

In re)	
)	Chapter 11
VERASUN ENERGY CORPORATION, <i>et al.</i> ,)	
)	Case No. 08-12606 (BLS)
Reorganized Debtors. ¹)	(Jointly Administered)
)	
)	
)	
VERASUN ENERGY CORPORATION, <i>et al.</i> ,)	Adv. Pro. Nos.
)	[See Attached Exhibit A]
)	
Plaintiffs,)	
)	Hearing Date: November 30, 2010 at 2:00 p.m.
v.)	Objection Deadline: November 23, 2010 at 4:00
)	p.m.
[SEE ATTACHED EXHIBIT A],)	
)	
Defendant(s))	

VeraSun Energy Corporation (“VSE”), for itself and on behalf of its affiliated reorganized debtors (collectively with VSE, the “Reorganized Debtors”), by and through its undersigned attorneys, hereby moves (the “Motion”) for an order establishing procedures governing all adversary proceedings brought by the Reorganized Debtors pursuant to sections 502 and 547 through 550 of the Bankruptcy Code and identified on the schedule attached hereto

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as Exhibit A (collectively, the “Avoidance Actions”). In support of the Motion, the Reorganized Debtors respectfully state:

Jurisdiction and Basis for Relief

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Plan (as defined below). This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (B) (F) and (O).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested in the Motion are sections 105(a), 105(d), 502, 547, 548, 549 and 550 of the Bankruptcy Code, Bankruptcy Rules 3003, 7004, 7012, 7016, 7026, 9006 and 9019 and Local Rules 7004, 7016, 7026, 9006 and 9019. The requested relief is also justified under and consistent with the General Order Regarding Procedures in Adversary Proceedings dated April 7, 2004, as amended on April 11, 2005 (the “General Order”) and as modified herein.

Background

4. On October 31, 2008 (the “Petition Date”), VSE and twenty-four of its subsidiaries and affiliates (collectively, the “Debtors”), predecessors of the Reorganized Debtors, filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. On July 31, 2009, the Debtors filed the Joint Plan of Liquidation of VeraSun Energy Corporation and its Affiliated Debtors (Docket No. 1642).

6. On October 21, 2009, the Debtors filed the modified Joint Plan of Liquidation of VeraSun Energy Corporation and its Affiliated Debtors (Docket No. 1944) (as modified, the “Plan”).

7. On October 23, 2009, this Court entered the Findings of Fact, Conclusions of Law, and Order Under 11 U.S.C. § 1129(a) and (b) and Fed. R. Bankr. P. 3020 Confirming the Joint Plan of Liquidation of VeraSun Energy Corporation and its Affiliated Debtors (Docket No. 1955).

8. On December 17, 2009, the Debtors filed the final, fully-executed version of the Plan Administrator Agreement Between VeraSun Energy Corporation and its Affiliated Debtors and KDW Restructuring & Liquidation Services LLC, dated as of December 17, 2009 (the “Plan Administrator Agreement”) (Docket No. 2240).

9. On December 17, 2009 (the “Effective Date”), the effective date of the Plan occurred (Docket No. 2241).

10. Pursuant to the Plan and the Plan Administrator Agreement, KDW Restructuring & Liquidation Services LLC was appointed the Plan Administrator effective as of the Effective Date.

11. Under the Plan and the Plan Administrator Agreement, the Plan Administrator is authorized on behalf of the Reorganized Debtors to enforce, sue on, settle or compromise Litigation Claims (as defined in the Plan), including the Avoidance Actions.

Relief Requested

12. The Reorganized Debtors have commenced approximately 199 Avoidance Actions to recover avoidable transfers pursuant to sections 547-550 of the Bankruptcy Code. By this Motion, the Reorganized Debtors seek an order, substantially in the form attached hereto as Exhibit B (the “Proposed Order”) approving procedures for litigating, mediating and settling the Avoidance Actions (collectively, the “Proposed Procedures”). The Proposed Procedures are designed to streamline litigation and promote settlement of the Avoidance Actions, thereby minimizing the costs to all parties and easing the Court’s administrative burden. The Proposed

Procedures also preserve the rights of all parties to adjudicate claims and defenses before the Court, if necessary.

The Proposed Procedures

13. The following is a summary of the Proposed Procedures. The summary is intended solely to give the Court and interested parties an overview of the Proposed Procedures. Interested parties should refer to the Proposed Order attached hereto as Exhibit B for a complete understanding of the Proposed Procedures:²

A. Extension of Time to Serve Summonses and Respond to Complaints

14. The Reorganized Debtors shall have a sixty (60) day extension of time to serve summonses and complaints under Fed. R. Civ. P. 4(m), applicable to the Avoidance Actions pursuant to Bankruptcy Rule 7004. Accordingly, the Reorganized Debtors must serve the summons and complaint upon a defendant within one hundred eighty (180) days after the complaint is filed. The Proposed Procedures further authorize the Reorganized Debtors to extend a defendant's time to answer or otherwise respond to a complaint by up to ninety (90) days after the defendant's initial response time expires. These extensions will maximize the number of Avoidance Actions that the Reorganized Debtors are able to settle expeditiously, and will encourage settlements with defendants who wish to avoid the expense of preparing and filing responsive pleadings.

B. Waiver/Stay of Pretrial and Scheduling Conferences; Stay of Discovery

15. The Reorganized Debtors also request that the Court (a) waive the requirement of an initial pretrial conference pursuant to Fed. R. Civ. P. 16, applicable to the Avoidance Actions pursuant to Bankruptcy Rule 7016; (b) stay the requirement of a scheduling conference pursuant

² To the extent that there are any inconsistencies between the summary and description of the Proposed Procedures set forth in this Motion and the Proposed Order, the Proposed Order shall control.

to Fed. R. Civ. P. 26(f), applicable to the Avoidance Actions pursuant to Bankruptcy Rule 7026 and Section 2(a) of the General Order; and (c) stay formal discovery in Avoidance Actions until a scheduling order is entered. The stay of discovery will not limit the exchange of documents or information in settlement discussions or mediation. Waiving and/or staying these requirements will facilitate settlement, minimize costs and alleviate the Court's administrative burden with respect to the Avoidance Actions.

C. The Mediation Process

16. Mandatory Mediation. Unless otherwise agreed by the Reorganized Debtors and a defendant, any Avoidance Action that has not settled by January 31, 2011 will be mediated (the "Mediation Process"). Mediation will be privileged and confidential, and proceedings, discussions and written materials associated with the Mediation Process will not be reported or admitted into evidence, nor shall anything stated or exchanged during the Mediation Process operate as an admission of liability, wrongdoing or responsibility.

17. Mediators. Mediators will be chosen by defendants from the list of mediators attached to the Proposed Order as Exhibit B thereto (the "Mediators"). Each of the Mediators is on the Court's Register of Mediators. Unless extended, defendants must select a mediator in writing by February 15, 2011. Limiting the number of Mediators assigned to Avoidance Actions will, *inter alia*, (a) minimize the time and expense of negotiating with defendants over the entire Register of Mediators, and (b) ensure that the Mediators quickly develop a strong understanding of the facts and issues common to all of the Avoidance Actions.

18. If a defendant does not timely choose a Mediator, the Reorganized Debtors will assign a Mediator and notify the applicable defendant by March 1, 2011.

19. Time/Place of Mediation. Avoidance Actions will be mediated in Wilmington, Delaware, unless the parties and the Mediator agree to another location. Each Mediator will provide the Reorganized Debtors with dates on which he or she is available, and the Reorganized Debtors will work in good faith with defendants to schedule mediation on the Mediator's available dates. Defendants will receive at least twenty-one days' written notice of the date and time of mediation.

20. Position Papers/Presentations. At least ten (10) days before mediation, the Reorganized Debtors and the applicable defendant shall exchange position statements and provide such statements to the Mediator. Unless agreed otherwise, position statements shall not exceed seven (7) double-spaced pages, excluding exhibits and schedules. The Mediator, however, may require the parties to provide additional papers, exhibits and/or a settlement proposal. The Mediator will have full authority to determine the nature and order of the parties' presentations, and he/she may implement additional procedures as are reasonable and practical under the circumstances. If any party fails to make required submissions or attend mediation, in addition to the Mediator's remedies under Local Rule 9019-5, the non-defaulting party may file a motion for default judgment or to dismiss the Avoidance Action.

21. Attendance at Mediation. The parties shall participate in mediation in good faith with a view towards settling the Avoidance Actions. Accordingly, at least one counsel for each party and a representative of each party with full settlement authority must attend the mediation in person, unless the Mediator authorizes any party to appear telephonically.

22. Mediator's Report. In accordance with the General Order, the Mediator shall file a report (the "Mediator's Report") within fourteen (14) days after the mediation concludes. The

Mediator's Report will simply state whether the applicable Avoidance Action did or did not settle, and the requirements of Local Rule 9019-5(f)(iii) shall be waived.

23. Fees. The Reorganized Debtors shall pay the Mediator's fees and costs in a fixed amount depending on the size of the action.

24. Conflicts of Interest: No Mediator will mediate an Avoidance Action in which his/her law firm represents a party. If a Mediator's law firm represents a defendant in another Avoidance Action, the Mediator will take all steps necessary to establish an ethical wall as required by the Delaware Lawyers Rules of Professional Conduct. So long as the ethical wall is effectively established and maintained, the Mediator's participation in the Mediation Process will not create a conflict of interest regarding the Mediator's law firm's representation of a defendant in another Avoidance Action.

D. Motions/Omnibus Hearings

25. Motions generally affecting defendants in all Avoidance Actions will be filed in the Reorganized Debtors' main chapter 11 case, Case No. 08-12606, and will not be filed in each individual Avoidance Action. Additionally, parties must seek an informal pre-motion conference with the Court before filing any motion in the Avoidance Actions. However, pre-motion conferences are not required with respect to a motion to dismiss under Fed. R. Civ. P. 12(b), applicable to the Avoidance Actions pursuant to Bankruptcy Rule 7012, or a motion for a default judgment pursuant to Bankruptcy Rule 7055. If a party files a motion to dismiss an Avoidance Action, it shall automatically be deemed to consent to allowing the Reorganized Debtors to amend the applicable complaint.

26. The Reorganized Debtors will schedule Avoidance Actions Omnibus Hearings approximately every ninety (90) days at the Court's convenience. All motions and other matters concerning any Avoidance Actions will only be heard at Avoidance Actions Omnibus Hearings.

E. Electronic Service

27. The Reorganized Debtors will serve each summons and complaint and a copy of the Proposed Procedures on each defendant by U.S. Mail, postage prepaid. The Reorganized Debtors will serve all other motions, pleadings and notices by e-mail. To facilitate electronic service of documents, the Reorganized Debtors will send a notice and information form (the "Information Form") in the form attached hereto as Exhibit C to each defendant listed on Exhibit A hereto, along with a pre-addressed, postage paid return envelope. Defendants must complete the Information Form within thirty (30) days, providing among other things, a valid email address and designated notice party.³ Only those parties designated in the Information Forms will receive notice of pleadings, conferences and other information regarding the Avoidance Actions.

F. Settlement Authority

28. Pursuant to the Plan and the Plan Administrator Agreement, the Reorganized Debtors are authorized to settle the Avoidance Actions. Accordingly, the Reorganized Debtors are not required to seek Court approval or further Order under Bankruptcy Rule 9019 to consummate a settlement and/or dismiss any Avoidance Action.

³ If a designated notice party does not have an email address, the defendant must clearly indicate this fact on the Information Form. In such case, the Reorganized Debtors will serve the designated notice party by U.S. or overnight mail, facsimile or hand-delivery based on the information provided on the Information Form.

G. Section 502(h) Claims

29. Defendants with claims under section 502(h) of the Bankruptcy Code (to the extent not waived as part of a settlement), must file such claims within thirty days of: (a) for Avoidance Actions settled outside of mediation, the date the Reorganized Debtors confirm the settlement in writing; (b) for Avoidance Actions settled pursuant to mediation, the date the Mediator's Report is filed; or (c) for Avoidance Actions determined by the Court, the date of the Court's order resolving the action. Any claims filed after such dates will be barred, and defendants shall not receive or be entitled to receive any payment or distribution of property from the Reorganized Debtors on account of such claims.

H. Claims Objection Procedures

30. The Reorganized Debtors' rights under that certain Order Pursuant to 11 U.S.C. § 502(b) and Fed. R. Bankr. P. 2002(m), 3007, 7016, 7026, 9006, 9007, and 9014 Establishing (I) Dates for Hearings Regarding Disallowance or Modification of Claims and (II) Certain Notices and Procedures Governing Hearings Regarding Disallowance or Modification of Claims entered on November 11, 2009 (Docket No. 2029) shall not be limited or impaired, and notwithstanding Bankruptcy Rule 7042, absent the Reorganized Debtors' consent, all objections to proofs of claim other than objections made pursuant to 11 U.S.C. § 502(d) shall continue to be governed by such order.

I. Costs

31. VSE will be authorized to (a) advance costs in connection with Avoidance Actions belonging to the estates of other Reorganized Debtors, and (b) in its discretion, forgive the reimbursement of any such costs. Such authority will ensure that valuable Avoidance Actions in all estates are pursued for the benefit of their respective creditors.

Relief Requested and Basis for Relief

32. There is ample authority for the Court to approve the Proposed Procedures. Section 105(a) of the Bankruptcy Code authorizes the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [chapter 11],” 11 U.S.C. § 105(a), and section 105(d) authorizes the Court to issue orders “necessary to further the expeditious and economical resolution of [a] case[.]” 11 U.S.C. § 105(d). Bankruptcy Rule 7016 further authorizes the Court to implement pretrial procedures designed to reduce costs and promote the prompt resolution and settlement of litigation. Fed. R. Bankr. P. 7016(b)(3)(B).

33. The Proposed Procedures are also consistent with the Local Rules and General Order and are similar to procedures adopted in other cases in this District and elsewhere. *See, e.g., In re Semcrude, L.P., et al.*, Case No. 08-11525 (BLS) (Bankr. D. Del. Aug. 27, 2010), Order Granting Motion of SemGroup Litigation Trustee for an Order Establishing Streamlined Procedures Governing Adversary Proceedings Brought Pursuant to 11 U.S.C. § 547 (Docket No. 8394); *In re Fleming Companies, Inc.*, Case No. 03-10945 (MFW) (Bankr. D. Del. May 2, 2005), Order Approving Procedures Governing Adversary Proceedings Brought by the PCT Pursuant to Sections 502(d), 544, 547, 548 and/or 550 of the Bankruptcy Code (Docket No. 11045); *In re Quebecor World (USA), Inc., et al.*, Case No. 08-10152 (JMP) (Bankr. S.D.N.Y. Mar. 19, 2010), Order Establishing Streamlined Procedures Governing Adversary Proceedings Brought by the Litigation Trustee Pursuant to Sections 502, 547, 548, 549 and 550 of the Bankruptcy Code and Extending the 120-Day Time Limit for Service of the Summonses and Complaints (Docket No. 3935); *In re Tower Automotive, Inc., et al.*, Case No. 05-10578 (ALG) (Bankr. S.D.N.Y. Apr. 5, 2007), Order Establishing Streamlined Procedures Governing Adversary Proceedings Commenced by the Debtors Pursuant to 11 U.S.C. §§ 502(d), 547, 548

and 550 (Docket No. 2530); *In re Fabrics Estate, Inc.*, Case No. 08-10249 (JCC) (Bankr. E.D. Tenn. Jul. 8, 2010), Order Establishing Streamlined Procedures Governing Adversary Proceedings Brought by Eugene I. Davis, Trustee of the Liquidating Trust, Pursuant to Sections 502, 547, 548, 549 and 550 of the Bankruptcy Code (*Docket* No. 1978).

34. The Proposed Procedures will (a) streamline the resolution of the Avoidance Actions without prejudice to any defendant, (b) facilitate the prompt and cost-effective resolution of the Avoidance Actions, (c) minimize the Court's administrative burden, and (d) maximize the recovery of funds for the Reorganized Debtors' estates. Accordingly, the Reorganized Debtors believe that the Proposed Procedures are appropriate under the circumstances and in the best interest of the Reorganized Debtors' estates and creditors, and should be approved.

Conclusion

WHEREFORE, the Reorganized Debtors respectfully request that the Court grant the Motion, enter the Proposed Order in the form attached hereto and grant such other and further relief as the Court deems just and proper.

Dated: Wilmington, Delaware
November 12, 2010

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