteholders. With
6 respect to notice, Your Honor, it's uncontroverted that the
7 existence of this roll-up has been very publicly known for 30
8 days, approximately. The Indenture Trustee was in court at
9 the interim hearing. Subsequent to the interim hearing I
10 believe it's the case, and please correct me if I'm wrong,
11 but the Indenture Trustee either sent a notice or posted it
12 to interlinks, however, it is that Indenture Trustees do
13 that, but provided notice to each of the senior secured
14 noteholders of the pendency of the motion and the existence
15 of the roll-up. The motion papers and proposed forms of
16 order, Your Honor, that very day with respect to the interim
17 hearing on November 3rd or November 4th, that was posted on the
18 Kurtzman Carson website. This public notice of the roll-up,
19 Your Honor, resulted in a number of senior secured
20 noteholders who were not in the group with which we
21 negotiated the interim financing over that weekend. A number
22 of noteholders came forward and asked to be included in the
23 roll-up. They were included in the roll-up. What we know
24 now, Your Honor, is that approximately 60 percent of the
25 senior secured noteholders are included in the DIP financing,

1 which of course means that approximately 40 percent are not.
2 Now what we do know is that they have not objected to the
3 imposition of the DIP financing. No senior secured
4 noteholder with an economic interest in this case has
5 objected to the imposition of the DIP financing. What we
6 don't know, Your Honor, for their own reasons, various and
7 unique to each of them, they had decided to not approach
8 anybody and made no effort to participate in the DIP
9 financing. I think it very important and appropriate to rely
10 upon the fact that the existence of the roll-up has been
11 public knowledge for sometime. All noteholders that asked to
12 be included have been included, and we have no objection from
13 a noteholder to the imposition of the DIP financing. With
14 respect to the sufficiency of the roll-up, Your Honor, the
15 uncontroverted evidence before the Court is that we would
16 have no DIP financing for the VeraSun silo in the absence of
17 the roll-up. The Indenture Trustee's objection to the motion
18 cites for support in part the Local Rules of the Southern
19 District of New York, which have laid out a number of factors
20 for courts to consider with respect to the appropriateness of
21 the roll-up, and if you go through those factors, Your Honor,
22 one of which is, for example, how much new money is being
23 provided in connection with the roll-up. Here we have \$93
24 1/2 million of new money being provided to the debtors,
25 uncontroverted that the financing that we have for the

1 VeraSun silo is the most robust and permanent of any of our
2 financings, Your Honor. Another factor, Your Honor, is a
3 comparison of the rolled-up financing terms and conditions
4 with other financing terms and conditions available to the
5 debtors. Again, uncontroverted testimony that there is no
6 other financing available to the debtors, and when you
7 consider the fact, Your Honor, that what the factors relied
8 upon by the Southern District of New York and other courts
9 that have considered this issue really go to is, is there
10 other financing available to the debtors, and to the extent
11 that there isn't financing available to the debtors, I think
12 the next line of inquiry really is the adequate protection
13 argument. Here, Your Honor, it's important for us to
14 consider what is the interest that we're adequately
15 protecting? We're not adequately protecting a \$210 million
16 claim. We're adequately protecting the pre-petition
17 noteholders' interest in their collateral as of the petition
18 date, and we're protecting them against any diminution in the
19 value of their interest in the collateral as of the petition
20 date. The uncontroverted evidence before this Court, Your
21 Honor, is that as of the petition date, their interest in
22 their collateral was in all likelihood going to be a hold
23 facility. Mr. Augustine testified that in the absence of
24 this DIP financing, the debtors had no cash available to them
25 to either hot-idle the VeraSun plants or to mothball them in

1 an orderly or not orderly fashion. So the adequate
2 protection interest that we're protecting is the noteholders'
3 interest in cold ethanol plants. How is it that we propose
4 to adequately protect that interest, Your Honor? We're
5 providing junior liens - most importantly in addition to
6 junior liens on collateral they already have, we're providing
7 junior liens on the working capital of the VeraSun debtors,
8 and this is not insignificant, Your Honor, because the record
9 is very clear that what we have done so far with what - when
10 I say "we" of course I'm referring to the debtors, what the
11 debtors have done so far is keep UBS in formula with respect
12 to UBS's senior lien on the working capital. By keeping UBS
13 in formula, Your Honor, we are over-secured with respect to
14 UBS on the working capital. The noteholders are getting
15 junior liens on that working capital. Also important, Your
16 Honor, to point out that we are making cash payments post-
17 petition as part of the adequate protection package. As a
18 matter of law, to the extent that the senior secured
19 noteholders are over-secured, they will be entitled to keep
20 those cash payments and apply them to interest. To the
21 extent that the senior secured noteholders are under-secured,
22 they will - those payments will be reapplied towards
23 principal pay-down, but that is not, Your Honor, an
24 insignificant form of adequate protection. The
25 uncontroverted evidence also supports, Your Honor, the fact

1 that these plants are worth more in either a hot idle or
2 operating status than they are cold and mothballed in
3 something other than an orderly fashion. So, it would be the
4 position of the debtors, Your Honor, that notice was
5 appropriate, we gave all the notice that we could give, in
6 fact, in response to the notice, we've had a number of people
7 come forward. Those who haven't presumably have their own
8 reasons. The sufficiency of the roll-up, Your Honor, again,
9 there would be no financing for the silo in the absence of
10 the roll-up, there's no evidence to the contrary. And as to
11 the adequate protection, Your Honor, the debtors believe that
12 the adequate protection being provided is a robust package
13 and, of course, under the order, to the extent that the
14 Indenture Trustee at any point in this case feels that the
15 adequate protection is insufficient, they can come back
16 before the Court and request additional adequate protection.
17 So with that, Your Honor, we would respectfully request that
18 you approve the DIP financing for the VeraSun silo.

19 THE COURT: Actually, before I hear from the
20 Indenture Trustee, I'd like to give the Committee an
21 opportunity to be heard if you wish to. Mr. Botter?

22 MR. BOTTER: Your Honor, very briefly, when we were
23 retained, as with any kind of roll-up facility, we took a
24 very hard look at it. We spent a lot of time with the
25 debtors, as well as the VSE DIP lenders and negotiated for a

1 number of changes to the DIP facility, significant economic
2 changes. We also spent time with the debtors to understand
3 whether or not in fact there had been other opportunities to
4 finance these facilities. And there weren't any. So, with
5 the changes, the substantial economic changes that we were
6 able to get, we have no objection to the entry of the order
7 for the VSE DIP facility.

8 THE COURT: Okay. Hang on. Mr. Davis, do you wish
9 to be heard? Mr. Schwartz, I want to give you a chance to
10 respond to everybody.

11 MR. SCHAFFER: Excuse me, Schaffer.

12 THE COURT: Oh. Mr. Schwartz is back there
13 somewhere. Sorry about that, I apologize.

14 MR. DAVIS: Good morning, Your Honor.

15 MR. GWYNNE: I call him that too, Your Honor.

16 THE COURT: Whatever works. Mr. Davis - I got that
17 one right.

18 MR. DAVIS: You got that one right.

19 THE COURT: Okay.

20 MR. DAVIS: Good morning, Your Honor. I'm going to
21 save most of my remarks in all likelihood for a response to
22 Mr. Schaffer's points that he raises. I would say that the
23 group - We were first contacted with and first approached
24 with a very dire circumstance that these debtors faced. They
25 were essentially out of money and were going to literally

1 start telling employees not to come to work on Monday. That
2 contact was made on a Thursday evening, and by approximately
3 72 hours later, we were before Your Honor with a negotiated
4 DIP credit agreement and ultimately funded the next day. We
5 have accommodated those who have approached us, and there are
6 four lenders who have approached us during this period
7 between the interim and the final hearings, and we have
8 provided for them to become DIP lenders under the facility on
9 terms acceptable to all of the DIP lenders. No one to my
10 knowledge has contacted - certainly has contacted me and to
11 my knowledge has contacted any members of the DIP lending
12 group requesting to be brought into the facility. That said,
13 I think at this point we have achieved a fully-committed
14 facility. The original facility was approximately \$64 1/2
15 million. The debtors' initial request was for a facility
16 around \$90 million. With the addition of the four new
17 lenders we are now at a facility that approximates the
18 debtors' requested amount, and I think at this point further
19 participation would no longer be welcomed because it is a
20 fully-committed facility.

21 THE COURT: I understand, okay.

22 MR. DAVIS: Thank you, Your Honor.

23 THE COURT: All right, Mr. Schaffer.

24 MR. SCHAFFER: Thank you, Your Honor. Your Honor,
25 Wells Fargo as Indenture Trustee raised three objections. I

1 know the Court has reviewed the papers, so I won't go into
2 them in great length. Before we got all the documents last
3 night, the only point that I did raise was that in order to
4 keep the holders whole during this case, the Trustee's fees
5 and expenses should be paid, and as of yesterday, the debtor
6 and the Committee thought that was just fine. I appreciate
7 they may have changed their mind overnight when they saw that
8 we gave them a number of comments, but I'll defer to Mr.
9 Gwynne to address that later. Your Honor, the first
10 objection we raised was we said the debtors have to establish
11 a record supporting the request for relief. And the debtors'
12 motion said, This is the best deal we could get and that the
13 interests are adequately protected. What is that interest?
14 I have to tell you, I don't know what it is, but I know in
15 the motion the debtors filed at the beginning of the case,
16 they said we were protected by the scheduled payments, by,
17 quote, "the existence of a substantial equity cushion",
18 unquote, and a resulting increase in the value of collateral.
19 The motion also referred to a, quote, "large equity cushion
20 of collateral", unquote, and said the interest was greatly
21 increased by the DIP financing. The noteholder lenders filed
22 a response to our objection in which they said that the
23 debtors have asserted we are over-secured and that the
24 noteholders lenders' limited objection to the motion
25 regarding trading and claims, they repeatedly said that were

1 fully secured. Your Honor heard the testimony yesterday, and
2 I don't think there's anything more I can add with regard to
3 that first objection. The second one we raised is we said
4 that, consistent with the indenture, all of the holders of
5 the senior secured notes should have an opportunity to
6 participate in the DIP financing and the roll-up which is
7 paying - more than half of which is being used to pay pre-
8 petition secured debt.

9 THE COURT: You know, we talked a little bit about
10 the mechanics of that yesterday, and I guess assuming that I
11 accept that proposition and all holders should have an
12 opportunity, there was a good deal of back-and-forth between
13 you and Mr. Augustine yesterday about how that would happen -

14 MR. SCHAFFER: Right, right.

15 THE COURT: - or who would make that phone call,
16 and for the first time today, Mr. Davis noted that we have
17 the additional lenders that have come in -

18 MR. SCHAFFER: Right.

19 THE COURT: - or players that have come in that
20 took us, I assume, from that 45-ish percent range to about 60
21 percent, from the record yesterday. But there's no record
22 before me that anybody called and was told, You can't join;
23 right?

24 MR. SCHAFFER: I believe that's correct.

25 THE COURT: So, the question is whether or not these

1 people got notice, and I don't know that it's incumbent upon
2 the debtors to affirmatively prove that someone sitting in
3 his office elected not to make a phone call.

4 MR. SCHAFFER: Your Honor, in responding, let me
5 first say -

6 THE COURT: Sure.

7 MR. SCHAFFER: - Mr. Nash is right. The Trustee
8 sent out a notice -

9 THE COURT: Okay.

10 MR. SCHAFFER: - saying that this has been filed,
11 and so there should be some notice out there. The Court
12 should in no way be misled with regard to that.

13 THE COURT: Uh-huh.

14 MR. SCHAFFER: One thing that I think did come out
15 is that there was no attempt to affirmatively go out and seek
16 people. It could have been done. You don't have to take out
17 an add. There's a way to reach people and while I appreciate
18 that there may have been good reasons to not try and go
19 through the Trustee and DTC pre-petition, it could have been
20 done post-petition, it wasn't. The question now is, is there
21 a way that others could be brought in. Your Honor, I know
22 that I was contacted by some holders who said, Are you going
23 to object? Can we get in? Well, the answer is, they did get
24 in. They're not objecting. I don't have any holders that
25 are objecting now, but I do know the loan documents

1 contemplate that there may be additional lenders, a defined
2 term, and there may be participations.

3 THE COURT: Let me ask you another question. This
4 is perhaps a more general discussion, but I think it's
5 implicit in comments from debtors' counsel and from Mr.
6 Davis.

7 MR. SCHAFFER: Uh-huh.

8 THE COURT: You sit as an Indenture Trustee, and
9 it's not typical that we would see Indenture Trustees in this
10 context coming in - I mean, I think as a practical matter,
11 you're obviously fiduciary for the holders.

12 MR. SCHAFFER: Right.

13 THE COURT: And I have, I guess, a more general
14 question of, How do you get here?

15 MR. SCHAFFER: A very good question. That's kind of
16 where we started at the beginning of this case.

17 THE COURT: Okay.

18 MR. SCHAFFER: It's very unusual to see a roll-up
19 that includes part of a bond issue, and looking at that, I
20 start out talking with my client and saying, Have you ever
21 seen this before? Do we have any precedent? What's our
22 role? And that's why I think when you look at our
23 objections, what we're focused on is trying to provide equal
24 opportunities. We're not saying that those who are
25 participating in the roll-up are engaged in some wrongful

1 activity. What we're saying is, as a Trustee, we think it's
2 appropriate that everybody get the same opportunity. To jump
3 ahead to our third point, which is, we want to reserve any
4 claims that may exist. Our third objection was not saying,
5 There are claims against those who are participating in the
6 DIP. To the contrary, we said, We don't know if there are
7 claims or not. We just want to make sure that as between
8 non-debtors, if there are any, they're preserved and that
9 this Court's order doesn't put them out of court.

10 THE COURT: And do you read this Court's order to
11 foreclose those?

12 MR. SCHAFFER: I don't think it does, but it's the
13 nature of bankruptcy lawyers and trustee lawyers to try and
14 make sure that we're not doing anything inadvertently bad.

15 THE COURT: Sure. Okay.

16 MR. SCHAFFER: So, I think that with regard to those
17 latter two objections, it really is the same thing. The
18 indenture has multiple provisions that talk about the need
19 for equal treatment. I fully appreciate the distinctions
20 that are being made here and our argument is that we think
21 there could have been notice to everyone. We think there
22 should have been, and we think the Court could still sanction
23 it. We've given proposed language to the other parties.
24 We're not pounding the table saying, Let us participate.
25 That's not the role of the Trustee, as you've noted. What we

1 do want to make clear on the record is that we are seeking to
2 give everybody equal access.

3 THE COURT: I understand. Okay.

4 MR. SCHAFFER: Your Honor, I think I've covered my
5 points.

6 THE COURT: I think so, and I appreciate your
7 response on the trustee question. I was trying to figure out
8 how to politely formulate it, and I anticipated that that
9 would be what your answer is, and I think that, frankly,
10 that's the right answer.

11 MR. SCHAFFER: Okay, I'm glad to hear that.

12 THE COURT: Okay. Mr. Davis, did you wish to
13 respond?

14 MR. DAVIS: Just a couple of points, Your Honor.
15 There's certainly nothing in the Bankruptcy Code that
16 requires that everyone be given an opportunity to participate
17 as a DIP lender. There is certainly nothing in the indenture
18 that so requires it. Any provisions in the indenture that
19 speak about equal and ratable treatment, every single one
20 involves a distribution by the Indenture Trustee of any
21 monies or proceeds that it receives either from the debtor or
22 from collateral disposed by the Trustee. It has absolutely
23 no application to these facts, and this Court is guided by
24 the Bankruptcy Code not by the pre-petition indenture which
25 the enforce-ability of which is currently suspended. With

1 respect to reserving claims, Your Honor, the order as you
2 have observed does not ask for a finding that what is being
3 proposed is in conformity with the terms of the indenture, so
4 I would leave it at that. I don't believe that a reservation
5 of rights or anything like that is appropriate because I
6 think it may be our position if there were to be some
7 proceeding in the future that, you know, parties have an
8 opportunity to come into court and object. We're certainly
9 not asking Your Honor to make a finding in that regard today,
10 but I think the record and the order should speak for
11 themselves. Thank you, Your Honor.

12 THE COURT: Thank you. Mr. Nash, do you have
13 anything to add?

14 MR. NASH: With respect to the Indenture Trustee's
15 fees, Your Honor, from the debtors' point of view, our issue
16 there is, is we need to have access to financing to pay those
17 fees. To the extent we have access to financing to pay those
18 fees as adequate protection, we as the debtors are willing to
19 do so. Interestingly, Your Honor, with respect to the notice
20 issue, we have established a record that we are borrowing -
21 "we" being the VSE debtors are borrowing the amount of money
22 that we need to operate these businesses for 12 months. The
23 amount of money that we need to operate these businesses for
24 12 months has \$102 million of rolled up financing associated
25 with it. To the extent that anybody else were to come

1 forward during some extended notice period and ask to
2 participate, no doubt they would also want their debt rolled
3 up. We would then have additional rolled-up debt on top of
4 those people, since we probably would all agree that not
5 everybody's going to come forward to participate. So you
6 would be then rolling up more debt in connection with
7 financing that there is no record before Your Honor that the
8 debtors have a need for or intend to borrow. So, with that,
9 I'll conclude, Your Honor.

10 THE COURT: Okay. Does anyone else wish to be
11 heard? Okay. The matter - There's a discreet matter before
12 the Court which is the Trustee's threshold objections to the
13 request for financing, and the Indenture Trustee's rights to
14 raise objections on particular points in the DIP documents in
15 the proposed order are fully reserved, but the matter before
16 me, I believe, is the appropriateness of the roll-up and the
17 sufficiency of the adequate protection, and I will overrule
18 the Trustee's objection in both of those regards, and I will
19 approve and authorize the requested roll-up as well as
20 approving the adequate protection. As a threshold matter, I
21 note that our Local Rules make it clear and I believe they're
22 not inconsistent with the practice in the Southern District
23 and in other courts, their roll-ups are not favored. They
24 are strongly discouraged on day one, and the bottom line is
25 that for approval a substantial showing has to be made, and

1 it has to be made on appropriate notice, and I find that
2 notice is sufficient here. I approve the request for
3 financing without the roll-up but with a conspicuous notice
4 that a roll-up would be requested at this hearing, and so I
5 believe that for purposes of Rule 2002 and Rule 4001, notice
6 of that is sufficient. But the record also does reflect with
7 respect to the holders, those parties represented by the
8 Indenture Trustee, that there certainly was notice to those
9 parties. There are degrees of notice. An advertisement
10 could have been taken out, but I don't believe that the Code
11 requires it. What I find significant is that the record, the
12 undisputed record reflects that holders did hear about it,
13 and a number of them, but not all of them, not surprisingly,
14 chose to participate in the process. So, I take from that a
15 measure of confidence that notice was provided to parties in
16 interest simply because the facts reflect that parties acted
17 on it subsequent to receiving notice. The uncontroverted
18 record in this case, and I include the first day affidavit as
19 well as Mr. Augustine's testimony, is that the debtor filed
20 these cases frankly in dire financial straights. The
21 uncontroverted record also reflects that the proposed roll-up
22 is a requirement without which there would not be financing,
23 and that no other financing was available that would not have
24 required a roll-up or would have been available on terms that
25 would have caused substantial harm to the debtor presumably

1 by a substantial litigation at the outset of these cases. I
2 also note that with respect to the financing, there is
3 substantial new money that is coming in. This Court and my
4 colleagues have seen cases where you've had \$15 million of
5 pre-petition liability being rolled up and another million
6 and a half of new money coming in. That's, I think, the kind
7 of circumstance that the proposed rules speak to and that I
8 find to be an abuse of the system, but here the record is
9 that the financing, the \$93 million in new financing is
10 sufficient under the debtors' projections to allow them to
11 continue to operate. With respect to adequate protection, I
12 find that the adequate protection that's offered is
13 sufficient. I did note that Mr. Augustine's testimony was
14 troubling given that he has not conducted a valuation of the
15 enterprise, but given where we are in the case, in the first
16 30 days of the case and that he's only been involved in the
17 case for 30 days, I'm not surprised that that has not
18 occurred, but again, the undisputed record reflects that the
19 financing is necessary to avoid a full shutdown of the
20 business and that the debtors' plants are either in a hot
21 idle or operating stage and for my purposes, I regard them
22 as, again, based upon the record before me, sufficiently
23 similar that we've got basic - I treat these as operating
24 plants and again, the record from the first day hearing shows
25 that when you shut one of these plants down, you shut it down

1 for awhile. So, the record does reflect that these are
2 operating, and that the financing serves to preserve the
3 value of the collateral of the noteholders. I also note that
4 the adequate protection package does include junior liens on
5 the working capital and that there is value to those junior
6 liens, at least at this point based upon the other financial
7 structures that they debtors have entered into, and that
8 there will be post-petition cash payments. So, I'm satisfied
9 that there is a sufficient record, and I think that that was
10 the threshold issue raised by the Indenture Trustee, and I
11 think that the Trustee was placed in an unusual situation in
12 this case. I, frankly, have not seen a structure like this,
13 and I think it was, perhaps incumbent upon the Trustee to put
14 the debtor to his proof to show that there was a sufficient
15 record and that the interests of your fiduciaries are being
16 adequately protected. So, based upon the record before me,
17 I'm satisfied and I will approve and authorize the roll-up
18 and the adequate protection package. With respect to the
19 issue of whether claims are being reserved, I make no ruling
20 on that. The order is silent. There's no release that's
21 being granted and there's no cause of action or standing
22 that's being conferred, and again, I think the Trustee has
23 appropriately - simply noting that the interests of his
24 fiduciaries remain whatever they are and if this matter were
25 to come forward then I would deal with it at that point, but

1 I make no ruling on it at this point. So, based upon that, I
2 don't think that the issue of the Trustee fees and expenses,
3 which are normally a matter of contract in any event, are
4 before me for purposes of financing. If it is and if it's in
5 dispute, then I think we need to raise that, but where I
6 think we leave it is that you have your ruling. I will
7 approve the roll-up and the adequate protection package and
8 perhaps we need a moment to look at the - You may need a
9 moment to look at the line-by-line, and I prefer that you do
10 that without me first, and then turn to any other items that
11 we have. Mr. Nash?

12 MR. NASH: I think that's right, Your Honor,
13 particularly with respect to the line-by-line. There's no
14 doubt this Court will appreciate, it's not up to the debtors
15 to unilaterally for sure make changes to the DIP credit
16 agreement. So, Mr. Davis and I will have to confer with the
17 Indenture Trustee on that, that might take a little while, I
18 don't know how long exactly. Would it make sense, Your Honor
19 - the only other issue open would be the fact that we've got
20 the three orders with the three silos that are essentially
21 complete -

22 THE COURT: Right.

23 MR. NASH: - with respect to the fact that we will
24 be making additional changes to confirm just how junior and
25 silent those intercompany liens are. We would be prepared

1 then to submit those under certification of counsel. Would
2 now be an appropriate time, Your Honor, to see if anybody in
3 the courtroom has anything that they wish to say with respect
4 to those orders so that they could then be released.

5 THE COURT: Sure.

6 MR. NASH: Okay.

7 THE COURT: Mr. Kunz.

8 MR. KUNZ: Good morning, Your Honor. Carl Kunz on
9 behalf of both CHS and Provista. Your Honor entered an order
10 yesterday with respect to Provista rejecting certain
11 contracts, so, with that in mind, my comments are - may be
12 dealt with may not be dealt with. I'm not really sure. Mr.
13 Miller was here yesterday and noted an objection with respect
14 to the preservation of setoff rights and recoupment rights
15 and with respect to these I'm talking about three orders, one
16 to be entered in the Hankinson matter, the Woodbury matter,
17 and the Albert City matter. Your Honor, the issue, I think,
18 for CHS and Provista specifically deals with the issues of
19 setoff and recoupment. What caused us some concern was that
20 when you dig through the definition after definition and the
21 definitions based on other definitions, it was not clear to
22 us that rights of setoff and/or recoupment that were held or
23 may be held by either Provista or CHS were being preserved as
24 part of the DIP financing orders entered in those three
25 cases. We had proposed some language to the debtor. I

1 understand that Mr. Athanas is not quite happy with that
2 language that would be inserted into each of those orders or
3 at least put on the record, but the idea was that the orders
4 would make clear that at least with respect to Provista and
5 CHS that whatever rights they had with respect to setoff and
6 recoupment would be preserved, and the language that we had
7 proposed was basically that notwithstanding anything to the
8 contrary contained in the final order, nothing in the final
9 order or in any post-petition financing documents, as that
10 was a defined term, affects, primes, subordinates, reduces,
11 allows, or otherwise impairs in any way Provista's or CHS'
12 rights of setoff, offset, or recoupment. One of the issues,
13 I think, that we're concerned about which we're not -
14 standing here right now we're not even sure whether it's
15 going to come to fruition, but because Provista - in our
16 opinion, because Provista's and CHS' contracts may be forward
17 commodity contracts and therefore have additional rights
18 proposed by §§ 556 and 561 of the Code, to exercise those
19 rights as setoff to the extent that they exist, and again,
20 sitting here right now, I don't know whether those rights in
21 fact - whether there are any setoff rights or any setoff
22 obligations, but my concern was that what we wanted to make
23 clear was that this order was not affecting whatever rights
24 we had under the Code or under applicable state law with
25 respect to those rights. I just didn't think it was clear in

1 the order, we proposed language we'd like the rights to be
2 preserved.

3 THE COURT: Mr. Nash? You've got to watch out when
4 you put a mint in your mouth.

5 MR. NASH: From the debtors' perspective, Your
6 Honor, I think it is clear in the order. I think it's clear
7 that the liens that are being given to the DIP lenders prime
8 the existing pre-petition indebtedness, but they are in fact
9 subject to any liens or rights that the pre-petition
10 indebtedness is subject to. Mr. Athenas probably will
11 address Your Honor in a moment. I believe to the extent that
12 Mr. Athenas had a hesitation to include any one setoff party
13 by name, we may have a run on the order, so to speak, and I
14 know that from my perspective, Your Honor, I'm trying to
15 limit how many times we're changing these orders, given my
16 difficulty in actually getting an order over to you that you
17 can sign.

18 THE COURT: Sure. Mr. Athanas.

19 MR. ATHANAS: Your Honor, Joe Athanas on behalf of
20 Agstar. I have very little to add. What our order says,
21 essentially, is that our liens, we're not seeking 364(d)
22 liens. Our liens are 364(c) liens. So, Your Honor, we're
23 subject to any valid perfected pre-petition liens and
24 although we don't say including setoff rights, I'm saying now
25 on the record, that includes setoff rights. Now to the

1 extent there's some sort of post-petition new -

2 THE COURT: And recoupment?

3 MR. ATHANAS: And recoupment rights, absolutely. If
4 they have pre-petition valid perfected rights, even if they
5 haven't actually exercised them yet because of the automatic
6 stay -

7 THE COURT: Right.

8 MR. ATHANAS: - if they're valid perfected and
9 ahead of us, they're ahead of us post-petition, no question.
10 If they're trying to get new rights, they need to come to
11 this court, post-petition rights, any kind of post-petition
12 financing and get approval for that. We're not in advance -

13 THE COURT: Sure.

14 MR. ATHANAS: - giving them a blanket lien or
15 anything like that, but pre-petition there's no question
16 they're ahead of us.

17 THE COURT: Mr. Kunz, how does that work for you?

18 MR. KUNZ: Your Honor, I'm fine with the first
19 comment which is with respect to the pre-petition rights of
20 setoff and recoupment. What I'm concerned about again to the
21 extent that they exist and to the extent that the Code
22 provides that forward looking contracts and contract
23 merchants with commodities can exercise their rights of
24 setoff -

25 THE COURT: Well, I think I just - I understand the

1 point you're making and what I think I just heard Mr. Athanas
2 to say was that the order doesn't necessarily affect that,
3 but if you've got rights that arose on a post-petition basis,
4 you need to come back, but the order doesn't dispose of them,
5 doesn't foreclose them, he has whatever rights he has to say
6 he may be senior under the circumstances of whatever
7 transaction it may be, but as I understand it, your pre-
8 petition claims, to the extent that they're valid for setoff
9 or recoupment are senior, are not being primed, and then on a
10 post-petition basis, if you have rights, I think what he
11 wants - the bottom line is, while ultimately it would be
12 coming back to me, I think what he wants is notice and an
13 opportunity to object.

14 MR. KUNZ: And that's fine, Your Honor.

15 THE COURT: Mr. Athanas, have I correctly captured?

16 MR. ATHANAS: With one very small caveat, Your
17 Honor, I thought you did a great job in describing it. The
18 only thing I'd add is, to the extent their pre-petition liens
19 are prior to our pre-petition liens, that's true.

20 THE COURT: That's - When I said valid, that was
21 implicit that they've got to be - I think that's implicit.

22 MR. ATHANAS: Thank you, Your Honor.

23 MR. NASH: Understood, Your Honor.

24 THE COURT: Okay.

25 MR. NASH: Thank you.

1 THE COURT: Mr. Kuntz, are you satisfied with the
2 record then in that regard?

3 MR. KUNZ: I am, Your Honor.

4 THE COURT: You can talk to them about the language,
5 however you want, but I think your record right now is
6 probably pretty solid for you.

7 MR. KUNZ: I appreciate that.

8 THE COURT: Okay.

9 MR. KUNZ: I got the sense that they were not
10 looking to word-smith the orders that had been presented, so,
11 subject to anybody else's comments, if they're going back for
12 another round, we'll work on language.

13 THE COURT: Sure.

14 MR. KUNZ: Thank you.

15 THE COURT: Okay. Ms. Heilman?

16 MS. HEILMAN: Good morning, Your Honor. Leslie
17 Heilman, Ballard Spahr Anderson Ingersoll on behalf of the
18 First National Bank of Omaha. I have been here before. As
19 you know, we are the cash management bank -

20 THE COURT: For the LC.

21 MS. HEILMAN: - for the debtors as well as the
22 letter of credit bank, correct, Your Honor, for the VeraSun
23 debtors. Your Honor, I prepared an argument for today
24 because we had not reached an agreement prior to the hearing
25 today with respect to the provisions in the VeraSun DIP order

1 that we were seeking as the cash management bank and as the
2 letter of credit bank. However, in my discussions with
3 counsel shortly before the hearing, I was told that they're
4 okay with our language or okay with the rights that we were
5 requesting, however, we still haven't had language included
6 in the order and to the extent that language is not going to
7 be included in the order because it has been included in the
8 UBS cash collateral order, I think we need some type of
9 acknowledgment exactly where we are today. I'm not really
10 sure we are okay. I think the two orders need to be
11 consistent. There is just one budget. So, in the UBS order
12 we have been granted adequate protection and reimbursement of
13 our fees and expenses, and if there's only one budget and the
14 VeraSun DIP lenders have not agreed to fund those fees and
15 expenses and the adequate protection, then I think we're at
16 an impasse. I think the two orders should be consistent,
17 that the language we've requested should be in both orders,
18 and if not, at least some type of acknowledgment on the
19 record that the budget will so provide for what has been
20 granted in the UBS cash collateral order, and that they won't
21 impede any of our rights to work with the debtors and work
22 with UBS in getting payment under the rights granted under
23 the UBS cash collateral order.

24 THE COURT: Mr. Nash. Mr. Davis?

25 MR. DAVIS: Your Honor, there was a language that

1 was negotiated with UBS and its counsel for inclusion in its
2 order, and we have determined that we're not going to object
3 to entry of that order. That's not language that we
4 negotiated and conceptually we have no objection to it. In
5 terms of including payments that are otherwise required or in
6 a budget, this is not - we haven't discussed as a lender
7 group individual disbursements like this. There is a budget.
8 Debtors need to comply with the budget. The lenders have are
9 in the process of or have approved the budget. If the
10 debtors are unable to make the payment in accordance with the
11 amount of flexibility they have in their budget, then I'm
12 sure counsel will come back with a motion for payment of an
13 administrative claim. I mean, I can't say more. I can't
14 commit that it will be part of the budget. The budget isn't
15 that specific. It's not disbursement specific in that
16 respect, so, I imagine and if the debtors are probably
17 comfortable, if there's adequate room in the budget to make
18 these payments that they've committed to, and that's fine. I
19 have no reason to think that that's not the case, but I can't
20 say that we have had a discussion among the now seven DIP
21 lenders -

22 THE COURT: Well, I think there's a difference.
23 There's a little bit of a - I mean, what she's asking for is
24 adequate protection. That discussion isn't necessarily -
25 doesn't normally revolve around a line in a budget. It's

1 rather, you know, does the order provide for adequate
2 protection, what would the adequate protection be, and is it
3 payment of the fees and expenses, as I understand it, of the
4 LC issuer; right? That's what we're talking about, the
5 issuing bank. And I understand that the budget is not
6 sufficient enough, but the question is, can I find that she's
7 adequately protected today and maybe - I think what you're
8 telling me it's a big budget and she ought to be fine, but I
9 guess I don't know whether that's adequate protection or
10 whether there's a way to write that into words that would
11 satisfy those concerns. Is that what we're talking about?

12 MR. DAVIS: I think that's all we're talking about,
13 Your Honor. I mean, as adequate protection, you are ordering
14 that they receive certain payments and that is an order of
15 the Court and it is an order that the debtor has to comply
16 with, and -

17 THE COURT: Okay, but tell me, does the order,
18 because I think what I'm hearing from counsel is that the
19 order doesn't say that. The order - I mean, I think - Does
20 the order say that your fee - Ms. Heilman, I don't even know
21 which order we're talking about.

22 MR. DAVIS: We're talking about the UBS -

23 THE COURT: Okay.

24 MR. BOTTER: Actually -

25 THE COURT: Bail me out here, Mr. Botter.

1 MR. BOTTER: Sure. We're actually talking about two
2 orders.

3 THE COURT: Okay. There's the UBS order and the LC.

4 MR. BOTTER: We're talking about Mr. Davis' order.

5 THE COURT: Right.

6 MR. BOTTER: And the UBS cash collateral order. The
7 UBS cash collateral order specifically provides for this type
8 of adequate protection.

9 THE COURT: Right.

10 MR. BOTTER: The VSE DIP order does not, but she's
11 got that protection in the UBS cash collateral order, which
12 to me seems as though exactly what Mr. Davis said, is an
13 order of the Court which the debtor will have to comply with.

14 THE COURT: Ms. Heilman?

15 MS. HEILMAN: Your Honor, maybe it will help to
16 clarify certain things. Number one, when we started this
17 process, we sent out the proposed language to the VSE DIP
18 lenders, UBS, and the debtors because our collateral with
19 respect to the - I've seen the cash management bank for most
20 of the VeraSun debtors as well as the letter of credit bank
21 for the VeraSun debtors. It impacts those orders. To
22 clarify, Your Honor, what we were seeking is kind of twofold:
23 One, we're seeking certain protections as the cash management
24 bank in this case and mainly we're seeking that all
25 obligations incurred by the bank in the ordinary course of

1 business should be paid on a *pari passu* with the debtors'
2 post-petition debtor-in-possession financing. I understand
3 that *pari passu* super-priority's treatment is junior to the
4 DIP liens of the VeraSun DIP lenders. So, we're fine with
5 that. We're not asking for anything that UBS hasn't gotten
6 as well. Our collateral is the same collateral with UBS. We
7 carved out certain of that collateral from any liens that the
8 VSE DIP lenders have and any liens that the UBS has. We've
9 resolved that point, but with respect to the super-priority
10 treatment, we don't see why the debtors or the DIP lenders,
11 and UBS has already agreed to it, aren't agreeing to pay our
12 ordinary course expenses as the cash management bank going
13 forward, and we don't understand why such language shouldn't
14 be in the order, in the VeraSun DIP order. As well as, Your
15 Honor, as the letter of credit bank, we're seeking the same
16 super-priority treatment with respect to our ordinary course
17 fees and expenses going forward in this case because we
18 continue to supply post-petition credit to the debtors on a
19 going-forward basis under our letter of credit facility and
20 they're provided for under the letter of credit agreement
21 and, Your Honor, until they replace our letters of credit, we
22 will continue to provide the letter of credit facility. In
23 addition, Your Honor, under the letter of credit agreement,
24 it does also provide for payment of interest and fees and
25 expenses. We have requested, consistent with the UBS order,

1 fees and expenses that were both incurred pre-petition as
2 well as post-petition. I think the problem lies here is
3 whether or not they want to pay our pre-petition fees. I
4 don't think anyone can dispute that they need to pay in the
5 ordinary course of business as a continuing lender to this
6 estate our ordinary course fees going forward under the
7 letter of credit agreement. It so provides, and 506(b)
8 provides that if we are a secured lender, we're entitled to
9 interest and repayment of our reasonable fees and expenses.
10 They might dispute, Your Honor, that we are under-secured,
11 however, Your Honor, with respect to the security end of the
12 letter of credit facility, we are secured by the money market
13 account, which is approximately 1.5 million. We're also
14 secured as a second position in all the deposit accounts the
15 bank holds, and actually that position is actually first in
16 line with respect to any ordinary course expenses of the bank
17 incurred in maintaining the deposit accounts. In addition,
18 Your Honor, UBS has issued a standby letter of credit to back
19 up the remaining letters of credit for the debtors. We
20 understand that is not property of the estate and we
21 understand that we have a contingent claim with respect to
22 any draws on the letters of credit themselves, but we are
23 certainly over-secured with respect to the interest and fees
24 and expenses due and payable under the letter of credit
25 agreement through the collateral that the debtors have an

1 interest in this estate, and because of that, Your Honor, I
2 do believe that we're entitled to all of the protections that
3 UBS has granted us in their order, but we do believe that
4 those same protections should be in the VeraSun DIP order
5 because we're dealing with the same budget here. We're
6 dealing with the cash management, we're dealing with the
7 letter of credit facility for all the VeraSun debtors in this
8 case, and the orders need to be consistent. We don't want to
9 be in a position where there's one budget and the DIP lenders
10 say, No, we're not going to fund that, although one order
11 says they will.

12 MR. NASH: Your Honor, I really don't think that we
13 have a dispute here.

14 THE COURT: I'm gathering that.

15 MR. NASH: We have -

16 THE COURT: I don't think there is a dispute, it's a
17 question -

18 MR. NASH: There is notice - We are in violent
19 agreement, Your Honor. There is -

20 THE COURT: Violent agreement.

21 MR. NASH: We have a cash collateral order where the
22 debtors have agreed as a means of adequate protection to make
23 the payments for which First National Bank of Omaha seeks.
24 We have a budget. The budget has got some specificity in it,
25 Your Honor, but it by no means has every payment that we will

1 be making. You heard Mr. Davis address the Court and say
2 that, you know, to the extent we have the liquidity to make
3 the payments, he's not aware of any prohibition or
4 proscription that would bar us from making those payments.
5 We have an obligation to make the payments under the order.
6 We intend to make the payments under the order. To the
7 extent that we don't make the payments under the order, we
8 will be hearing from the First National Bank of Omaha.

9 THE COURT: Well, I guess I'm asking a question of
10 why, with all of that said, you can't - I mean we're in
11 agreement that they're entitled to whatever they're entitled
12 to, and there's adequate protection that everybody's agreed
13 to that they're entitled to, and the question I'm asking is,
14 it's already built into one order, why can't some sort of
15 language be built in. I realize the budget is not sufficient
16 - not sufficiently detailed in it, and I don't want to
17 necessarily reopen that can of worms, but why is it that the
18 request that there be parallel language - I mean, what I see
19 is a general agreement that whatever these concerns are going
20 to get dealt with and maybe the bank is being hyper-cautious,
21 but I think taking it a step further, there's a concern that
22 she's going to get whipsawed and that there's going to be -
23 She'll have rights under UBS and VSE won't fund it or VSE
24 won't approve it or it won't be in the budget and then she's
25 going to turn and, you know, under whatever documents she's

1 going to be sort of between a rock and a hard place, and I
2 don't have any idea whether that could or would play out, but
3 the question is, if everybody's in agreement that she's got
4 whatever rights she's got, why can't we memorialize that?

5 MR. NASH: Understanding and appreciating, Your
6 Honor, that the DIP financing orders are the debtors' orders
7 and we stand by any order that we submit. It's probably a
8 question best directed at this point to Mr. Davis with
9 respect to that language.

10 MR. DAVIS: Your Honor, I was hoping not to have to
11 go here, but let me try to explain the thinking a little bit.
12 I have no problem trying to put similar type language in the
13 order. It's not an issue of trying to whipsaw someone and
14 say it's -

15 THE COURT: I know and I didn't mean to imply that
16 that was going to happen, but -

17 MR. DAVIS: But there is some facts that -
18 Essentially the LCs we're talking about are about \$12 million
19 secured by a million dollars in cash collateral and
20 backstopped by an LC issued by UBS. Okay. In terms of from
21 an estate perspective, it's under-secured. It only has a
22 million and a half dollars of estate collateral supporting
23 it. It does have the benefit of a UBS backstop LC which is
24 why UBS would like to provide for it to be taken care of in
25 accordance with its terms. We have no objection to that

1 because, you know, either way the estate's going to be paying
2 the fees to one or the other. The problem is in the priority
3 of the administrative expense claim. The administrative
4 expense claim, as I read the order, is being granted for
5 pre-petition and post-petition - essentially fees, bank fees
6 for administering the bank accounts as well as the LC
7 exposure. That is going to reign junior to the super-
8 priority administrative expense claims of the DIP lenders,
9 but be on a parity with the administrative expense claims
10 super-priority for replacement liens. Obviously, the
11 Bankruptcy Code contemplates giving super-priority
12 administrative expense claims as replacement liens and as
13 adequate protection. It doesn't contemplate it for what's
14 otherwise an administrative claim in performing post-petition
15 services. So for that reason, I had kind of a feeling that
16 it was just inappropriate to put the two things on an equal
17 parallel. I think to the extent it's going to be an our
18 order to any administrative expense claims that granted to
19 the extent the super-priority should be behind any adequate
20 protection that's provided to the secured noteholders.

21 THE COURT: Okay, okay.

22 MR. DAVIS: With that, I'm willing to put it in the
23 order.

24 THE COURT: Ms. Heilman?

25 MS. HEILMAN: I think, Your Honor, that with the

1 acknowledgment that what is provided in the UBS order is
2 sufficient to protect our rights, and with an acknowledgment
3 today on the record that the secured bondholders won't impede
4 on those rights, and provided it's sufficient, the budget is
5 sufficient to produce them, I don't think that we need to
6 insist on language. We would prefer language that so the two
7 orders would be consistent. We do disagree that - I mean,
8 especially as a cash management bank, the treatment that
9 we're seeking as the cash management bank is language that
10 generally goes into cash management orders. I don't
11 understand why there's a dispute with respect to that
12 treatment, however, if we've been granted those rights in the
13 UBS order and the DIP lenders are acknowledging those rights
14 and won't impede on those rights, then that should be
15 sufficient, Your Honor. I mean, if we need to come back
16 before Your Honor, we will. I mean -

17 THE COURT: Well, let me make one comment. Your
18 ability to come back before this Court certainly is not being
19 foreclosed by this order, and I make that comment because I
20 don't believe I have an objection from the bank, and I don't
21 mean that as a criticism, this has been moving fairly
22 quickly, and I understand the parties are reviewing orders
23 and attempting to preserve their client's rights and
24 interests. So, your right to appear before this Court and
25 raise issues, if you need to, I believe are - your rights are

1 reserved, but I do think that with the record that's been
2 established, that the concerns that you're expressing are
3 being largely addressed, and if you feel that that's
4 insufficient and you need either more documentation or an
5 affirmative finding of adequate protection, you have a right
6 to file that motion, but I don't believe that I have a
7 sufficient record, really, to finally adjudicate the matter,
8 but I don't think I need to because I'm not sure that there
9 actually is a dispute before me.

10 MS. HEILMAN: I understand that, Your Honor, and -

11 THE COURT: Okay.

12 MS. HEILMAN: - as long as we have that
13 acknowledgment that the rights granted under the UBS order
14 will not be impeded on, then I think we're fine.

15 THE COURT: Okay.

16 MS. HEILMAN: Thank you, Your Honor.

17 THE COURT: Mr. Botter?

18 MR. BOTTER: Yes, very briefly, Your Honor, and
19 we're finished with VSE. Two quick comments with respect to
20 West LB and with respect to Agstar. West LB, repeating
21 comments made yesterday, we have no objection to the interim
22 order at this point in time, which is the only thing that the
23 debtor is seeking. We are still continuing to have
24 discussions with the West LB lenders regarding the economic
25 issues that we identified yesterday. It's my hope that we

1 will resolve them in the context of the final order. With
2 respect to Agstar, Mr. Athanas and I worked quite hard to try
3 to resolve everything, and we have resolved everything, and
4 we have no objection. Two clarifications: I had mentioned
5 yesterday that they had baked into the post-petition facility
6 some pre-petition facility events of default. It is fairly
7 clear, and I think Mr. Athanas agrees, that some of those
8 just don't apply in the context of a Chapter 11 case. So,
9 for the record, those that do not apply and obviously do not
10 apply in the context of a Chapter 11 case, will not apply in
11 this Chapter 11 case. Last point. There is a prohibition
12 against substantive consolidation in their order. I have
13 never seen such a provision. It has been explained to me
14 that because of the various agricultural types of regulations
15 and the reason why we have multiple DIP facilities at Agstar
16 that those entities cannot be substantively consolidated
17 because it would violate this regulatory scheme. I'm okay
18 with that, however, to the extent the estates at some point
19 in time, which I have no idea standing here today, will or
20 will not occur, should be substantively consolidated. As
21 long as it doesn't impact them, I mean, they're going to have
22 to get paid out in cash in full in the context of any plan,
23 obviously to the extent that it's appropriate for this Court
24 to consider substantive consolidation, it ought to be able to
25 do so, again, as long as they're paid in full and in cash and

1 in the context of such a plan.

2 THE COURT: Then do you expect to revise the order
3 to reflect that? I actually did not see that provision, so I
4 must have - But I have not seen it before - I mean, I
5 understand the regulatory structure generally and I
6 understand where that would be an issue, but I think at least
7 the possibility should remain out there on sufficient notice
8 to parties and from your point of view, I can't imagine that
9 they would care if they got paid out in full.

10 MR. DAVIS: Well it said, it in fact has been
11 revised to provide, unless it's pre-petition indebtedness and
12 post-petition obligations, shall have been indefeasibly paid
13 in full. The only issue there is, obviously, to the extent
14 that a sub-com plan is proposed which contemplates them being
15 paid in full, that of course can't be a problem. So, we've
16 been working really hard and quickly to try to get things
17 done. I think with the clarification I've made on the
18 record, the language is now fine.

19 MR. ATHANAS: Your Honor, I agree. I just want -
20 unfortunately the Farm Credit Act is its own separate animal
21 and each of our loans must at all times, pre-petition and
22 post-petition remain separate. So, substantive consolidation
23 would cause us to violate federal laws as lenders that are
24 charters as banks are based on.

25 THE COURT: Sure.

1 MR. ATHANAS: So, therefore, Your Honor, we're in
2 this position where we have to have this unusual position.
3 Obviously, once we're paid out of pre-petition/post-petition
4 loans, we have absolutely no problem, and if it happens, you
5 know, if they substantively consolidate the second after
6 we're paid in a plan, that is of course fine. We just have
7 to be paid first.

8 THE COURT: Okay, I understand.

9 UNIDENTIFIED SPEAKER: With that, Your Honor, we
10 agree.

11 THE COURT: All right. Anyone else wish to be
12 heard? Mr. Swett?

13 MR. SWETT: Thank you, Your Honor. The Court has
14 heard my statements on behalf of UBS both today and yesterday
15 with respect to the adequacy of our protection, and I wanted
16 to ask the Court what its intentions were with respect to the
17 Agstar motion before I put anything else on the record with
18 respect to our cash -

19 THE COURT: This is the joint stipulation resolving
20 the emergency motion?

21 MR. SWETT: Yes, Your Honor.

22 THE COURT: Actually, what I wanted was an
23 opportunity - at some point I was expecting we would break
24 because I want to read the stipulation again. I understand
25 the arguments that have been raised and the responses. I'm

1 not adjourning this, but I would like the chance to read it
2 before I rule on it one way or the other.

3 MR. SWETT: Okay. Thank you, Your Honor. I guess
4 then I would ask to defer any further comments on the entry
5 of our cash collateral order -

6 THE COURT: Oh, sure.

7 MR. SWETT: - until the Court has had an
8 opportunity to state its view of that stipulation.

9 THE COURT: I understand.

10 MR. SWETT: Thank you, Your Honor.

11 THE COURT: Okay. Mr. Nash, where does that leave
12 us? I think you want the opportunity to have discussions
13 with Mr. Schaffer -

14 MR. NASH: Yes.

15 THE COURT: - on the orders, but otherwise I think -
16 and then you're finalizing some of the language on - what was
17 the remaining point that applies to all three motions?

18 MR. NASH: I think we're in a position to send over
19 under certification of counsel this afternoon the final UBS
20 cash collateral order -

21 THE COURT: Okay.

22 MR. NASH: - pending the answer.

23 THE COURT: Right.

24 MR. NASH: We're in a position then to send over the
25 DIP financing orders, six of them at US Bio, one of them at

1 ASA, and one of them at VeraSun. We'll send those over under
2 certification of counsel because the only changes that we're
3 making to those orders -

4 THE COURT: Well, aren't you supposed to have a
5 discussion with him?

6 MR. NASH: I spoke too fast. The six orders at US
7 Bio will be coming over under certification of counsel. The
8 West LB order will be coming over under certification of
9 counsel.

10 THE COURT: Okay.

11 MR. NASH: We've got the issue on the VeraSun DIP
12 financing order, and for that, I do need to break and sit
13 down with Mr. Davis and Mr. Schaffer so that we at least only
14 bring in front of Your Honor those points where we don't have
15 agreement.

16 THE COURT: Sure. So, my question is, how would you
17 like to handle this. Do you want to take a short break? Do
18 you want to break for 90 minutes and then you can bring
19 documents back?

20 UNIDENTIFIED SPEAKER: Ten minutes, I think.

21 THE COURT: Ten minutes?

22 MR. NASH: Ten minutes, if it's okay with the
23 Indenture Trustee, it's certainly okay with the debtors, Your
24 Honor.

25 THE COURT: All right, I'll give you 15 minutes, and

1 then -

2 MR. NASH: We'll need every minute of it, Judge.
3 We'll be back in 20.

4 THE COURT: Because you're more likely half an hour.
5 All right, so, we'll reconvene at 12:15 for purposes of
6 walking through the proposed form of order and the DIP credit
7 agreement and any open issues that remain. You have my
8 ruling with respect to the roll-up and the adequate
9 protection, and at that point I would be prepared to deal
10 with the Agstar proposed stipulation. Okay?

11 MR. NASH: Thank you very much, Your Honor.

12 THE COURT: All right, any questions? We'll stand
13 in recess, 15 minutes.

14 (Whereupon at 12:02 p.m., a recess was taken in the
15 hearing in this matter.)

16 (Whereupon at 12:31 p.m., the hearing in this
17 matter reconvened and the following proceedings were had:)

18 THE CLERK: All rise.

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

20 MR. NASH: Your Honor, I think what we'll try to do
21 is Mr. Gwynne will address the Court on his issues where he
22 seeks clarification.

23 THE COURT: Okay.

24 MR. NASH: Mr. Davis and/or myself will yeah or nay
25 on the clarification points, and we'll cede to the extent

1 that we have any issues.

2 THE COURT: Okay. That would be great.

3 MR. GWYNNE: The Committee will have a nay on one as
4 well, Your Honor, but hopefully we can have some violent
5 agreement and amicable disagreement with respect to these
6 issues -

7 THE COURT: Mr. Gwynne, let me make sure that we're
8 all on the same document.

9 MR. GWYNNE: Okay.

10 THE COURT: We're looking at the VSE order. I have
11 CWT draft 12/2/2008, and if not then you ought to give me a
12 different order.

13 MR. GWYNNE: I have the order that was actually
14 filed this morning at 8:35.

15 THE COURT: I think - does the footer say version
16 15?

17 MR. GWYNNE: Yes, Your Honor.

18 THE COURT: Okay, good.

19 MR. GWYNNE: And generally there's three buckets
20 that our objections fall into, and I'm going to be as brief
21 as is possible, Your Honor.

22 THE COURT: Okay.

23 MR. GWYNNE: Especially because I tend to be long-
24 winded.

25 THE COURT: You do. You opened yourself up for

1 that.

2 MR. GWYNNE: That was rhetorical. The first bucket
3 -

4 THE COURT: You left yourself wide open for that.

5 MR. GWYNNE: I know, absolutely. The first bucket
6 goes to information and notice. We just want to make sure
7 that we're in the loop. Since we were the first priority
8 lien holder that's now being primed, to the extent there's a
9 problem it hits us first. We want to make sure we have
10 information and that we're in the loop. Second bucket deals
11 with the extent or effect of the priming in the documents and
12 whether our existing lien should be silent as opposed to just
13 the adequate protection lien being silent, and I think we've
14 resolved that issue.

15 THE COURT: Okay.

16 MR. GWYNNE: Then there's issues regarding
17 restrictions regarding the debtors' ability to issue further
18 adequate protection. The order says we can ask for it, but I
19 believe the agreement would make it a default under the DIP,
20 and that's one of the few things that we didn't get to that
21 lenders' counsel, I presume, will have a response. I'm not
22 sure if it's yeah or nay

23 THE COURT: Okay.

24 MR. GWYNNE: And then there's the issue of avoidance
25 actions with respect to our super-priority claim whereas Your

1 Honor can imagine that's the one - at least the one issue
2 that I think that the Committee will have.

3 THE COURT: You're looking for your 507(b) super-
4 priority to attach to proceeds of avoidance actions?

5 MR. GWYNNE: We are, Your Honor. We're being
6 primed, and normally if you're being primed under the
7 Bankruptcy Code and you get adequate protection that includes
8 a junior lien, even if we weren't granted separately a
9 super-priority claim we were just granted a junior lien and
10 that ended up being insufficient adequate protection, under
11 507(b) we'd have a super-priority claim, and under the law we
12 would then be entitled, like any other admin claimant with a
13 super-priority claim, first to share out of the proceeds of
14 avoidance actions. Now, everyone else agreed that avoidance
15 actions would not be subject to their super-priority claims,
16 but we're the only ones being primed. We don't have a first
17 lien, that's why it's important to us. With no evidence of
18 the valuation of the collateral in the record, we think that
19 may be the only real significant source. We don't really
20 know, but we don't think we should have to give up a right
21 that the Code doesn't take away from us.

22 THE COURT: Okay.

23 MR. GWYNNE: With respect to - and I didn't mean to
24 get to that one first, so -

25 THE COURT: No, that's fine.

1 MR. GWYNNE: I started with the final order.

2 THE COURT: Yeah.

3 MR. GWYNNE: I have comments to the final order as
4 well as the DIP credit agreement. Debtors' counsel and
5 lenders' counsel made it very clear that they're not changing
6 the credit agreement. It's been signed, filed, I understand
7 that, but I think we can either handle these things with
8 clarifications on the record or to the extent necessary
9 language in the order which is not uncommon.

10 THE COURT: Okay.

11 MR. GWYNNE: On pages 16 and 17 of the final order,
12 paragraph (8)(a)(1), and there's language regarding Agstar's
13 liens and adequate protection and that Agstar is not being
14 primed, I believe, is the impact of this. We don't have any
15 issue with that. We agree that that's the way it should be,
16 but we think there's language in here that needs to be
17 tweaked slightly. It says - It refers to on page 17, on the
18 second line down, "that was transferred". So what this is
19 saying, the way we read it is this says that Agstar had a
20 lien on inventory that was transferred to VeraSun Marketing,
21 that that lien is not being primed, and we agree that that's
22 okay if they're talking about when it was in US BioEnergy
23 debtors' possession. Once that inventory went to VeraSun
24 Marketing, if Agstar has a lien, then we agree it shouldn't
25 be primed. If Agstar doesn't have a lien, which is not being

1 decided today, but if Agstar doesn't have a lien, this
2 language shouldn't grant it, and we just want to make it
3 clear on the record that the parties don't read it that way.

4 THE COURT: Okay. Responses?

5 MR. NASH: Confirmed.

6 THE COURT: Okay.

7 MR. GWYNNE: I liked that "violent agreement", that
8 was good. Next, Your Honor, page 19, paragraph (9), and this
9 is just general, this is where adequate protection starts. I
10 believe that debtors' counsel indicated that the Trustee's
11 professional fees would be paid and they would be paid as an
12 administrative expense claim and would be put in the budget.
13 We wanted them to also be paid out of the carve-out. They
14 said, No. We're okay with that.

15 THE COURT: Okay.

16 MR. GWYNNE: I would just like the debtors and the
17 lenders and the Committee to confirm when I'm done talking to
18 make sure we have an agreement on the record. I'm stating
19 where I think we do have one.

20 THE COURT: Well, why don't we deal with it point by
21 point -

22 MR. GWYNNE: Okay.

23 THE COURT: - because if this goes sideways three
24 months from now, no one will be able to sort that out.

25 MR. NASH: Confirmed.

1 THE COURT: Okay, thank you.

2 MR. BOTTER: Your Honor, just as - as with all the
3 other lenders' counsel, effectively if they're lenders'
4 counsel, we want to see reasonably detailed invoices and have
5 an opportunity to object to them.

6 THE COURT: And that's routine.

7 MR. BOTTER: Yes.

8 THE COURT: Okay.

9 MR. BOTTER: Understood.

10 THE COURT: Very good. Okay.

11 MR. GWYNNE: On page 19, paragraph (9)(a)(2), there
12 was language in the interim DIP order that is not in the
13 final order with respect to our liens. Unfortunately because
14 of the time and when we saw these things, I only have one
15 copy of the interim order. I did show it to debtors' counsel
16 and counsel for the lenders. If I could have a second to
17 show it -

18 THE COURT: Sure.

19 MR. GWYNNE: - to the Committee and then approach
20 Your Honor?

21 THE COURT: Yep.

22 MR. GWYNNE: May I approach, Your Honor?

23 THE COURT: Sure. Okay.

24 MR. GWYNNE: The language is - This is page 6, Your
25 Honor, of the term sheet that's attached to the interim DIP

1 order. Our lien was also described in there. This is our
2 adequate protection lien as being, quote, "and senior to any
3 and all other liens presently existing or hereafter granted
4 on any of the VSE DIP collateral", close quote, and we want
5 that language to also be in the final order.

6 THE COURT: Mr. Davis?

7 MR. DAVIS: Thank you, Your Honor. The reason that
8 it's not in the final order is - I think it was a mistake to
9 have it in the term sheet. The DIP itself is not priming
10 valid and existing liens other than the noteholders' liens.
11 So, if the adequate protection lien is going to be junior to
12 the DIP and the DIP doesn't prime them, it's inconsistent to
13 say that these liens would then prime -

14 THE COURT: Well, let's -

15 MR. DAVIS: - liens if the DIP doesn't.

16 THE COURT: Let's parse between two things. There's
17 "existing" and "hereafter granted", and existing would make
18 this a priming adequate protection lien and I assume that
19 you're not pushing for that.

20 MR. GWYNNE: No, we're fine with it. Your Honor
21 just referred to the hereafter granted.

22 THE COURT: Mr. Davis?

23 MR. GWYNNE: And, Your Honor, the importance there
24 is we're being primed. This is our adequate protection for
25 that. That adequate protection shouldn't be primed.

1 MR. DAVIS: I guess what I would say is to the
2 extent that - I don't think it's appropriate at this point to
3 foreclose the possibility that there could be a further
4 priming on a record established before Your Honor and Your
5 Honor determined that that was appropriate.

6 THE COURT: I guess - and one way to square this
7 circle, Mr. Gwynne, might be to say, "or hereafter granted on
8 VSE collateral upon motion, notice, and an appropriate order
9 of the Court." Because I think the point is, this language,
10 if it just says "hereafter granted", technically you can't
11 grant liens on a estate property without a Court order, but
12 your fear would be that it would be buried in some sort of
13 document. You wouldn't see it and you'd get primed at some
14 point during the course of this case, and you don't want that
15 to happen.

16 MR. GWYNNE: We don't want that, and frankly, Your
17 Honor, we don't want to be primed again -

18 THE COURT: At all, no, I know.

19 MR. GWYNNE: - at all.

20 THE COURT: But I think that the point that Mr.
21 Davis is saying is that it's not easy to prime somebody.
22 It's even less easy to prime them twice, but I'm not going to
23 foreclose the prospect of that at this point, but I think
24 that you should have full and fair notice of any intention by
25 the debtor or any other party to prime the adequate

1 protection liens that I'm approving. So, I think the word
2 "existing or" should come out because otherwise that would be
3 priming out of a protection lien, but I don't think that
4 there should be any prospect of you being primed going
5 forward until and unless there's a full-blown hearing on it,
6 and, you know, if they can make a record that you're
7 adequately protected or they're giving you other stuff then
8 fine, but I don't think we're ever going to get there, but I
9 think the main thing for you is not so much that it's - I
10 mean, it would be nice for you if it got foreclosed forever
11 today, but I don't think I'm prepared to do that, but I'm
12 certainly prepared to preserve your right to know that it's
13 coming and to come in and raise the issue.

14 MR. GWYNNE: Okay.

15 THE COURT: So, can - somebody can word-smith that;
16 all right?

17 MR. GWYNNE: Okay, thank you, Your Honor.

18 THE COURT: Does that work? Okay. Here, do you
19 want this back?

20 MR. GWYNNE: Sure. May I approach?

21 THE COURT: Sure. Thanks.

22 MR. GWYNNE: The next issue, Your Honor, is
23 paragraph (9) (a), Romanette iii, it's on pages 19 and 20.

24 THE COURT: That's the super-priority issue?

25 MR. GWYNNE: Yeah, this is the super-priority issue

1 on the avoidance actions. I said I wouldn't be long-winded.
2 I think I've already told Your Honor what my position is with
3 respect to that, so I'll cede to Committee's counsel.

4 THE COURT: Okay.

5 MR. BOTTER: Your Honor, we've taken the position
6 with all the lenders and we've taken the position throughout
7 that the proceeds of avoidance actions really belong to
8 unsecured creditors. We've gotten agreement from everyone.
9 That's been part of how we've agreed to - that's part of the
10 package of how we've agreed to all of these orders. To the
11 extent that the adequate protection liens, there are super-
12 priorities attached to it, we'd lose the proceeds then as
13 well. It will obviously come out before us, and to the
14 extent that people are concerned about recoveries, obviously
15 we're all concerned about recoveries. At this stage of the
16 case, we have no idea what's going to happen here, and we
17 want to preserve the ability for the unsecured creditors to
18 recover something in this case.

19 THE COURT: Let me ask you a question that goes,
20 perhaps, to Mr. Davis, but there was a comment earlier on
21 about whether or not it was a default under the DIP for the
22 noteholders to seek additional adequate protection. Is that
23 accurate? Perhaps for me to approve it, it might be a
24 default, but for them to seek?

25 MR. DAVIS: Your Honor, I'm not aware if it is. I

1 will tell you this though, if it is, we will remove it. I
2 don't think there should be a default if someone asks for
3 adequate protection.

4 THE COURT: All right. Mr. Gwynne, here's what I
5 want to do with this, and I appreciate the position of the
6 lender and the noteholders. I am going to leave in - I'm not
7 going to give you a 507(b) super-priority upon avoidance
8 actions subject to your right to seek additional adequate
9 protection being 507(b) super-priority claims against them or
10 whatever else you may want, because I don't think to the
11 extent that we've clarified, I don't think it would be
12 appropriate to foreclose your ability to seek adequate
13 protection. We're early in the case, and I don't know where
14 we stand right now. The reason that I'm actually kind of
15 kicking this can down the road is that one of the consistent
16 themes of the last two days of hearings and really the first
17 day hearings as well, is that there is not a tremendous
18 amount of certainty about what the overall values of the
19 different assets are, and I understand that your point would
20 be well in the absence of that, I ought to get as much as I
21 can get, and I understand that.

22 MR. GWYNNE: And, Your Honor, all I'm saying is
23 you're phrasing it as I'm asking for a super-priority -

24 THE COURT: Yeah, you already have it, and I'm
25 carving it out.

1 MR. GWYNNE: What I'm saying that, all right, I have
2 a super-priority claim under the Code and that's all I'm
3 asking for. I'm not asking for anything special, I'm just
4 saying, Your Honor shouldn't take away something that the
5 Code doesn't provide comes away.

6 THE COURT: I understand, and I am, but that is -

7 MR. GWYNNE: That was a rhetorical question.

8 THE COURT: No, but, you understand the point that
9 I'm making is that one, I simply, I frankly don't have, I've
10 already made a ruling that I believe that the adequate
11 protection that's being provided in terms of the junior liens
12 and the current cash payments are sufficient adequate
13 protection, but I realize that it's early in the case, and
14 so, I'm making a specific notation that I think should be
15 reflected in the order that your rights to seek access to
16 those proceeds are reserved under rights that you might
17 otherwise be able to assert under § 507(b), and the reason
18 that I'm saying that is, that I don't have enough of a record
19 one way or the other. I believe that with the cash payments
20 and I'm satisfied that the cash payments in the junior liens
21 currently are adequate. I also note that the proceeds that
22 we're talking about don't exist yet, and so, I think I want
23 to give the noteholders an opportunity to see how this case
24 plays out and frankly to take a breadth, look around, and if
25 in the next two weeks or two months or six months or

1 whatever, your concern that your position is being diminished
2 then I will be more than happy to hear you, but in the
3 context of the financing structures that the debtors have
4 made, I'm not going to give you - I'm going to essentially
5 require and I will sustain the Committee's demand that that
6 be carved out.

7 MR. GWYNNE: Understood.

8 THE COURT: Okay.

9 MR. GWYNNE: Your Honor, the next issues is
10 paragraphs (9) (b) on page 20 and paragraph (12) (a) on page
11 23. Those paragraphs have language in there that precludes
12 the Trustee from taking any action in the court or otherwise
13 related to enforcement of the prime liens. There's similar
14 language like that in the credit agreement as well, and I
15 believe after discussing this with debtors' counsel and
16 noteholders' counsel that any provision - I think this is
17 something though that should be clarified in the order
18 itself, but that the silent lien is the adequate protection
19 lien. That's a silent lien. Our lien that's being primed is
20 pushed down in priority where there's no basis to make it
21 silent. If we think, for example, we need more adequate
22 protection or if we think we need relief from stay even as a
23 junior creditor, obviously, they'd have to be paid off before
24 we could do anything, but there's no basis to make that lien
25 silent and I believe that the debtor and noteholders' counsel

1 agree.

2 MR. DAVIS: That's fine, Your Honor.

3 THE COURT: Okay.

4 MR. GWYNNE: In paragraph (12) (b) on page 24,
5 there's no provision for the Indenture Trustee to get notice
6 if the DIP lenders exercise their remedies, debtors' and
7 lenders' counsel agree that that's appropriate. This if for
8 a lien holder too, that we would get that notice.

9 THE COURT: Sure. Okay.

10 MR. GWYNNE: Paragraph (12) (c) provides that
11 everyone else's liens except ours continue in subsequent
12 cases, debtors' counsel and lenders have agreed to put us in
13 there to avoid a negative implication.

14 THE COURT: Sure.

15 MR. GWYNNE: Paragraph (14) (b) on page 26. There's
16 language in there that says the debtors can offer or provide
17 a priming lien to any other lender. I understand, based on
18 Your Honor's comments earlier that the potential for further
19 priming is not being foreclosed today, but that language
20 where it says the debtor can offer - I don't have a problem
21 with that, the debtor can offer whatever it wants, needs Your
22 Honor's approval, but it says in there the debtors can
23 provide. It doesn't say anything about Court approval or
24 notice. Maybe that's something we can just clarify on the
25 record that it's not intended to give the debtor unilateral

1 right to prime us, particularly because that provision says
2 with only the DIP lenders' consent.

3 MR. NASH: Confirmed.

4 THE COURT: Okay, and I think that's accurate. In
5 another circumstance, I think I ruled that no post-petition
6 lien on estate assets can occur without an entry at the
7 Bankruptcy Court and that was in the context of putative
8 state law liens, but so I think that that's appropriate, and
9 I think that the notice issue is implicit, and frankly,
10 anybody that would want - that would be demanding that
11 adequate protection lien would care more about getting the
12 order than getting the promise. Okay.

13 MR. GWYNNE: Paragraph (21) deals with modifications
14 to the DIP loan documents. It says nonmaterial modifications
15 can be made without notice. Material modifications can be
16 made on two days' notice to the Committee. We want to make
17 sure we also get that notice. Debtors' counsel and lenders'
18 counsel have agreed, I believe.

19 THE COURT: Okay.

20 MR. GWYNNE: And then I have comments to the DIP
21 credit agreement, Your Honor. I realize we can't change
22 that, but to the extent - some of this is in both places.
23 I'd just like to address the issues. In §§ 6.1 and 6.2,
24 pages 49 and 52, those provisions deal with the debtor
25 sending certain information and reports to the DIP lenders or

1 the administrative agent. § 6.15 on page 55, also provides
2 for information to the DIP lenders or administrative agent
3 and a weekly teleconference with the CRO and the DIP lenders.
4 § 6.18 on page 58, provides the backup regarding the budget
5 will be provided to the administrative agent, and that the
6 administrative agent will have a weekly conference call with
7 the obligors - or I think that one says the DIP lenders will
8 have that conference call with the obligors. We want the
9 same information and right to participate on those calls as
10 other lenders, and again, as I mentioned, since we're now at
11 the bottom of the priority scale that information is perhaps
12 more important to us than anybody. I believe debtors'
13 counsel and lenders have agreed subject to us signing an
14 appropriate confidentiality agreement if we're going to be
15 getting that information.

16 MR. NASH: Your Honor, no problem with respect to
17 providing notice at anywhere in the DIP credit agreement
18 where it talks about the debtors having an obligation to
19 provide notice to the DIP lenders, we will provide notice to
20 the Indenture Trustee. It's obviously in our interest to the
21 extent we want Your Honor to rule in our favor on anything to
22 have provided notice to more people rather than fewer people
23 and not be relying on a hundred-page DIP credit agreement for
24 why we didn't give somebody notice of something. So we will,
25 Your Honor, give notice. Different issue though with respect

1 to the weekly call between the DIP lenders and the chief
2 restructuring officer. I know and Your Honor probably has
3 enough of a record to perhaps infer, and I don't want to be
4 presumptuous, but Mr. Bonsall is very busy. As a condition
5 to the \$95 million of new financing, these DIP lenders
6 insisted on a weekly call with the chief restructuring
7 officer. Mr. Bonsall probably at times feels like he would
8 rather run the business than to explain to the -

9 THE COURT: Than talk to the banks.

10 MR. NASH: Than talk to his banks about how he's
11 running the business.

12 THE COURT: Big surprise there.

13 MR. NASH: And so, Your Honor, I wouldn't agree, and
14 I'm not prepared to agree that the Indenture Trustee has the
15 right to participate on any weekly calls.

16 THE COURT: Let me do this, I understand exactly the
17 concerns that you're raising -

18 MR. GWYNNE: And there's information and the call.
19 There's two parts of it.

20 THE COURT: Yeah. I don't think that the - as I
21 read through quickly as you were going through it, I don't
22 think that the DIP credit agreement precludes sharing that
23 information with you. Your comment was on execution of
24 appropriate confidentiality arrangements, and I think that's
25 obvious. I'm not going to order it right now. I think a lot

1 of these issues get sort of negotiated and figured out. I
2 will recognize that your constituents, Mr. Gwynne, are
3 certainly entitled to a measure of information. They've been
4 active in the case and I expect that they'll continue to be
5 so. I don't know enough about the mechanics of how Mr.
6 Bonsall and the debtors' management are running their
7 business to say whether or not you ought to be on a call or
8 not, but I want to give you a chance to sit down with these
9 guys, figure out what is that they're circulating every week
10 or every day to the lenders and to the Committee, and what
11 would be appropriate, what wouldn't be appropriate, and if
12 you can get satisfied with that, which I expect would occur,
13 then that's fine. If there's a need for you to get more
14 information, I think you probably ought to come back to me,
15 but what I'm telling the debtors is, I think that you're
16 entitled to some information and it's not just the limited
17 notice requirements of changes to the DIP and stuff. They're
18 an interested secured party that's active in the case with a
19 substantial constituency, and given where they stand in the
20 waterfall, I think you're right, that you're more exposed
21 than some other creditors, but you have a substantial stake.
22 So, I want you to work through that.

23 MR. GWYNNE: Your Honor, with respect to the
24 information, there's all different kinds of information. The
25 one thing that I think should be not subject to reasonable

1 dispute are that we get the financial statements that go to
2 the lenders' cashflow, those type of statements that are
3 provided.

4 MR. NASH: Your Honor, I hear you with respect to
5 the need to keep the Indenture Trustee in the loop from an
6 information point of view. I will be remiss and disappointed
7 if I'm ever in front of you because the Indenture Trustee
8 believes that they are not getting the information that they
9 need, and I recognize that Your Honor will not appreciate the
10 debtors' having put the Indenture Trustee in that position,
11 and frankly, the fact that you may have to wade through that
12 type of a dispute is not the kind of dispute that I intend to
13 bring before Your Honor. I'm just reluctant here today with
14 everything flying around to make hard and fast commitments in
15 terms of what I can and can't give to the Indenture Trustee.

16 THE COURT: Yeah, and on that I guess what I would
17 say is, that to the extent I haven't been entirely clear, as
18 a general principle, I agree with Mr. Gwynne. I would
19 imagine that he and his constituents would be interested in
20 the debtors' cash position and a lot of that information, and
21 I would expect that you'd likely share it with him. I make
22 no comment about participation in the phone call because I
23 don't have enough information. As to the various reports, I
24 don't know what the debtor creates and what is and what isn't
25 of concern, and some of this touches on confidentiality and

1 some of it just touches on the difficulty of having a phone
2 call with more and more and more people on it, but my
3 experience has been that these issues get resolved. You're
4 right, I don't normally conduct these hearings, disputes with
5 folks who are Indenture Trustees, so I think, Mr. Gwynne, the
6 answer is that I'm going to be pretty receptive if there's an
7 issue. I don't know that you need everything that the DIP
8 lender gets and I'm sensitive to the burdens on the debtor,
9 but I'm going to give you a chance to sort through that and
10 to the extent that there remains an issue, I would - as I do
11 with discovery issues, and this is kind of parallel perhaps
12 or relevant to - and perhaps a little bit consistent with
13 discovery issues. I don't like motion practice on discovery
14 issues. If you have an issue about stuff that you want, get
15 me on the phone. Okay? But I think if you have a chance to
16 sit down with these guys, they'll tell you what they prepare
17 and what they're willing to share and then you can talk
18 through it. Okay?

19 MR. GWYNNE: Okay, thank you, Your Honor.

20 THE COURT: Sure.

21 MR. GWYNNE: § 11.1 and 11.2 deal with the power to
22 amend the DIP loan documents, and -

23 THE COURT: What page?

24 MR. GWYNNE: Pages 76 and 78.

25 THE COURT: I'm there.

1 MR. GWYNNE: And they also deal with the notice
2 provision. I think that as long as the final order will
3 govern to the extent we've addressed those issues already,
4 that that's fine, and I understand we can't change this
5 anyway. I just wanted to be clear that if we're entitled to
6 notice of amendments under the DIP order or notice of the
7 other things that we've discussed that the DIP order trumps
8 the DIP loan documents. Normally it provides for that. I
9 don't recall seeing it in here.

10 MR. NASH: The DIP order governs, Your Honor.

11 THE COURT: Okay.

12 MR. GWYNNE: The last issue, Your Honor, is the DIP
13 order provides that we have the right to ask for - to seek
14 other adequate protection, that nothing in there precludes us
15 from doing it, but the problem is, if the debtor agrees to it
16 or if the Court grants it, that that is a default under the
17 DIP, and I don't want to be in the position or have the Court
18 in the position of feeling like the motion needs to be denied
19 because it's going to bring the whole case down. I think
20 it's inappropriate to make that a default.

21 THE COURT: But isn't that a fairly standard default
22 provision and, you know, what I would do, frankly, and I've
23 done before is just say, I realize that there's - I mean,
24 I've had cases that had examiners as a default, additional
25 committees as a default. I understand the consequences of -

1 and it being a default does not drive - frankly does not
2 drive the decision, and we usually have an opportunity to
3 have that discussion. So, I'm not very troubled by that. I
4 understand the concern, but I think it's fairly common -

5 MR. GWYNNE: It is, it is, and I think in this case,
6 Your Honor, we're just looking at -

7 THE COURT: Would I prefer that it not be there?
8 Yes.

9 MR. GWYNNE: Well, you can fix it.

10 THE COURT: Yeah, you too, I know. There's only so
11 much water I'm going to carry for you.

12 MR. GWYNNE: I hear you, Your Honor, and I
13 understand what you're saying. Some of these things like
14 that are relatively standard. What's not is being primed.
15 Not that it doesn't happen, but it's very unusual to have a
16 priming lien and it's unusual to be representing someone that
17 had a first lien that is not involved - and even the
18 information loop and that's why I thought in this case it
19 should be different, but I heard Your Honor and that's all I
20 have.

21 THE COURT: Okay.

22 MR. GWYNNE: Thank you.

23 THE COURT: All right, thank you. All right,
24 anything else on that proposed form of order? Mr. Gwynne?

25 MR. GWYNNE: No, but I did want to say before I sat

1 down that we have no objection to the Agstar stipulation now.

2 THE COURT: Oh, okay. All right, well then, let me
3 first deal with the Agstar stipulation since it is now
4 unopposed. I will go ahead and enter that stipulation, and I
5 believe then that closes the circle on some UBS issues. With
6 respect to the debtors' application for approval of the
7 financing of the VSE level, I will approve and authorize
8 that. As noted, I did previously approve and authorize the
9 roll-up as requested, and I found that the adequate
10 protection offered to the noteholders is sufficient with the
11 revisions and modifications that were announced on the record
12 and those rulings that I have made, I would be prepared to
13 approve and authorize that financing, and so that the record
14 is sufficient, I will adopt the record from my prior hearing
15 and I rely upon the testimony, in particular Mr. Augustine
16 regarding the terms of the financing and the debtors' need
17 for the financing, and I find that the debtors have carried
18 their burden under Bankruptcy Code §§ 361, 363, 364, and
19 Bankruptcy Rule 4001. So, based upon that, I'm satisfied and
20 upon submission of a satisfactory form of order under
21 certification of counsel, I will enter the order. As I
22 noted, I will sign the Agstar order now.

23 MR. NASH: Your Honor, the Agstar order that you
24 just signed, the stipulation that's attached to it does not
25 have signatures on it. I have the signatures here.

1 THE COURT: Why don't you bring them up. We'll just
2 replace my stip for yours. Oh, you just want the last page.
3 Thanks. Okay, Mr. Nash, I understand I've got a handful of
4 orders that will be coming over, and I expect that they'll be
5 satisfactory and I'll enter them upon receipt. Usually with
6 DIP orders, I ask this question: Are there funding issues
7 today? Does the debtor need those orders on the docket? I
8 can make those arrangements, but sometimes it takes a little
9 bit longer to get those orders over than parties guess. I
10 think you're still under the interim orders, but I want to
11 make sure. I'm always worried mainly about payroll.

12 MR. NASH: No, Your Honor.

13 THE COURT: Okay.

14 MR. NASH: Certainly no payroll issues.

15 THE COURT: Okay.

16 MR. NASH: Of course, sooner rather than later, but

17 -

18 THE COURT: Well, I expect - If you get them over to
19 me, I'll get them on the docket, but I just didn't want
20 anything to blow up if they didn't wind up on the docket this
21 afternoon.

22 MR. NASH: No, we're okay, Judge.

23 THE COURT: Very good. All right, is there anything
24 further?

25 MR. NASH: No, Your Honor.

1 THE COURT: All right, we'll stand in recess. Thank
2 you, counsel.

3 UNIDENTIFIED SPEAKER: Thank you, Judge.

4 (Whereupon at 1:04 a.m., the hearing in this matter
5 was concluded for this date.)

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18 I, Elaine M. Ryan, approved transcriber for the
19 United States Courts, certify that the foregoing is a correct
20 transcript from the electronic sound recording of the
21 proceedings in the above-entitled matter.

22

23 /s/ Elaine M. Ryan
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_____December 8, 2008