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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE: :
: :
VERASUN ENERGY CORPORATION, et al., : Chapter 11
: :
Debtors. : Case No. 08-12606 (BLS)
.

Wilmington, Delaware
December 15, 2008
1:14 p.m.

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

APPEARANCES:

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23 Proceedings recorded by electronic sound recording;
24 transcript produced by transcription service.

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1 THE COURT: Please be seated. Mr. Nash, ready to
2 proceed?

3 MR. NASH: Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 MR. NASH: Pat Nash for the Debtors, here on the
6 Debtors' Motion for Entry of an Interim Order, Your Honor, to
7 obtain \$500,000 of DIP financing from Agstar for purposes,
8 essentially, of preserving the collateral value of the Debtors'
9 Janesville facility. Your Honor, we appreciate you making this
10 time available on very short notice.

11 THE COURT: Happy to oblige.

12 MR. NASH: It was important to the Debtors and the
13 other constituents that we make sure that we don't lose the
14 insurance coverage on that significant piece of collateral
15 which is why we're here on short notice. Your Honor, I did
16 reach out to each of the key constituents, gave them e-mail
17 copies of the Motion, in fact, before we filed it. I don't
18 believe we have any objections. I believe that Mr. Rochester,
19 here on behalf of the Committee, may have a point or two that
20 he would wish to make to the Court, but other than that, Your
21 Honor, I think that we'll be in a position to hand up a
22 proposed Form of Order that is unchanged from the Order that we
23 filed and that, of course, would be a change of pace for these
24 cases. So unless Your Honor has any questions, perhaps I'd
25 yield the podium to Mr. Rochester.

1 THE COURT: Sure. I've been through the Motion and I
2 have looked at the proposed Form of Order as well, although I
3 confess I went through it pretty quickly because I assumed it
4 was going to change given our history, but I understand the
5 circumstances in which the request is being made, and the
6 timing, likewise, we were happy to accommodate once we
7 understood what the circumstances were. And Mr. Rochester, do
8 you wish to address the Court?

9 MR. ROCHESTER: Sure. Thank you, Your Honor.

10 THE COURT: Sure.

11 MR. ROCHESTER: For the record, I'm Shaya Rochester
12 of Akin, Gump, Strauss, Hauer & Feld for the Official Committee
13 by the Secured Creditors. The Committee has no objection to
14 entry of the Interim Order. There are just two comments I
15 guess about the terms of the DIP financing I'd just like to
16 make for the record, none of which are controversial. Number
17 one, regarding the negative covenants that are on the term
18 sheet on page 4, currently as drafted, they're just basically
19 to be determined. The Committee is okay with that under the
20 circumstances, but to the extent this financing is used as a
21 bridge to a larger financing to fund the US Bio Debtors
22 including the Janesville Debtor, then we'll be looking for more
23 specific covenants. That's point number one.

24 And point number two is on the events of default, on page
25 4 and continuing over to page 5 of the term sheet, an event of

1 default occurs if, among other things, there's a failure to
2 comply with the terms and conditions set forth in the Pre-
3 Petition Credit Agreement except those events of default set
4 forth in Section 6.01(g) of the Pre-Petition Credit Agreement,
5 and except for any event of default arising as a result of the
6 filing or the pendency of the borrower's Chapter 11 case. That
7 last part of the term sheet was added, you know, basically to
8 reflect the fact that if you look at the events of default in
9 the Pre-Petition Agreement, on their face, some of them simply
10 are inapplicable or just don't make any sense within the
11 context of a Chapter 11 case. Just as one example, Section
12 6.01(n) of the Pre-Petition Credit Agreement said that if
13 there's a delay in the construction of the project and that
14 constitutes an event of default. I understand that counsel for
15 the DIP agent is prepared to make some comments on the record
16 just simply to clarify that. To the extent that any of the
17 events of default in the Pre-Petition Credit Agreement do not
18 make sense in the context of a Chapter 11, if they're
19 inapplicable in the context of Chapter 11, then they will not
20 be enforced. So that is my understanding of the interpretation
21 of those provisions. And unless Your Honor has any questions,
22 that's all I have.

23 THE COURT: No, I don't have any questions at this
24 point. Mr. Athanas.

25 MR. ATHANAS: Hello, Your Honor. Joe Athanas on

1 behalf of Agstar. We agree completely with the Committee --

2 THE COURT: Okay.

3 MR. ATHANAS: -- and look forward to giving them
4 financing.

5 THE COURT: Okay. Does anyone else wish to be heard
6 regarding the Debtors' request?

7 (No verbal response.)

8 THE COURT: Okay. I note, as a threshold matter,
9 that there is no opposition. This matter was scheduled by the
10 Court on short notice as is permitted and contemplated by
11 Bankruptcy Rule 4001, and I find that the Debtor, as a
12 threshold matter, has carried its burden that the Estate
13 suffers the risk of immediate and irrevocable harm in the
14 absence of the financing being provided on an interim basis.
15 Similarly, I find that the Debtor has satisfied its burden
16 under Bankruptcy Code Section 361 and 364 for purposes of
17 obtaining post-petition financing, and I am prepared to enter
18 and approve the Proposed Form of Order. Do you have a clean
19 form for me? Thank you. This hasn't changed from your prior
20 order?

21 MR. NASH: Has not.

22 THE COURT: I assume that's not going to be trend, is
23 it?

24 MR. NASH: Probably not.

25 THE COURT: We do have a blank for the final hearing

1 date.

2 MR. NASH: January 8th, Your Honor. 10 a.m., Your
3 Honor.

4 THE COURT: Thank you. All right. I'm going to plug
5 that date in. I'm going to check back with my courtroom
6 deputy. That date probably will stay for you, but I have a
7 SemCrude hearing scheduled for an hour later, and I assume
8 you're going to have other -- we're going to treat the 8th as
9 an omnibus hearing?

10 MR. NASH: That's right, Your Honor.

11 THE COURT: Okay. We probably should not put them
12 back to back. Okay. You'll stay on for the 8th. We may
13 tinker with the schedule as it relates to other items on for
14 that day. Objections are due by December 30. Okay.

15 (Order signed.)

16 THE COURT: Okay. I signed the Order. We'll have
17 that on the docket today. Mr. Nash, is there anything further
18 today?

19 MR. NASH: Nothing further.

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

22 (Court adjourned at 1:21 p.m.)

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CERTIFICATE

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

S/April J. Foga
April J. Foga, CET, CCR, CRCR

Demeber 21, 2008