

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:)	Chapter 11
ENERGY CONVERSION DEVICES, INC.,)	Case No. 12-43166
et al. ¹ ,)	(Jointly Administered)
Debtors.)	Judge Thomas J. Tucker

**LIQUIDATION TRUSTEE'S
FIRST SET OF DISCOVERY REQUESTS TO SUNWAY 2, LLC**

John Madden, solely in his capacity as the Liquidation Trustee of the Energy Conversion Devices Liquidation Trust and not individually, pursuant to Fed. R. Bankr. P. 7033, 7034 and 7036 as made applicable to this proceeding by Fed. R. Bankr. P. 9014(c) and the Contested Matter Scheduling Order Regarding Certain Debtors' Objections to the Claims of Sunway 2, LLC and Sunway 3, LLC (Docket No. 1344), submits the following discovery requests to Sunway 2, LLC.

I. DEFINITIONS

1. “And” and “or” mean and/or.
2. “Communication” means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including, without limitation, correspondence, documents, conversations, dialogues, discussions, e-mails, interviews, consultations, agreements, and other understandings.

¹ The Debtors in these jointly-administered cases are Energy Conversion Devices, Inc. (“ECD”) (Case No. 12-43166) and United Solar Ovonic LLC (“USO”) Case No. 12-43167).



3. “Concerning” shall mean relating to, referring to, describing, reflecting, evidencing or constituting.

4. “Contact Information” shall mean the current or last known business and residence address; business, residence and mobile telephone number; email address; and employer name, as applicable.

5. “Document” includes, but is not limited to, any written or graphic matter of any kind or character, however produced or reproduced; any electronically or magnetically recorded matter of any kind or character, however produced or reproduced; and any other matter constituting the recording of data or information upon any tangible thing by any means, as well as any tangible thing on which information is recorded in writing, sound, electronic or magnetic impulse, or in any other manner, including but not limited to paper, cards, tapes, film, electronic facsimile, e-mail, computer storage devices, video discs or any other media. For the purposes of this definition, “matter” shall include, but shall not be limited to paper, cards, tapes, film, electronic facsimile, e-mail, computer storage devices, video discs, letters, memoranda, notes, law books, contracts, agreements, opinions, programs, minutes, records, photographs, correspondence, telegrams, diaries, bookkeeping entries, financial statements, tax returns, checks, check stubs, reports, studies, charts, graphs, statements, notebooks, handwritten notes, applications, agreements, books, pamphlets, periodicals, appointment calendars, records and recordings of oral conversations, and work papers, and shall also include, but shall not be limited to, originals plus all copies which are different in any way from the original whether by handwritten notes, interlineation, receipt stamp notation, indication of copies sent or received, or otherwise, as well as all preliminary versions, drafts or revisions of any of the foregoing and any supporting, underlying or preparatory material, which are in your possession, custody, or control or in the possession,

custody, or control of your present or former agents, representatives, or attorneys, or any and all persons acting on their behalf. A draft or non-identical copy is a separate document within the meaning of this term.

6. The term “identify” when used with reference to an individual person shall mean to state his or her full name (or if not known, provide sufficient description so that he or she will be identifiable to the recipients of your answer), job title, employer or business affiliation, and last known business or home address.

7. The term “identify” when used with reference to a document or written communication shall mean to state the type of document or communication (e.g., memorandum, employment application, letter, handwritten notes, etc.), to state its date, to briefly describe its contents, to identify the author (and if different, the originator and signer), and to identify the person (or, if widely distributed, the organization or classes of persons) to whom the document or communication was sent. You may produce the document or written communication in lieu of identifying it.

8. The term “identify” when used with reference to an oral communication, discussion, conversation, meeting, conference, or any other oral statement, shall mean to describe in detail the substance of, to state the date and location of, and to identify the participants in each such communication, discussion, conversation, meeting, conference, or statement.

9. The terms “describe in detail” and “set forth the factual basis” shall mean to describe fully by reference to underlying facts rather than by ultimate facts or conclusions or facts of law, and to particularize as to time, place, and manner.

10. “Including” means “including, without limitation” or “including but not limited to.”

11. “Person” means any natural individual in any capacity whatsoever, or any entity or organization, including divisions, departments, or other units therein, and shall include, without limitation, a public or private corporation, firm, partnership, joint venture, voluntary unincorporated association, organization, proprietorship, trust, state, government agency, commission, bureau or department.

12. “Relate” and its variants encompass the terms “refer,” “reflect,” and “concern” and shall be construed to bring within the scope of the Request all documents that comprise, evidence, constitute, describe, explicitly or implicitly refer to, were reviewed in conjunction with, or were generated as a result of the subject matter of the Request, including but not limited to all documents that reflect, record, memorialize, discuss, evaluate, consider, review, report, or otherwise evidence the existence of the subject matter of the Request.

13. “System” or “Systems” shall mean that assemblage of all equipment and materials installed and configured at a given host site as necessary to mount, operate, monitor and maintain a photovoltaic power plant incorporating USO solar panels or laminates and also including, without limitation, a fixation mechanism, wiring, wire management components, combiner boxes, fuses, inverters, disconnects and data acquisition apparatus.

14. “USO” shall mean United Solar Ovonic LLC.

15. “USO Laminates” shall mean the photovoltaic laminates manufactured by USO.

16. “You” or “your” shall refer to Sunway 2, LLC, and Portland General Electric Co. and their respective predecessors, affiliates, subsidiaries, parent companies, and any other entity related in any manner to Sunway 2, LLC, and Portland General Electric Co.

17. “Claim” means the proof of claim filed by Sunway 2, LLC, as Claim No. 489.

18. “Objection” means the objection to the Claim filed by the Liquidation Trustee as Doc. No. 886.

19. “SIT” means Solar Integrated Technologies, Inc.

20. “Response to Objection” means the response filed by Sunway 2, LLC, to the Objection.

21. “Sunway 2 Agreement” means the Solar Power System Supply and Installation Agreement dated October 3, 2008, by and between Sunway 2, LLC and SIT.

22. Any term that is not defined herein has its usual and customary meaning.

23. Reference to a corporation, partnership, limited partnership, limited liability company, unincorporated association, joint venture, government entity, or other fictitious person shall be deemed to include each and all of its present or former subsidiaries, affiliates, predecessors and successors, and, with respect to each of the aforesaid entities, its present or former officers, directors, shareholders, employees, partners, members, general partners, and/or limited partners.

24. References to the singular include the plural, and references to the plural include the singular as needed to construe the Requests in their broadest permissible form.

25. The terms “all,” “any,” “each,” and “every” shall each be construed as both “each” and “every” to bring within the scope of each Request or Requests all responses which might otherwise be construed to be outside of its or their scope.

26. The masculine form of a noun or pronoun includes the feminine form to construe the Requests in their broadest permissible form.

27. Each Request shall be construed conjunctively or disjunctively as necessary to make the Request inclusive rather than exclusive. Any Request propounded in the present tense

shall also be read as if propounded in the past tense and vice versa.

II. INSTRUCTIONS

1. The preceding Definitions apply to each of these Instructions and each of the following discovery requests (the “Requests”).

2. These Requests apply to all documents in your actual or constructive possession, custody or control, including documents in the actual or constructive possession, custody or control of your members, attorneys, agents, accountants and advisors. A document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (1) own such document in whole or in part; (2) have a right, by contract, statute or otherwise, to use, inspect, examine or copy such document on any terms; (3) have an understanding, express or implied, that you may use, inspect, examine, or copy such document on any terms; or (4) as a practical matter, have been able to use, inspect, examine, or copy such document when you sought to do so. If any requested document was, but no longer is, in your control, state the disposition of each such document.

3. As the term “possession” pertains to e-mail, the term includes, but is not limited to, e-mail contained in your electronic e-mail directories containing (a) “deleted” e-mails which have not been permanently deleted, including all subdirectories irrespective of the title of such subdirectories; (b) “sent” e-mails, including all subdirectories irrespective of the title of such subdirectories; (c) “received” e-mails, including all subdirectories irrespective of the title of such subdirectories; and (d) “draft” e-mails, including all subdirectories irrespective of the title of such subdirectories.

4. In responding to each Request, you are to review and search all relevant files of appropriate entities and persons.

5. All Requests shall be deemed to include Requests for any and all transmittal sheets, cover letters, enclosures, or any other annexes or attachments to the documents.

6. You are to produce the original and all non-identical copies, including all drafts, of each document requested. If you are not able to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts.

7. Any document requested herein shall be produced as it is kept in the ordinary course of business and in such a manner as to indicate the particular Request to which they are responsive. The name of the file from which it was produced, the identity of the person from whose file it was produced, and the identity of the present custodian of that file each shall be set forth. All documents requested herein shall be produced electronically as tagged image file format ("TIFF") or portable document format ("PDF") files, except that all spreadsheets and accounting and financial data, including those created with Excel software, shall be produced in their native form.

8. If any document responsive to these Requests is known to have existed and cannot now be located, or has been destroyed or discarded, set forth a complete statement of the circumstances surrounding such loss or destruction, including:

- a. A description of the document, including the date, a summary of its contents and the identity of its author and the person(s) to whom it was sent or shown;
- b. The last known custodian;
- c. Whether the document is missing or lost or was destroyed or discarded;
- d. The date of loss, destruction or discard;
- e. The manner of destruction or discard;
- f. The reason(s) for destruction or discard;

- g. The person(s) authorizing or carrying out such destruction or discard; and
- h. The efforts made to locate lost or misplaced documents.

9. In the event that you seek to withhold any document, thing, or information on the basis that it is properly entitled to some privilege or other limitation of discovery, you shall produce as much of the document concerned as to which no claim of privilege is made. With respect to documents or portions of documents for which a claim of privilege or limitation is made, you are instructed to provide a numerical list of the document(s) and thing(s) for which a privilege or limitation of discovery is claimed that (1) identifies the nature of the privilege (including work product) asserted and, if the privilege is governed by state law, indicates the state of the privilege rule invoked; and (2) provides the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information: (i) the type of document, e.g., letter or memorandum; (ii) the name and capacity of each author and recipient of the document; (iii) the general subject matter of the document in a manner sufficient to support the privilege claimed; (iv) the date of the document; (v) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author(s) of the document, the addressee(s) of the document, and any other recipient(s) shown in the document, and, where not apparent, the relationship of the author(s), addressee(s), and recipient(s) to each other; and (vi) the same information referenced in (i)-(v) above for each enclosure or attachment to each listed document if the enclosure or attachment also is withheld from production. This instruction is intended to elicit a privilege log where documents are withheld on the basis of privilege or some other reason. Any basis for withholding documents not stated in an objection within the time frame provided by the applicable court rules, or any extensions thereof, shall be waived.

10. Each Definition, Instruction and Request herein shall be construed independently and not with reference to any other Definition, Instruction or Request for the purposes of limitation.

11. If any meaning of any term in any Request herein is unclear to you, without waiver of the Trustee's right to seek a full and complete response to the Request, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Request according to the assumed meaning.

12. In the event that you interpose an objection to a Request, you should clearly indicate to which part or portion of the Request the objection is directed and provide all documents to which objection is not made as if such part or portion were propounded as a separate Request.

13. If any Request is objected to on the ground of breadth, specifically state the manner in which it is purportedly overly broad and produce documents as narrowed to conform to such objection.

14. Each Request shall be deemed continuing so as to require prompt supplementation if you obtain, generate, or discover additional documents. If, after responding, you obtain or become aware of any additional information or documents responsive to these Requests, you shall promptly supplement your response.

III. REQUESTS FOR ADMISSIONS

1. Admit that You did not purchase any USO Laminates directly from USO.

RESPONSE:

2. Admit that USO never provided to You any express warranty.

RESPONSE:

3. Admit that USO was not a party to the Sunway 2 Agreement.

RESPONSE:

4. Admit that USO did not manufacture the Systems in their entirety.

RESPONSE:

5. Admit that USO only manufactured one component of the Systems.

RESPONSE:

6. Admit that the only component of the Systems that USO manufactured was the USO Laminate.

RESPONSE:

7. Admit that you have no evidence that any USO Laminate was defective at the property located at PDX Corp Ctr East One, 15509-15613 NE Airport Way, Portland, Oregon 97230.

RESPONSE:

8. Admit that you have no evidence that any USO Laminate was defective at the property located at PDX Corp Ctr East Two, 15311-15427 NE Airport Way, Portland, Oregon 97230.

RESPONSE:

9. Admit that you have no evidence that any USO Laminate was defective at the property located at PDX ProLogis Park Four, 5545 NE 148th Ave., Portland, Oregon 97230.

RESPONSE:

10. Admit that you have no evidence to support the contention that any failure of the Systems was the fault of USO.

RESPONSE:

11. Admit that you have no evidence to support the contention that any failure of the Systems is attributable to the USO Laminate.

RESPONSE:

12. Admit that the USO Laminates were installed on unapproved substrates at the three sites identified in paragraph 6 of your Claim.

RESPONSE:

13. Admit that the USO Laminates were not properly installed at the three sites identified in paragraph 6 of your Claim.

RESPONSE:

14. Admit that the USO Laminates were not properly serviced and maintained at the three sites identified in paragraph 6 of your Claim.

RESPONSE:

15. Admit that you have no evidence to support your contention that USO “knowingly sold” USO Laminates “to the public with full knowledge that they were defective.”

RESPONSE:

16. Admit that the “water/moisture infiltration” issue described in paragraphs 8 and 9 of your Response is not attributable to USO.

RESPONSE:

17. Admit that the “thermal damage” issue set forth in paragraph 10 of your Response is not attributable to USO.

RESPONSE:

18. Admit that the “delamination” issue referenced in paragraph 11 of your Response is not attributable to USO.

RESPONSE:

19. Admit that the “debonding” issue referenced in paragraph 11 of your Response is not attributable to USO.

RESPONSE:

20. Admit that you are seeking a remedy that is not provided in any of USO’s warranties.

RESPONSE:

21. Admit that SIT applied for and obtained UL (United Laboratories) or IEC (International European Commission) certification for the Systems.

RESPONSE:

IV. INTERROGATORIES

1. If your response to any of the foregoing Requests for Admissions is anything other than an unequivocal admission, identify with specificity each fact upon which you rely in support of your non-admission, and every document or other tangible item upon which you rely in support of your non-admission, and every individual with personal knowledge of the basis supporting your non-admission.

ANSWER:

2. Describe in detail all evidence that supports, refutes or relates in any way to your claim that “many of the PV Products installed in the System located at 5545 NE 148th Ave., Portland, Oregon 97230 have failed,” as alleged in paragraph 3 of your Response. Please include in your answer a detailed description of each specific USO Laminate that allegedly failed, when you first learned that each such USO Laminate allegedly failed, how you learned that it allegedly failed, the cause of each such alleged failure, the identity of all individuals with personal knowledge of your contentions, and the identity of all documents that relate in any way to your contentions.

ANSWER:

3. To the extent you contend that any of the USO Laminates installed at PDX Corp Ctr East One, 15509-15613 NE Airport Way, Portland, Oregon 97230 have failed, please:

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- (a) Identify, by serial number or otherwise, which specific USO Laminate allegedly failed;
- (b) Identify the manner in which it failed;
- (c) Identify the date on which you first learned that it failed;
- (d) Describe your belief as to the cause of the failure;
- (e) Describe in detail all evidence that supports your contention that any of the USO Laminates failed.
- (f) Identify all individuals with personal knowledge that support your contention;
- (g) Identify any documents that relate in any way support your contention.

ANSWER:

4. To the extent you contend that any of the USO Laminates installed at PDX Corp Ctr East Two, 15311-15427 NE Airport Way, Portland, Oregon 97230 have failed, please:

- (a) Identify, by serial number or otherwise, which specific USO Laminate allegedly failed;
- (b) Identify the manner in which it failed;
- (c) Identify the date on which you first learned that it failed;
- (d) Describe your belief as to the cause of the failure;
- (e) Describe in detail all evidence that supports your contention that any of the USO Laminates failed.
- (f) Identify all individuals with personal knowledge that support your contention;
- (g) Identify any documents that relate in any way support your contention.

ANSWER:

5. Identify all evidence in your possession that supports, refutes or relates in any way to your contention that the alleged failure of the USO Laminates is attributable to the installation of the Systems by SIT, as alleged in paragraph 10 of your Response. Please include in your answer the identity of all individuals with personal knowledge of your contention and the identity of all documents that relate in any way to your contention.

ANSWER:

6. Describe in detail the factual basis to support your contention that the failures described in your Claim are the result of the USO Laminates. Please include in your answer the identity of all individuals with personal knowledge of your contention and the identity of all documents that relate in any way to your contention.

ANSWER:

7. Describe in detail the factual basis to support your contention that “the installation techniques” “were approved by USO” as alleged in paragraph 1 of your Response. Please include in your answer the identity of all individuals with personal knowledge of your contention and the identity of all documents that relate in any way to your contention.

ANSWER:

8. Describe in detail the factual basis that supports your contention that “USO knowingly sold the” USO Laminate “to the public with full knowledge that they were defective.” Please include in your answer the identity of all individuals with personal knowledge of your contention and the identity of all documents that relate in any way to your contention.

ANSWER:

9. Describe in detail the factual basis that supports your contention that “at least 35% of the PV Products have failed,” as alleged in paragraph 9 of your Claim. Please include in your answer the identity of all individuals with personal knowledge of your contention and the identity of all documents that relate in any way to your contention.

ANSWER:

10. With regard to your contention that the USO Laminates suffer from “water/moisture infiltration,” as alleged in paragraphs 8 and 9 of your Response, please:

- (a) Identify any and all reasons that cause you to believe that the water/moisture infiltration is caused by a USO Laminate or USO;
- (b) Identify any and all reasons that cause you to believe that the water/moisture infiltration is caused by the installation of the Systems by SIT;
- (c) Identify any and all reasons that cause you to believe that the “water/moisture infiltration” is caused by a factor not identified in your responses to (a) and (b) above;
- (d) Identify all individuals with personal knowledge to support your contentions; and
- (e) Identify all documents that relate in any way to your contentions.

ANSWER:

11. With regard to your contention that the USO Laminates suffer from “thermal damage,” as alleged in paragraph 10 of your Response, please:

- (a) Identify any and all reasons that cause you to believe that the thermal damage is caused by a USO Laminate or USO;

- (b) Identify any and all reasons that cause you to believe that the thermal damage is caused by the installation of the Systems by SIT;
- (c) Identify any and all reasons that cause you to believe that the “thermal damage” is caused by a factor not identified in your responses to (a) and (b) above;
- (d) Identify all individuals with personal knowledge to support your contentions; and
- (e) Identify all documents that relate in any way to your contentions.

ANSWER:

12. Identify the installation process that SIT utilized for the Systems at each of the three sites identified in your Claim.

ANSWER:

13. Identify all products and materials that were incorporated in each System that SIT installed at each of the three sites identified in your Claim, and separate by those products and materials that were purchased from USO and those products and materials that were purchased from entities other than USO.

ANSWER:

14. Identify all warranty complaints or other complaints of defective products and materials you have made or received in regard to each System installed at each of the three sites identified in your Claim.

ANSWER:

15. Identify all persons, including experts, that you may call as witnesses at any hearing in regard to this contested matter.

ANSWER:

16. Identify all existing unremedied conditions at each of the three sites identified in your Claim.

ANSWER:

17. Identify each defect that you contend exists with regard to the USO Laminates and describe in detail the basis for your contentions, identify all individuals with personal knowledge of your contentions, and identify all documents that relate to your contentions.

ANSWER:

18. Identify each USO warranty provision that you contend applies to, or covers, the claims at issue in your Claim.

ANSWER:

19. Please provide an account, itemized and described as carefully as possible, of your alleged damages, specifically including what those damages are based on, how they are calculated, and identify each individual who has personal knowledge of the amount and method used to calculate that amount.

ANSWER:

V. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents identified in response to any and all of the Requests for Admissions and Interrogatories above.
2. Produce all documents that support, refute, or relate in any way to the allegations at issue in your Claim or Response.
3. Produce all documents you may introduce, or attempt to introduce, at any hearing in this matter.
4. Produce all photographs of any of the alleged failures at issue.
5. Produce all documents that support your claim for damages.

VI. REQUEST TO PERMIT ENTRY ON DESIGNATED PROPERTY FOR INSPECTION AND OTHER PURPOSES

Request is hereby made that one or more agents designated by the Liquidation Trustee be permitted entry on each of the three sites at issue in your Claim to inspect, measure, survey, photograph, test or sample the systems located at said sites. The time, place and manner for such inspection(s) and performance of related actions shall be specified by supplement hereto promptly following the time of your response.

PEPPER HAMILTON LLP

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Dated: October 29, 2012

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2012, the foregoing papers were filed with the Clerk of the Court which sends notice by operation of the Court's electronic filing service to all ECF participants registered to receive notice in this case.

PEPPER HAMILTON LLP

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