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Important Update for Farmers that Supplied Grain to VeraSun within 90 days of Bankruptcy

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Abstract
On Sept. 30, 2010, attorneys for the New-York based law firms, Kelley Drye & Warren and Silverman Acampora, notified several corn producers and their attorneys in Iowa and across the Midwest that they are withdrawing demands for preference claims against a number of producers in the VeraSun Bankruptcy proceeding. In August, these law firms sent letters to producers who received payment for corn or other services from VeraSun Energy within 90 days of the company’s filing of Ch. 11 bankruptcy. These letters notified producers that payments received within the 90-day timeframe were preference claims under the U.S. Bankruptcy Code that should be returned to the bankruptcy estate and offered to settle with producers for 80 percent of the amount paid. The law firms requested that farmers respond to their settlement offer by Sept. 30, 2010.

Disciplines
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Important Update for Farmers that Supplied Grain to VeraSun within 90 days of Bankruptcy

by Erin Herbold, Center for Agricultural Law and Taxation

On Sept. 30, 2010, attorneys for the New-York based law firms, Kelley Drey & Warren and Silverman Acampora, notified several corn producers and their attorneys in Iowa and across the Midwest that they are withdrawing demands for preference claims against a number of producers in the VeraSun Bankruptcy proceeding. In August, these law firms sent letters to producers who received payment for corn or other services from VeraSun Energy within 90 days of the company’s filing of Ch. 11 bankruptcy. These letters notified producers that payments received within the 90-day timeframe were preference claims under the U.S. Bankruptcy Code that should be returned to the bankruptcy estate and offered to settle with producers for 80 percent of the amount paid. The law firms requested that farmers respond to their settlement offer by Sept. 30, 2010.

Correspondence from these law firms on Sept. 30, indicated that the firms have received “sufficient information” to determine that the VeraSun estate will not pursue a claim for relief against corn producers and the demands are withdrawn. The law firms indicated that they would compile and issue a list of corn producers against whom demands are withdrawn at a later date. The firms indicated that this should be relatively soon.

At this time, it appears that the law firms are still pursuing claims against normal preference defendants. It is not known whether the law firms have withdrawn their demand against cooperatives and private grain dealers.

After a preliminary reading of the situation, it is a good idea for corn producers to keep the documentation they have gathered together until they receive actual notice that they have been released from these claims. If you are a corn producer who proceeded without an attorney on this matter and sent money to these law firms, please contact us at the Center or consult with an attorney. It is not known, at this time, how the law firms will deal with producers who sent money. Staff at the Center for Agricultural Law and Taxation continue to monitor this situation and will provide updates when available at www.caflastate.edu when they become available.

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