

MEMORANDUM

February 26, 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 of Debtors for Order Under Bankruptcy Code Section 363 Authorizing the Debtors to Consensually Modify the Terms of Certain Railcar Leases (the “Motion”)

By the Motion, the Debtors seek an order (a) authorizing the Debtors to consensually modify the terms of certain Railcar Leases (defined below) with Trinity Industry Leasing Company (“Trinity”) and GE Electric Railcar Services Corporation (“GE Railcar”), and (b) clarifying that any modified Railcar Leases will remain prepetition leases subject to assumption or rejection under section 365 of the Bankruptcy Code.

According to the Motion, the Debtors are parties to numerous railcar leases (the “Railcar Leases”), pursuant to which the Debtors lease hopper cars, which transport distiller grains (the “Hopper Cars”), and tanker cars, which transport ethanol (the “Tanker Cars” and, together with the Hopper Cars, the “Railcars”). On December 12, 2008, the Debtors sent a Request for Quotation Form (the “RFQ”) to each of their five Railcar providers (collectively, the “Railcar Lessors”). The RFQ solicited bids from the Railcar Lessors to enable the Debtors to reduce their Railcar fleet from 6,166 Railcars to 3,363 Railcars (which number was subsequently reduced to 2,230 to reflect the Debtors’ inability to allocate VeraSun lease costs to the US BioEnergy facilities).¹ The Motion states that on December 17, 2008, in response to the RFQ, four of the five Railcar Lessors submitted bids (the “Bids”). Such Bids sought to accommodate the Debtors’ wish to downsize their Railcar fleet and also lowered the rates charged under the respective Railcar Leases from \$360 - \$400 per month for Tanker Cars and \$625 per month for Hopper Cars. As stated in the Motion, since December 17, 2008, the Debtors and their advisors have met with the Railcar Lessors that submitted Bids and have evaluated the respective Bids

¹ In connection with the Debtors’ efforts to downsize their Railcar Fleet, the Debtors rejected certain Railcar Leases with Midwest Ethanol Transport, LLC and Union Tank Car Company and have returned the related Railcars to those Railcar Lessors. The Motion states such lease rejections have resulted in savings of approximately \$480,000 per month.

based on a number of factors, including, without limitation, price, delivery, technical capability, contract flexibility, and compromise of claims under existing leases.

As stated in the Motion, the Debtors have selected Trinity and GE Railcar as the successful bidders under the RFQ because of their willingness to (a) permit a reduction in the number of Railcars leased by the Debtors, (b) lease such Railcars at reduced monthly rates, and (c) compromise and/or fix any claims arising from both rejection damages and the 60-day period after the bankruptcy filing during which the Debtors did not pay lease payments on a current basis. Additionally, the Debtors contend that Trinity is the only Railcar Lessor that can meet the Debtors' capacity needs related to the transport of distiller grains to customers. The Motion states that, as a result of modifications agreed to by Trinity and GE Railcar, together with the rejection of the remaining Railcar Leases, the Debtors will save approximately \$2.3 million (before allocation) each month on their total Railcar Lease expenses, or approximately \$27.6 million annually.