

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
VERASUN ENERGY CORPORATION, et al.,)	Case No. 08-12606 (BLS)
)	
Debtors.)	Jointly Administered
)	
)	Re: Docket Nos. 924, 975, 1750

**CERTIFICATION OF COUNSEL REGARDING STIPULATION AND AGREED
ORDER MODIFYING THE AUTOMATIC STAY TO ALLOW NORTH DAKOTA
PUBLIC SERVICE COMMISSION TO COMMENCE STATE PROCEEDING**

I, Kevin G. Collins, of Bifferato LLC, counsel for Liberty Mutual Insurance Company (“Liberty”) in the above-captioned bankruptcy cases, hereby certify as follows:

1. On March 27, 2009, the North Dakota Public Service Commission (the “Commission”) filed a Motion for Relief from Stay (the “Commission Motion”) in which it sought an order lifting the automatic stay to allow the Commission to commence an action in the North Dakota District Court, Southeast Judicial District, against VeraSun Hankinson, one of the above Debtors, to secure the Commission’s appointment as trustee under applicable North Dakota law, and to maintain an action against Liberty under a bond in accordance with applicable North Dakota law [Docket No. 924].

2. On April 2, 2009, the Commission filed the Amended Notice of Motion for Relief from the Automatic Stay [Docket No. 975].

3. On August 27, 2009, Liberty filed an Objection to the Commission Motion (the “Liberty Objection”) asserting that (i) Federal bankruptcy law preempts (procedurally) the state insolvency proceeding contemplated by the Commission’s Motion, (ii) that this Court could determine the relative rights and interests of Liberty, the Commission, the Debtors and others


under North Dakota law, and (iii) that the interests of judicial economy would not be served by allowing a parallel proceeding to move forward in North Dakota state court [Docket No. 1750].

4. Thereafter, the Commission and Liberty engaged in discussions raised by the Commission's Motion and Liberty Objection, and reached an agreement, which is memorialized in the Stipulation and Agreed Order Modifying the Automatic Stay to Allow North Dakota Public Service Commission to Commence State Proceeding (the "Stipulation and Agreed Order"), attached hereto as Exhibit "A."

5. Liberty respectfully requests that the Court approve and enter the Stipulation and Agreed Order at its earliest convenience.

Dated: September 11, 2009

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Exhibit A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:)
) Chapter 11 Cases
VERASUN ENERGY CORPORATION., *et al.*,) *Jointly Administered*
)
Debtors) Case No. 08-12606
)

**STIPULATION AND AGREED ORDER MODIFYING THE AUTOMATIC STAY TO
ALLOW NORTH DAKOTA PUBLIC SERVICE COMMISSION TO COMMENCE
STATE PROCEEDING**

VeraSun Energy Corporation ("VeraSun") and its affiliated debtors and debtors-in-possession (collectively, the "Debtors"), Liberty Mutual Insurance Company ("Liberty") and the North Dakota Public Service Commission (the "Commission"), acting through the undersigned counsel, hereby stipulate to the following:

A. On March 12, 2009, the Commission received a claim (the "Claim") against VeraSun Hankinson, LLC ("VeraSun Hankinson"), one of the Debtors herein, in which the claimant alleged he had not been paid in-full for grain purchased by VeraSun Hankinson and in which the claimant asked the Commission to take appropriate action in seeking recovery of the alleged unpaid amount under grain elevator warehouse bond number 674012345 issued by Liberty naming VeraSun Hankinson as principal and in the amount of \$380,000 (the "Bond").

B. On March 27, 2009, the Commission filed a Motion for Relief from Stay (the "Commission Motion") in which it sought an order lifting the automatic stay to allow the Commission to commence an action in North Dakota District Court, Southeast Judicial District against VeraSun Hankinson to secure the Commission's appointment as trustee under applicable

North Dakota law, and to maintain an action against Liberty under the Bond in accordance with applicable North Dakota law (Docket No. 924).

C. On August 27, 2009, Liberty filed an Objection to the Commission Motion (the "Liberty Objection") asserting that (i) Federal bankruptcy law preempts (procedurally) the state insolvency proceeding contemplated by the Commission's Motion, (ii) that this Court could determine the relative rights and interests of Liberty, the Commission, the Debtors and others under North Dakota law, and (iii) that the interests of judicial economy would not be served by allowing a parallel proceeding to move forward in North Dakota state court (Docket No. 1760).

D. Thereafter, the Commission and Liberty engaged in discussions concerning the issues raised by the Liberty Objection, including that the Commission does not formally evaluate the claims referenced in the Commission Motion until such time as the Commission secures its appointment as trustee under State law. In light of this, the Commission and Liberty agreed that the state insolvency proceeding contemplated by the Commission Motion should move forward on a limited basis to allow the Commission to file an action in North Dakota District Court, Southeast Judicial District, against VeraSun Hankinson, LLC for the limited purpose of (i) seeking the Commission's appointment as trustee under Chapter 60-04 of the North Dakota Century Code (the "State Court Proceeding") and, in furtherance of said appointment, (ii) allowing the Commission to take possession of relevant books and records of the warehouseman, issue and publish a notice of appointment and notice to file claims with the Commission, and evaluate claims presented to it within the statutory period prescribed by applicable North Dakota law.

E. The Commission has further agreed to provide the Debtors and Liberty with a copy of the Report and Recommendation of Trustee ("Report and Recommendation") that the

Commission prepares for filing with the North Dakota District Court, Southeast Judicial District, showing the Commission's recommendation on the amount and validity of each claim and the proposed distribution of the trust fund assets, including expenses incurred by the Commission in the administration of the insolvency. The Debtors have agreed to provide the Commission with such documents and records as may be reasonably requested by the Commission to assist the Commission in evaluating claims and preparing the Report and Recommendation. The Commission has agreed to provide the Debtors and Liberty with the Report and Recommendation and to seek further stay relief to the extent it seeks to take any further action in the State Court Proceeding based upon the Report and Recommendation.

F. NOW THEREFORE, in furtherance of the foregoing, the parties hereby stipulate and agree as follows:

1. The automatic stay imposed by 11 U.S.C. § 362 is hereby modified for the limited purpose of allowing the Commission to take such action as may be required to secure its appointment as trustee under Chapter 60-04 of the North Dakota Century Code, issue and publish a notice of appointment and notice to file claims with the Commission and, to enable the Commission to evaluate claims presented to it as prescribed by applicable North Dakota law.

2. The Debtors have agreed to provide the Commission with such documents and records as may be reasonably requested by the Commission to assist the Commission in evaluating claims and preparing the Commission's Report and Recommendation. The Commission shall provide the Debtors and Liberty with a copy of the Commission's Report and Recommendation. The Commission shall be required to seek further stay relief to the extent it seeks to take any further action in the State Court Proceeding, including the filing of the Report

and Recommendation, the joinder of Liberty as a party thereto, and the deposit of bond proceeds deemed necessary, based upon the Report and Recommendation.

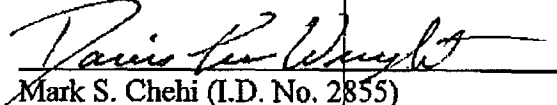
3. Nothing herein shall be deemed an admission by any of the parties as to the validity of any claim or claims against the Debtors, under the Bond or otherwise arising under applicable bankruptcy and non-bankruptcy law, it being understood that except to the extent of the limited stay relief granted herein, all claims, arguments, remedies and defenses of the parties are expressly reserved without limitation or prejudice.

4. This Court shall retain jurisdiction over any matter concerning this Order, or the relief granted herein.

STIPULATED AND AGREED:

Dated: September 11, 2009.

**SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP**



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**ATTORNEYS FOR THE NORTH
DAKOTA PUBLIC SERVICE
COMMISSION**

Dated: _____, 2009
Wilmington, Delaware

The Honorable Brendan L. Shannon
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2009, a copy of the foregoing *Certification of Counsel Regarding Stipulation and Agreed Order Modifying the Automatic Stay to Allow North Dakota Public Service Commission to Commence State Proceeding* was caused to be served upon the following parties, in the manner so indicated:

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FIRST CLASS MAIL

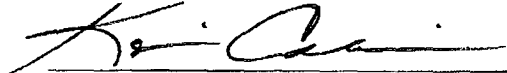
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A handwritten signature in black ink, appearing to read "Kevin G. Collins", written over a horizontal line.

Kevin G. Collins (No. 5149)