

MEMORANDUM

February 25, 2009

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 Pleading

Motion for Order Pursuant to Bankruptcy Code Sections 105, 362 and 363 and Fed. R. Bankr. P. 9019 (I) Modifying the Automatic Stay Solely to Allow Stipulation of Settlement Between Debtors and Plaintiffs and (II) Approving Settlement Agreement Between Debtors and American International Group, Inc. (the "AIG Motion")

By the AIG Motion, the Debtors seek an order (i) modifying the automatic stay to allow the settlement of a certain class action complaint (the "Class Action Settlement"), and (ii) approving a certain settlement agreement (the "Settlement Agreement") between the Debtors and American International Group, Inc. ("AIG") pursuant to which AIG will provide the Debtors with insurance coverage for the Class Action Settlement in exchange for a release of future claims related thereto.

According to the AIG Motion, on December 19, 2007, Paul Blumstein, a stockholder of US BioEnergy Corporation ("US BioEnergy"), filed a class action complaint (the "Class Action"), on behalf of himself and all other US BioEnergy stockholders (the "Plaintiffs"), naming US BioEnergy and its directors as defendants (the "US BioEnergy Defendants") and alleging that the US BioEnergy Defendants had breached their fiduciary duties to US BioEnergy shareholders by, among other things, not disclosing material information and participating in unfair negotiations which resulted in unfair pricing, in connection with the Debtors' acquisition of US BioEnergy. The US BioEnergy Defendants engaged in efforts to resolve the dispute, which culminated in the Class Action Settlement. Pursuant to the Class Action Settlement, the US BioEnergy Defendants agreed not to oppose the Plaintiffs' application for a state court award of attorney fees in an amount not to exceed \$200,000, and the Plaintiffs agreed to fully release all claims related to the Class Action. The Debtors state that the Class Action Settlement has been approved in the South Dakota court in which the Class Action was filed. However, absent lifting the automatic stay, US BioEnergy is unable to pay any cash award for attorney fees that may be part of the Class Action Settlement (the "Award").

As stated in the AIG Motion, upon the Debtors' entry into the Class Action Settlement, AIG asserted that the Award was not covered under US BioEnergy's directors' and officers' insurance policy. As a proposed resolution to the insurance coverage dispute, US BioEnergy and AIG negotiated the Settlement Agreement, pursuant to which (i) AIG agreed to pay the Plaintiffs, on behalf of the US BioEnergy Defendants, and in satisfaction of the Award, an amount not to exceed \$200,000, and (ii) US BioEnergy agreed to release all claims against AIG based upon the Class Action, the Class Action Settlement, or the allegations underlying the Class Action. The Debtors contend that the Settlement Agreement provides substantial benefit to the Debtors and their estates because (a) no party in interest would be harmed by the Settlement Agreement, (b) the Debtors will avoid the uncertainty and risk that litigation of the insurance dispute might otherwise entail, and (c) the Settlement Agreement enables the Debtors to obtain a broad release of any claims asserted in the Class Action on behalf of the Plaintiffs and a complete discharge of any other claim or action against the US BioEnergy Debtors.