

MEMORANDUM

December 28, 2008

To: Official Committee of Unsecured Creditors (the “Committee”) of VeraSun Energy Corporation, et al. (the “Debtors”)

From: Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”)

Re: VeraSun Energy Corporation, et al. – Summary of Recently Filed Motion

Union Tank Car Company’s Request for Payment of Administrative Expense and Motion to Compel VeraSun Marketing LLC to Return Railcars in an Environmentally Safe Condition (the “Motion”)

By the Motion, Union Tank Car Company (“Union”) seeks entry of an order (the “Order”) (i) allowing and authorizing payment of \$867,300 as an administrative expense for the Debtors’ postpetition use of certain Tank Cars (defined below); (ii) upon rejection of the Car Service Agreement (defined below), requiring the Debtors to empty and clean the Tank Cars or to pay Union \$875 per car as the cost of remediating any environmental contamination or damages related to the Tank Cars; and (iii) upon rejection of the Car Service Agreement, requiring the Debtors to return the remediated Tank Cars to Union within ten days of entry of an order approving such rejection.

Pursuant to a Car Service Agreement dated August 1, 2006 between VeraSun Marketing LLC (“Marketing”) and Union (the “Car Service Agreement”), Union provided Marketing with 600 railroad tank cars (collectively, the “Tank Cars”) to be used in the course of the Debtors’ business operations. According to the Motion, the Debtors owe Union approximately \$867,300 on account of unpaid postpetition rental charges due under the Car Service Agreement. The Motion states that, on or about December 15, 2008, Marketing notified Union of its intent to reject the Car Service Agreement by serving Union with a Notice of Rejection.

Union argues that it is entitled to an immediate cash payment of \$867,300 as an administrative expense on account of unpaid postpetition rental charges due under the Car Service Agreement. In addition, Union argues that, if the Bankruptcy Court approves the rejection of the Car Service Agreement, then the Debtors should be required within ten days of entry of the rejection order, to return the Tank Cars empty of all ethanol and residue thereof and remediated of any environmental contamination or damage, as required by applicable, non-bankruptcy law. In the alternative, Union argues that the Debtors should be required to pay the foregoing clean-up costs as administrative expenses (which Union estimates to be \$875 per car or approximately \$525,000 in the aggregate). In support of the latter argument, Union relies upon case law holding that

clean-up costs associated with the removal of toxic substances from a debtor's property provide benefit to the estate worthy of administrative expense priority.