

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE: §  
RAAM GLOBAL ENERGY COMPANY, § CASE NO. 15-35615  
*et al.* § (Chapter 11)  
DEBTORS. § JOINTLY ADMINISTERED

**EXPEDITED MOTION FOR ORDER AUTHORIZING (A) THE DEBTORS TO DELIVER CHECKS TO THEIR INTENDED RECIPIENTS, (B) THE DEBTORS AND ACE TO ENTER INTO CONTRACTS WITH VENDORS TO PERFORM PLUGGING AND ABANDONMENT WORK IN THE ORDINARY COURSE, AND (C) THE UTILIZATION OF FUNDS IN THE ESCROW ACCOUNT TO PAY FOR SUCH WORK IN THE ORDINARY COURSE**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJET TO THE REQUESTED RELIEF, OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

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**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”),<sup>1</sup> file this *Expedited Motion for Order Authorizing (a) the Debtors to Deliver Checks to Their Intended Recipients, (b) the Debtors and ACE to Enter into Contracts with Vendors to Perform Plugging and Abandonment Work in the Ordinary Course, and (c) the Utilization of Funds in the Escrow Account to pay for Such Work in the Ordinary Course* (the “Motion”), and in support respectfully state as follows:

**JURISDICTION AND PROCEDURAL BACKGROUND**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. On October 26, 2015 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), thereby commencing the above-captioned cases (the “Cases”).
4. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.
5. On November 9, 2015, an official joint committee of unsecured creditors was appointed in the Cases.

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<sup>1</sup> The Debtors are RAAM Global Energy Company [2973], Century Exploration New Orleans, LLC [4948], Century Exploration Houston, LLC [9624], and Century Exploration Resources, LLC [7252].

## **STATEMENT OF FACTS**

### **A. Business Overview**

6. RAAM Global Energy Company (“RAAM”) is an independent oil and natural gas exploration and production company engaged in the exploration, development, production, exploitation, and acquisition of oil and natural gas properties. The other Debtors are wholly-owned subsidiaries of RAAM, and RAAM provides administrative, technical, financial, and strategic planning support to the subsidiaries.

7. The Debtors’ producing assets are located offshore in the Gulf of Mexico and onshore in Louisiana, Texas, Oklahoma, and California, and the Debtors maintain offices in Lexington, Kentucky and New Orleans, Louisiana. Additional information concerning the Debtors can be found in the *Declaration of James R. Latimer, III in Support of First Day Pleadings* [Docket No. 20].

### **B. Plugging and Abandonment Obligations**

8. The Debtors, primarily through Century Exploration New Orleans, LLC (“Century New Orleans”), are lessors under various oil and gas leases issued by, among other lessors, the Department of the Interior on behalf of the United States Government. Certain of these oil and gas leases (the “Gulf of Mexico Leases”) are for exploration and production activities on the outer-continental shelf in the Gulf of Mexico.

9. To continue operating in the outer-continental shelf in the Gulf of Mexico, the Debtors must comply with the terms and conditions of the Gulf of Mexico Leases, laws governing such operations, including, without limitation, laws designed to protect the public health and safety from identifiable hazards, and the rules and regulations to enforce such laws

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promulgated by, among others, the Department of Interior and the Bureau of Ocean Management (collectively, the “Lease Requirements”). Pursuant to the Lease Requirements, the Debtors must, *inter alia*, comply with certain plugging and abandonment obligations. Accordingly, in the ordinary course of business, from time to time as required under state and federal law, the Debtors have engaged vendors to perform plugging and abandonment work for certain of their oil and gas wells covered by the Gulf of Mexico Leases.

**i. *The Escrow Agreement***

10. Prior to the Petition Date, the Debtors paid \$750,000 each month into an escrow account (the “Escrow Account”) pursuant to that certain *Escrow Agreement* (the “Escrow Agreement”) entered into between Century New Orleans and ACE American Insurance Company (“ACE”) with Bank of America as Escrow Agent dated November 5, 2014, attached hereto as **Exhibit A**, for the benefit of ACE to ensure funds would be available to satisfy the Debtors’ obligations to ACE under the Debtors’ bonding program.<sup>2</sup> As set forth below, the Escrow Account may be a “true escrow” and, as such, the funds therein may not be property of the estate under Bankruptcy Code § 541. See ¶ 9 of the Escrow Agreement. As of the date of this Motion, the balance of the Escrow Account is approximately \$7,142,812.

**ii. *The Funds Disbursing Agreement***

11. Contemporaneously with the Escrow Agreement, Century New Orleans and ACE entered into that certain *Funds Disbursing Agreement* (the “Funds Disbursing Agreement”) dated November 5, 2014, attached hereto as **Exhibit B**. The Funds Disbursing Agreement serves to, *inter alia*, outline procedures for (a) the Debtors to engage vendors to perform plugging and

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<sup>2</sup> See the Debtors’ *Emergency Motion for Order Authorizing Debtors to Continue Insurance Policies and Bonding Program* [Docket No. 15] for additional information regarding the Debtors’ bonding program.

abandonment work and (b) paying for such plugging and abandonment work with funds in the Escrow Account. *See* Articles 3 and 4 of the Funds Disbursing Agreement.

12. Provided the Debtors are not in default of the Funds Disbursing Agreement, the Escrow Agreement, and related agreements (collectively, the “ACE Agreements”), the mechanics of the Funds Disbursing Agreement are as follows:

- (a) the Debtors enter into an agreement with a vendor to perform plugging and abandonment work;
- (b) the Debtors receive an invoice requesting payment for such plugging and abandonment work;
- (c) the Debtors submit a Disbursement Request (as defined in the Funds Disbursing Agreement) to ACE requesting payment of the invoice either (i) directly to the vendor or (ii) to the Debtors if the Debtors have already paid the vendor;
- (d) ACE authorizes payment of the invoice and directs Bank of America to debit the funds from the Escrow Account and place such funds in a Bank of America demand deposit account (also known as a DDA) that is commingled with funds of other Bank of America clients (the “Bank of America Account”),<sup>3</sup> from which Bank of America issues a check made payable to either the vendor or the Debtors; and
- (e) if the check is payable to the vendor, the Debtors then deliver the check to the payee vendor.

13. Although the Funds Disbursing Agreement contemplates the issuance of a check to reimburse the Debtors if the Debtors have already paid the particular vendor, the Checks (as defined and discussed below) were made payable to the vendors but mailed to the Debtors.

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<sup>3</sup> Funds in the commingled account are held in the name of Bank of America.

14. If the Debtors are in default of the ACE Agreements, any disbursements from the Escrow Account are at the discretion of ACE. As of the date of this Motion, the Debtors are in default of the ACE Agreements for, among other things, the failure to continue funding the Escrow Account. As a result, any disbursement from the Escrow Account is at ACE's discretion.

**iii. *The Pre-Petition Plugging and Abandonment Invoices***

15. Prior to the Petition Date, the Debtors (a) engaged certain vendors to perform plugging and abandonment work on certain of the Debtors' oil and gas wells and (b) received invoices (the "Invoices") from such vendors for \$1,452,606.73 for the plugging and abandonment work performed pre-petition.

16. On October 23, 2015 and October 26, 2015, ACE authorized payment of the Invoices in accordance with the Funds Disbursing Agreement and Bank of America issued and delivered to the Debtors checks (each a "Check" and collectively, the "Checks") that were payable to the vendors in the aggregate amount of \$1,452,606.73. The Debtors received (a) the Checks issued on October 23, 2015 in the mail on October 26, 2015 (the Petition Date) and (b) the Check issued on October 26, 2015 in the mail on October 27, 2015. However, as a result of filing the Cases and in an abundance of caution, the Debtors postponed the delivery of the Checks to the applicable vendors pending entry of an order by this Court authorizing such delivery.

**RELIEF REQUESTED**

17. The Debtors request authority to deliver the Checks to the vendors, and ACE has consented to this request. Additionally, (a) the Debtors, with the consent of ACE, desire to

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continue meeting their plugging and abandonment obligations as required under the Lease Requirements and (b) ACE desires to cause funds in the Escrow Account to be utilized for such purposes consistent with pre-petition practices. Integral to this process is the continued performance of the vendors.

18. Accordingly, the Debtors request entry of an order, pursuant to Bankruptcy Code §§ 105(a) and 363, with the consent of ACE and in accordance with pre-petition practices, (a) allowing funds in the Escrow Account to be utilized to satisfy any other outstanding invoices for plugging and abandonment work performed prior to the Petition Date and (b) authorizing the Debtors and ACE, with each other's consent, to enter into additional contracts with vendors to facilitate the plugging and abandonment of certain other oil and gas wells,<sup>4</sup> provided that ACE authorizes the utilization of funds in the Escrow Account in accordance with pre-petition practices to pay for such plugging and abandonment work.

19. Highbridge Principal Strategies, LLC's approval is not required prior to (a) the Debtors or ACE entering into any post-petition contract for plugging and abandonment work or (b) the payment of pre-petition plugging and abandonment invoices with funds from the Escrow Account; however, as a courtesy, the Debtors will provide five days' notice to Highbridge Principal Strategies, LLC of any such activities.

20. ACE has agreed to not assert and to waive any entitlement, whether by subrogation, contribution, or otherwise, to administrative expense priority for any disbursements made from the Escrow Account or related to the Checks.

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<sup>4</sup> The Debtors believe that entering into such contracts constitute ordinary course of business transactions; however, in an abundance of caution, the Debtors seek Court approval to enter into such contracts.

**BASIS FOR REQUESTED RELIEF**

**A. The Checks are not Property of the Debtors' Estates**

21. Bankruptcy Code § 541(a) provides, in relevant part, that property of the estate consists of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a).

22. Courts in the Fifth Circuit and in other jurisdictions have held that a “true escrow” is not property of the estate. *See, e.g., Matter of Kemp*, 52 F.3d 546, 550 (5th Cir. 1995) (acknowledging that money held in a “true” escrow account is not property of the estate); *In re Dolphin Titan Intern., Inc.* 93 B.R. 508, 511-12 (Bankr. S.D. Tex. 1988) (holding that funds in escrow account were not property of the estate); *In re ANR Advance Transp. Co., Inc.*, 247 B.R. 771, 774 (Bankr. E.D. Wisc. 2004) (“The parties do not dispute the legal consequences if the agreement is found to be a true escrow. If that is the case, the funds remaining in the escrow account are not property of the bankruptcy estate.”). A “true escrow” arises “only when the parties come to a clear and definite agreement directing that the funds be deposited with a third party and specifying the terms and conditions on which the third party is required to deliver the funds.” *Matter of Kemp*, 52 F.3d at 551.

23. The Escrow Account may be a “true escrow” based on the terms of the Escrow Agreement, which provides, in relevant part, that:

The escrow established by this Escrow Agreement constitutes a “true escrow” such that Principal has delivered and relinquished dominion and control over the Escrow Funds and the Escrow Account. Principal further acknowledges and agrees that: its right to receive or obtain possession of any part of the Escrow Funds shall be limited solely to any right to receive funds (including any remainder interest in the Escrow Funds) pursuant to instructions issued by Surety; Principal shall not have any right to demand such funds from Escrow Agent; and the Escrow Funds shall not otherwise become property of Principal or of any

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estate created in the name of Principal pursuant to title 11 of the United States Code (“Code”).

See ¶ 9 of the Escrow Agreement.

24. Given that (a) the Escrow Account may be a “true escrow” and (b) the Checks were directed by ACE to be issued and are made payable to the vendors from funds in the Escrow Account that were moved to the Bank of America Account, the Debtors hold neither legal title to, nor do they have an equitable interest in, the Checks. *See Matter of Kemp*, 52 F.3d at 551. Rather, the Debtors have mere possession of the Checks, and the Checks are not property of the estate. Therefore, the Debtors should be authorized to deliver the Checks to the vendors in satisfaction of the Invoices.

**B. The Debtors Should be Authorized to Enter Into Post-Petition Contracts for Plugging and Abandonment Work and Utilize Funds in the Escrow Account to pay for Such Work in the Ordinary Course**

25. The Debtors have reached an agreement with ACE, subject to this Court’s approval, whereby, with the consent of ACE and in accordance with pre-petition practices: (a) funds in the Escrow Account may be utilized to pay for any outstanding invoices for plugging and abandonment work performed prior to the Petition Date; and (b) the Debtors and ACE, with each other’s consent, may enter into post-petition contracts with the vendors to perform plugging and abandonment work in the ordinary course, provided that ACE authorizes funds in the Escrow Account to be utilized in accordance with pre-petition practices to pay for such post-petition plugging and abandonment work. ACE has agreed to allow the funds in the Escrow Account to be used for such purposes.

26. Bankruptcy Code § 363(b)(1) provides that a debtor in possession “may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . .” 11 U.S.C. §

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363(b)(1). A debtor in possession seeking to use or sale property of the estate under Bankruptcy Code § 363 must articulate a sound business justification for the proposed use or sale. *See In re Continental Airlines*, 780 F.2d 1223, 1226 (5th Cir. 1986).

**i. *A Sound Business Justification Exists for the Use of Funds in the Escrow Account to pay Outstanding Pre-Petition Invoices, if any***

27. Bankruptcy courts have authorized payment of pre-petition obligations with funds that are property of the estate under Bankruptcy Code § 363(b) where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of pre-petition wages). As explained above, the funds in the Escrow Account may not be property of the estate. To the extent the funds in the Escrow Account may be property of the estate, the Debtors are requesting authority under Bankruptcy Code § 363 to utilize such funds to pay any outstanding pre-petition plugging and abandonment invoices.

28. The Debtors submit that a sound business justification exists for allowing funds in the Escrow Account to be utilized, in accordance with pre-petition practices, to pay any outstanding invoices for plugging and abandonment work performed prior to the Petition Date. First, given the downturn in the industry, the Debtors are presently able to enter into economically beneficial arrangements with vendors as such vendors are willing to perform the plugging and abandonment work at a much lower cost than in years past. Additionally, the payment of any outstanding pre-petition amounts pursuant to this Motion will merely shift the pre-petition claims from the vendors to ACE.

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29. Accordingly, the Debtors, in their business judgment, request entry of an order allowing the utilization of funds in the Escrow Account to pay any outstanding pre-petition plugging and abandonment invoices.

**ii. *Entering into Post-Petition Contracts***

30. While the Debtors do not believe entering into post-petition contracts with vendors to perform plugging and abandonment work would be outside the ordinary course of business, it is possible that the relief requested in this Motion (*e.g.*, ACE entering into such contracts) may cause estate property to be used “other than in the ordinary course of business.” Accordingly, in an abundance of caution, pursuant to Bankruptcy Code §§ 105(a) and 363, the Debtors request that they and ACE be authorized, with each other’s consent, to enter into post-petition contracts with vendors to perform plugging and abandonment work on certain of the Debtors’ offshore oil and gas wells.

31. A sound business justification exists for authorizing the Debtors and ACE to enter into post-petition contracts with vendors to perform plugging and abandonment work. First, as stated previously, the Debtors and ACE are presently able to enter into economically beneficial arrangements with vendors given the downturn in the industry. Second, entering into post-petition contracts for additional plugging and abandonment work will allow the debtors to remain in compliance with the Lease Requirements.

32. For these reasons, in an abundance of caution, the Debtors submit that this Court should enter an order (a) authorizing the Debtors and ACE, consistent with past practices and agreements and with each other’s consent, to enter into post-petition contracts with vendors to perform plugging and abandonment work and (b) allowing the utilization of funds in the Escrow

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Account in accordance with pre-petition practices to pay the vendors for such plugging and abandonment work.

**C. ACE Will not be Entitled to an Administrative Claim for the Payment of the Checks or the Utilization of Funds in the Escrow Account**

33. ACE has agreed to not assert and to waive any entitlement, whether by subrogation, contribution, or otherwise, to administrative expense priority for any disbursements made from the Escrow Account or related to the Checks. ACE reserves its rights to assert entitlement to administrative expense priority for any payments made with ACE's own funds in furtherance of plugging and abandonment work; provided, however, the funds in the Escrow Account must be exhausted prior to ACE using its own funds to pay for such plugging and abandonment work. Accordingly, the Debtors request that the order on this Motion provide that any payments made from the Escrow Account or related to the Checks will not cause ACE to be entitled to administrative priority claims under Bankruptcy Code § 503(b)(1)(A).

**EXPEDITED RELIEF IS APPROPRIATE**

34. The Debtors submit that an expedited hearing on this Motion is appropriate (a) to allow the plugging and abandonment work to go forward as quickly as possible and (b) to allow the Debtors to secure economically beneficial arrangements with the vendors while there is a downturn in the industry, which will ultimately reduce the costs of post-petition plugging and abandonment work to the Debtors' estates.

**RESERVATION OF RIGHTS**

35. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted in the Order is intended or should be construed as: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute

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any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to Bankruptcy Code § 365; (f) a release, waiver, or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens or interests (contractual, common law, statutory, or otherwise) are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens or interests.

### **NOTICE**

36. Notice of this Motion has been provided by e-mail, facsimile, or overnight delivery to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Debtors; (c) counsel to the Debtors; (d) counsel to the lenders under the Term Loan Facility; (e) counsel to ACE; (f) counsel to certain holders of the Notes; (g) counsel to the administrative agent under the Term Loan Facility; (h) counsel to the indenture trustee and collateral agent under the Notes; (i) the Debtors' 50 largest unsecured creditors (on a consolidated basis); (j) those persons who have formally appeared in the Cases and requested service pursuant to Bankruptcy Rule 2002; (k) Upstream; (l) the providers of the Insurance Policies; (m) the Securities and Exchange Commission; (n) the Internal Revenue Service; and (o) all other applicable government agencies to the extent required by the Bankruptcy Rules and the Bankruptcy Local Rules.

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**PRAYER**

37. The Debtors respectfully request that the Court enter an order authorizing the relief requested herein and granting such other and further relief to which the Debtors may be justly entitled.

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Dated: November 23, 2015

Respectfully submitted,

**VINSON & ELKINS LLP**

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**PROPOSED ATTORNEYS FOR THE  
DEBTORS**

**CERTIFICATE OF SERVICE**

I certify that on November 23, 2015, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Reese A. O'Connor  
One of Counsel

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