

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § CASE NO. 15-35615
RAAM GLOBAL ENERGY COMPANY, §
ET AL. § (CHAPTER 11)
DEBTORS § JOINTLY ADMINISTERED

**OBJECTION OF ACOCK CONSULTING, L.L.C. TO EMERGENCY MOTION FOR
APPROVAL OF INTERIM AND FINAL USE OF CASH COLLATERAL AND
GRANTING ADEQUATE PROTECTION (docket 11)**

TO THE HONORABLE JUDGE MARVIN ISGUR, U.S. BANKRUPTCY JUDGE:

Acock Consulting, L.L.C. (“ACLLC”) files its Objection to Debtor’s Emergency Motion for Approval of Interim and Final Use of Cash Collateral and Granting Adequate Protection (docket 11) (“Cash Collateral Motion”) and in support would show the Court as follows:

1. ACLLC performed labor and/or furnished material, machinery and supplies pursuant to a contract with Debtor, Century Exploration Houston, LLC, for which ACLLC has not been paid. ACLLC has certain lien rights under applicable state law which provide for statutory mineral liens. *See Tex. Prop. Code § 56.001, et. seq.* ACLLC is within the statutory period for exercising its lien rights under applicable law, including the right to perfect such liens post-petition. The principal indebtedness in connection with the unpaid amounts due and owing from the goods, material, supplies, machinery, equipment and labor furnished by ACLLC is approximately \$46,249.02 as related to the Akula, Phineas, Jacques, Flipper, Sebastian and Blacktip Prospects and related leases. ACLLC is in the process of perfecting its liens post-petition as allowed by 11 U.S.C. § 546(b). Once perfected, ACLLC’s Mineral Lien incepts and relates back to the date ACLLC commenced furnishing labor and/or materials on the subject leaseholds. *See Tex. Prop. Code §§ 56.004-005.*

OBJECTION

2. ACLLC objects to Debtor's Cash Collateral Motion and Interim Order to the extent mineral lien claimants do not receive equal protection of their lien rights.

NATURE AND SCOPE OF MINERAL LIEN RIGHTS

3. The ACLLC Mineral Liens encumber the following interests:

- a. the interests of the contracting party (operator) and any mineral property owner on whose behalf such contracting party contracted as trustee, agent, receiver or mineral contractor;
- b. the interests of identified working interests owners with a recorded assignment as of the applicable mineral lien inception date; and
- c. the interests of any working interest owners without a recorded assignment as of the applicable mineral lien inception date.

4. The ACLLC Mineral Liens encumber the oil, gas and mineral leases upon which operations were conducted by or on behalf of the Debtor. Pursuant to applicable state law, the ACLLC Mineral Liens attach to and encumber (i) the well; (ii) the whole of such land or leasehold or lease for oil and gas purposes; (iii) the material, machinery and supplies furnished by the lien claimant; (iv) all other material, machinery and supplies used for mineral activities; (v) all personal property; (vi) all buildings; (vii) all appurtenances; (viii) all other oil, gas and water wells and pipelines located on the subject leases; (ix) the oil and gas produced from the subject leases; and (x) the proceeds from the sale thereof (collectively the "Subject Property"). *See* Tex. Prop. Code § 56.003.

5. The ACLLC Mineral Liens attach to and encumber the proceeds from production generated from the Subject Property. *See Abella v. Knight Oil Tools*, 945 S.W.2d 847, 850 (Tex. App.—Houston [1st Dist.] 1997, no writ). Likewise, all post-petition collections of joint interest billings from third-party working interest owners constitute the cash collateral of the holders of any perfected mineral contractor or subcontractor liens under applicable state law. *See F.D.I.C. v. Mid-America, Inc.*, 83

B.R. 933, 935 (Bankr. N.D. Tex. 1988). Further, the security for such mineral liens is impaired by the draining of oil and gas from the oil and gas leases upon which the liens attach under applicable state law. Hydrocarbons are unique because they are not reproducible and the amount is finite. The oil and gas leases are likewise unique because as production occurs, the value of the leases diminish and finally becomes worthless. Thus the value of the subject mineral liens diminish as the wells are produced.

REQUIREMENTS FOR USE OF CASH COLLATERAL

6. Section 363 of the Bankruptcy Code provides in relevant part:

(c)(2) The trustee may not use, sell, or lease cash collateral unless

(A) each entity that has an interest in such cash collateral consents; or

(B) the court after notice and a hearing authorizes such use, sale, or lease in accordance with provisions of this section.

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing ***shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.*** . . . (emphasis added).

7. Further, Tex. Prop. Code §56.003(2) prohibits the sale by the mineral property owner, contractor, or purchaser or agent, trustee or receiver of one of those persons, of property to which the mineral lien has attached or removal of property from the land upon which it was to be used, unless the lienholder consents in writing.

8. Debtor's Cash Collateral Motion involves Prepetition Secured Creditors, which are not mineral lien and mineral contractor and subcontractor lien holders. As such, Debtor's Cash Collateral Motion and Interim Order do not provide any form of adequate protection for the use of

the cash collateral of statutory mineral lien and mineral contractor and subcontractor lien holders.

9. ACLLC requests that any order which authorizes the use of mineral lien creditors' cash collateral expressly provide that:

- a. All production revenues or proceeds from the encumbered leases are the cash collateral of the mineral lien claimants;
- b. All post-petition collections of joint interest billings encumbered by mineral contractor and subcontractor liens are the cash collateral of the holders of such liens;
- c. Replacement liens deemed perfected without any further action be granted in all of Debtor's property securing the mineral lien claimants' claims in an amount equal to the post-bankruptcy petition production revenues or proceeds from the encumbered leases which shall be of the same relative priority as the pre-petition liens (including liens perfected post-petition which relate to pre-petition materials and/or services);
- d. Replacement liens deemed perfected without any further action be granted in all of Debtor's property securing claims in an amount equal to the post-bankruptcy petition collections of joint interest billings encumbered by the mineral subcontractor liens which shall be of the same relative priority as the pre-petition liens (including liens perfected post-petition which relate to pre-petition materials and/or services);
- e. A percentage of the net revenue attributable to the encumbered leases be deposited monthly into a segregated account for the benefit of mineral lien claimants;
- f. To the extent that the value of the replacement liens and security interests granted pursuant to the order granting use of cash collateral proves to be inadequate to assure full payment of the cash collateral used by Debtor, then the amount of the cash collateral shall be afforded status as an administrative priority claim equivalent in priority to a claim under Section 364(c)(1) of the Bankruptcy Code, and, as such, having priority over all other costs and expenses of the kind specified in, or ordered pursuant to, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, or any other Section of the Code, and shall at all times be senior to the rights of the Debtors, and any successor trustee in this or any subsequent proceedings under the Code.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Acock Consulting, L.L.C. respectfully requests that the Court grant the adequate protection requested herein and for such other and further relief to which the subject mineral lien creditors are justly entitled.

Respectfully Submitted,
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by: /s/ Elizabeth G. Smith
Elizabeth G. Smith
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Attorney for Acock Consulting, L.L.C.

CERTIFICATE OF CONFERENCE

I hereby certify that I have been conferring with Debtor's counsel Bradley Foxman concerning the related Debtor's Critical Vendor Motion and I have been attempting to work out terms for ACLLC as related to the same motion. Today, it became evident that ACLLC needed to file an objection to the Cash Collateral Motion, so I phoned Mr. Foxman this afternoon to discuss Debtor's Cash Collateral Motion. I knew Mr. Foxman was out of the office at a conference, so I would likely not be able to reach him, but I did attempt to reach him. I will continue to attempt to confer Mr. Foxman to resolve the issues related to ACLLC and Debtor concerning this Objection.

/s/ Elizabeth G. Smith
Elizabeth G. Smith

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2015, a true and correct copy of the above and foregoing Objection to Emergency Motion for Approval of Interim and Final Use of Cash Collateral and Granting Adequate Protection was served by the method and to the following parties as indicated below:

/s/ Elizabeth G. Smith
Elizabeth G. Smith

Via Email Mail Only

Attorney for Debtors: bfoxman@velaw.com
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U.S. Trustee USTPRegion07.HU.ECF@USDOJ.GOV
and by email to all the parties listed in the Mailing Information List for Case #15-35615 attached hereto who are on said list to receive email notice/service for this case;

and, to the following by 1st Class Mail only:

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