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

In re:	§	
	§	Case No.: 15-35615
RAAM GLOBAL ENERGY COMPANY, *et al.*,[1]	§	
	§	Chapter 11
	§	
	§	Jointly Administered
Debtors.	§	
	§	Re: Dkt. No. 11

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE EMERGENCY MOTION FOR APPROVAL OF INTERIM AND FINAL USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION

TO THE HONORABLE MARVIN ISGUR:

The Official Committee of Unsecured Creditors (the "Committee") of RAAM Global Energy Company, *et al.* (collectively, the "Debtors"), by and through its undersigned proposed counsel, hereby files this objection (the "Objection") to the *Emergency Motion for Approval of Interim and Final Use of Cash Collateral and Granting Adequate Protection* [Docket No. 11] (the "Cash Collateral Motion").[2] In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The First Lien Lenders are neither providing new money in the form of postpetition financing, nor are they being primed by any third-party financing. By their own admission, the First Lien Lenders appear to be undersecured. Inexplicably then, the First Lien

[1] The Debtors in these cases, and each of their respective last four digits of each Debtor's federal tax identification number, are: RAAM Global Energy Company (2973); Century Exploration New Orleans, LLC (4948); Century Exploration Houston, LLC (9624); and Century Exploration Resources, LLC (7252).

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Cash Collateral Motion.

Lenders seek an excessive adequate protection package, including payments of nearly $1 million per month. These payments of interest and fees are allowable under section 506(b) of the Bankruptcy Code only for *oversecured* creditors. Additionally, the First Lien Lenders seek full and unprecedented control over the Debtors' restructuring process, including numerous hair-trigger defaults that give the First Lien Lenders almost unfettered control to pull the plug on these cases at will. The Cash Collateral Motion is therefore, internally inconsistent, is a clear product of overreaching by the First Lien Lenders, and benefits only the First Lien Lenders by giving them full control over the Debtors' actions.

2. The Cash Collateral Motion and proposed final order approving the Cash Collateral Motion (the "Proposed Order")[3] are far from standard. Without evidentiary support to justify their positions, the First Lien Lenders are attempting to wrestle control of these bankruptcy cases for their own advantage, and to do so on a highly expedited timeline for no apparent business reason other than to directly benefit the First Lien Lenders. If the Court grants the Cash Collateral Motion as written, the First Lien Lenders will be able to exploit the bankruptcy process for their own benefit by preserving the value of their Prepetition Collateral through the continued operation of the Debtors' business as a going concern, while extracting value in the form of adequate protection payments and replacement liens on substantially all of the Debtors' assets including previously unencumbered assets, all to the detriment of unsecured creditors. Moreover, if a termination event occurs under the Proposed Order, the First Lien Lenders will have the ability to terminate the Debtors' use of Cash Collateral and foreclose on their Prepetition Collateral almost immediately and without further order of the Court. These

[3] The Committee assumes that the proposed final order will be substantially similar to the Second Interim Cash Collateral Order (as such term is defined below).

dire consequences effectively constrain the ability of the Debtors to even consider alternative restructuring options that could provide a better recovery for unsecured creditors.

3. As if this were not enough, the Proposed Order also contains a number of provisions that appear to be designed to limit the ability of unsecured creditors to protect their own rights. For example, the Proposed Order includes provisions that unduly restrain and obstruct the Committee's ability to fulfill its duties under section 1103(a)(2) of the Bankruptcy Code by, among other things, essentially providing no funding to the Committee while funding $300,000 per month to the First Lien Lender's counsel.

4. The First Lien Lenders cannot have it all ways. They cannot simultaneously (i) submit a credit bid for less the amount of their secured claim, as if they were undersecured, (ii) seek post-petition interest, fees and expenses under section 506(b), as if they were oversecured; (iii) provide no new money financing; (iv) seek to exert control over these cases through trip wire termination provisions and sale milestones as if they were providing new money financing; (v) budget for $1.2 million on a monthly basis for the Debtors' professionals and First Lien Lenders' professionals; and (vi) provide little or no budget for Committee professionals.

BACKGROUND

5. On October 26, 2015 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On October 26, 2015, the Debtors filed the Cash Collateral Motion. On October 28, 2015, the Court conducted a hearing (the "First Day Hearing") to consider approval of, *inter alia*, the Cash Collateral Motion. Based upon statements made on the record at the First Day Hearing, the parties agreed to a form of order granting the limited use of cash collateral on an

interim basis. As such, the Court entered its *Interim Order Authorizing Use of Cash Collateral* [Docket No. 40] (the "First Interim Cash Collateral Order"), which served as a bridge order authorizing the use of cash collateral in accordance with the budget until a further hearing.

7. On November 6, 2015, the Debtors filed the *Motion to Authorize and Approve (A) Stalking Horse Purchase Agreement, (B) Sale of Substantially All Assets Free and Clear of Claims, Liens, Encumbrances and Other Interests, (C) Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Bidding Procedures, (E) Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases, and (F) Related Relief* (the "Sale Motion"). The Sale Motion seeks approval of the sale of substantially all of the Debtors' assets on an expedited timetable summarized below, which such timetable reflects similar milestone dates provided in the Proposed Order:

Bid Procedures Hearing	December 2, 2015
Bid Deadline	Not specified
Auction Date	January 8, 2016
Sale Hearing	January 20, 2016
Outside Closing Date	February 19, 2016

8. On November 9, 2015, the Office of the United States Trustee for the Southern District of Texas, Houston Division appointed an official committee to represent the interests of unsecured creditors of the Debtors pursuant to section 1102 of the Bankruptcy Code. The members of the Committee are: (a) Montco Oilfield Contractors, LLC; (b) Island Operating Company, Inc.; and (c) Quality Energy Services, Inc.

9. On November 18, 2015, the Court held a further interim hearing on the Cash Collateral Motion (the "Second Day Hearing"). Immediately following the Committee's

appointment and selection of its counsel and financial advisor, the Committee engaged in numerous discussions with both Debtors' counsel and counsel to the First Lien Lenders in an effort to informally express concerns of the overreaching requests for relief under the Cash Collateral Motion. Based upon these discussions, the parties were able to agree upon a form of interim order that, on the one hand, provided the Debtors and First Lien Lenders with the comfort of certain protections relating to the Debtors' use of Cash Collateral and, on the other hand, provided the Committee with a broad reservation of rights pending a final hearing. To this end, on November 18, 2015, the Court entered the *Second Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 507, Bankruptcy Rules 2002, 4001 and 9014 and Local Bankruptcy Rule 4001-2 (I) Authorizing Debtors' Limited Use of Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Scheduling a Final Hearing* [Docket No. 131] (the "Second Interim Cash Collateral Order"). Specifically, paragraph 27 of the Second Interim Cash Collateral Order provides as follows:

> The Committee, the Debtors and the First Lien Lenders have recently commenced negotiations toward a comprehensive resolution of the significant issues in this case. While the Committee has significant reservations regarding the form of Final Order, the objections the Committee would otherwise put forth may be mooted by these discussions. Accordingly, while reserving all such objections and the right to pursue those objections at the Final Hearing to allow these discussions to proceed, the Committee has agreed to an extension of interim cash collateral usage to December 2, 2015, and does not at this time object to the form of Second Interim Order proposed by the First Lien Lenders with a Final Hearing on cash collateral to be held on December 2, 2015. In the event that the negotiations are not successful, the Committee reserves the right to assert any and all objections to the form of Final Order and the relief requested by the Debtors and First Lien Lenders, including, without limitation, any rights and remedies set forth in Paragraph 29 below. Notwithstanding anything to the contrary contained in the Second Interim Order, the Second Interim Order and each of its provisions remain, in all respects, subject to the terms of the Final Order.

ARGUMENT

10. The Committee recognizes—and indeed, supports—that collateralized funds may be required to successfully operate, preserve and maintain the value of the Debtors' businesses until the consummation of a sale of assets or through a plan of reorganization. Although the Committee recognizes that the First Lien Lenders have much more expansive rights afforded to them under the Proposed Order than the Second Lien Lenders (collectively, with the First Lien Lenders, the "Prepetition Secured Parties")[4], the collective adequate protection sought in the Proposed Order will provide no benefit to any party except the Prepetition Secured Parties, and will reduce unsecured creditors' recoveries. The Committee is doubly concerned about the Debtors' agreement to file a Cash Collateral Motion that is internally inconsistent and that does not comply with the Bankruptcy Code's distinction between an oversecured creditor and an undersecured creditor.

11. As written, however, it is clear that the Cash Collateral Motion and Proposed Order was negotiated without oversight by any other constituencies in these cases. Courts recognize that "debtors-in-possession generally enjoy little negotiating power with a proposed lender, particularly when the lender has a pre-petition lien on collateral." *Resolution Trust Corp. v. Official Unsecured Creditors' Comm. of Defender Drug Stores, Inc. (In re Defender Drug Stores, Inc.)*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992). As such, the Cash Collateral Motion and Proposed Order must be carefully scrutinized by the Court. The Committee respectfully submits

[4] This Objection provides reference to the Adequate Protection package granted to the First Lien Lenders due, primarily, to the Intercreditor Agreement that subordinates the liens of Second Lien Lenders to be junior to those of the First Lien Lenders, which such structure is maintained in the Proposed Order. To the extent that reference is made in this Objection to the First Lien Lenders, such reference and objection shall be deemed to extend to the Second Lien Lenders, to the extent applicable, and the Committee reserves all rights in connection with challenging the Adequate Protection provided to the Second Lien Lenders and does not waive any rights in connection therewith.

that the Court should not grant the Cash Collateral Motion unless the Proposed Order contains certain essential modifications described below:

A. The First Lien Lenders Have Not Met Their Factual Burden For The Adequate Protection The Debtors Seek To Provide.

12. Section 363(c)(2) provides that a trustee may not use a party's cash collateral unless the party consents or the court authorizes such use. 11 U.S.C. § 363(c)(2). Section 363(e) conditions the use of cash collateral on the trustee providing adequate protection to all parties with an interest in such cash collateral. Section 361 of the Bankruptcy Code provides the framework for the granting of postpetition adequate protection to prepetition secured lenders. No provision of the Bankruptcy Code authorizes a chapter 11 debtor to grant its secured lender, who is not providing new funding, with an adequate protection lien against assets in which that lender had no prepetition security interest.

13. Adequate protection is intended to *preserve* a secured creditor's proprietary interest following the commencement of a bankruptcy case, not to *enhance* that creditor's position. *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996). It is well established that a secured party is not entitled to adequate protection absent a showing that its collateral is declining in value. *See, e.g., Zink v. Vanmiddlesworth*, 300 B.R. 394, 402-03 (N.D.N.Y. 2003) ("[T]he initial burden of showing the need for adequate protection [is] upon the creditor having an interest in the property being used by the debtor . . . [and] a likelihood that the collateral will decrease in value").

14. The scope of the proposed adequate protection in these cases extends beyond replacement of collateral securing the potential diminution in the value of the Prepetition Secured Lenders' collateral. The Prepetition Secured Lenders should not receive more than replacement liens for the diminution in value of their collateral. Moreover, as discussed in more

detail below, the Debtors have not demonstrated that the payment of post-petition interest, professionals' fees, and expenses is necessary to protect against diminution in the value of its prepetition collateral, or that such collateral will diminish in value at all.

15. The Cash Collateral Motion provides no evidence whatsoever to show a need for adequate protection.[5] Without evidentiary support, the First Lien Lenders have not satisfied their burden to show any decline in value or threat in decline in value as required by existing case law. Thus, under these circumstances, the First Lien Lenders are not entitled under the Bankruptcy Code to any adequate protection in the first instance unless and until the First Lien Lenders are able to proffer evidence that there is a decrease or threat of decrease in the value of the Prepetition Collateral.

B. Adequate Protection Payments Should be Stricken Because The Facts Indicate That The First Lien Lenders Are Not Oversecured.

16. Paragraph 3(c) and (e) of the Proposed Order seeks authorization to grant the First Lien Lenders an oversized adequate protection payment package of nearly $1,000,000 per month that includes, among other things approximately $670,000 per month on account of post-petition accrued interest, with such interest calculated at the applicable default rate of 12.5% under the First Lien Credit Agreement, and payments of all pre-petition and post-petition professional fees and expenses incurred by the First Lien Lenders and First Lien Agent, estimated to be approximately $300,000 per month.

---

[5] Even if oil prices decline during this period, based upon the statements made on the record at the First Day Hearing, and the language agreed upon and reflected in the Second Interim Cash Collateral Order, such price decreases—even if precipitous—would not show the requisite diminution of value as required under applicable case law. Specifically, the Second Interim Cash Collateral Order and the Debtors' proposed final order provides that "for purposes of calculating 'Collateral Diminution', the valuation of the Debtors' assets as of the date of the Petition Date and as of the date of measuring any Collateral Diminution will assume a constant price of oil and gas." Second Interim Cash Collateral Order at ¶5.

17. Section 506(b) of the Bankruptcy Code allows payment of postpetition interest, fees, and costs only to the extent a secured claim is oversecured. *See United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 382 (1988) (denying postpetition interest sought as adequate protection by an undersecured creditor). As set forth in the Sale Motion, the First Lien Lenders have offered a $58,800,000 credit bid for the Debtors' assets, yet are owed in excess of that amount. Thus, by the First Lien Lenders' own admission, the Prepetition Collateral is insufficient to pay the total amount asserted by the First Lien Lenders. Neither the Debtors nor the First Lien Lenders have provided an alternative factual basis for the relief sought under section 506(b) to receive postpetition interest and fees. Accordingly, the Committee requests that the Court deny the Motion to the extent it seeks authorization to pay these professional fees and expenses as adequate protection.

C. The Court Should Not Authorize the Debtors to Grant a Lien on Otherwise Unencumbered Property

18. The Proposed Order seeks to grant adequate protection liens to the Prepetition Secured Parties on potentially valuable assets that are free of their liens, including any proceeds recovered in respect of any Avoidance Actions. Where they are not providing new funding, it is unnecessary and unduly punitive to the Debtors' unsecured creditors to expand the Prepetition Secured Parties' collateral package by granting the Prepetition Secured Parties liens on previously unencumbered assets or on rights that are uniquely created under the Bankruptcy Code.

19. The Debtors concede that certain assets are unencumbered, including without limitation: (a) equity value of the Debtors' office building in Houston, Texas; (b) a potential commercial tort claim in connection with the Debtors' Pegasus well; (c) certain raw prospect acreage (both onshore and offshore); and (d) avoidance actions (collectively, the "Unencumbered

Assets"). Although the Debtors have represented that the value of the Unencumbered Assets is relatively small, neither the Debtors nor the Committee have conducted a valuation analysis to ascribe an aggregate value on the Unencumbered Assets. Moreover, upon information and belief, the Committee believes that there may be significant value with respect to certain raw prospect offset acreage, where the geologic conditions may prove fruitful for conversion to a producing platform. The Debtors' proposal to grant the Prepetition Secured Lenders adequate protection liens on the Unencumbered Assets (in addition to the myriad grants of additional adequate protection), without providing a scintilla of factual or legal support, improperly shifts the recoveries that may be available to unsecured creditors to the Debtors' Prepetition Secured Lenders.

20. Given the infancy of these cases and that the Debtors have not yet filed their schedules of assets and liabilities or statements of financial affairs,[6] the Committee has not yet had an opportunity to investigate potential Avoidance Actions. As such, the extent of overall potential value encompassed by Avoidance Actions proceeds is presently unknown. Under the Proposed Order, the Debtors would transfer any and all value of the Avoidance Actions proceeds to the detriment of the unsecured creditors. *See* Proposed Order at ¶ 3(a)(i). To the extent any viable Avoidance Actions or other commercial tort claims (to the extent they are unencumbered) exist, the value of such assets would immediately shift from the Debtors' general unsecured creditors to the First Lien Lenders. To provide these parties with a lien on these Avoidance Actions would impart a windfall at the expense of general unsecured creditors.

[6] Pursuant to the *Order Extending the Time to File Schedules of Assets and Liabilities, Current Income and Expenditures, Executory Contracts and Unexpired Leases, and Statements of Financial Affairs* [Docket No. 44], with certain limited exceptions, the time by which the Debtors must file their schedules of assets and liabilities and statements of financial affairs on or before December 10, 2015.

21. Courts have found that granting liens on avoidance actions, or on proceeds of avoidance actions, is heavily disfavored. *See In re Qualitech Steel Corp.*, 276 F.3d 245, 248 (7th Cir. 2001) ("[C]ourts do not favor using § 364 to give pre-petition lenders security interests in the proceeds of avoidance actions."). Rather, avoidance actions are designed to facilitate equal distribution among creditors and should be preserved for the benefit of the estate. The Proposed Order provides the Prepetition Secured Lenders with a lien on the proceeds of the Debtors' avoidance actions. The Committee submits that any order approving the Cash Collateral Motion should specifically exclude the proceeds of Avoidance Actions from the First Lien Adequate Protection Liens and Second Lien Adequate Protection Liens, and that any proceeds recovered in respect of any Avoidance Actions or any other Unencumbered Assets of the estates shall not be used to pay or otherwise satisfy any section 507(b) superpriority claims.

D. The Proposed Order Contains Hair-Trigger Default Provisions That Give The First Lien Lenders Inappropriate Control Over the Debtors' Bankruptcy Cases.

22. Section 11 of the Proposed Order grafts numerous events of default and sale milestone events commonly seen in debtor in possession financing agreements that would entitle the Prepetition Secured Parties to terminate the Debtors' use of Cash Collateral *without Court approval*. The Court should approve any termination of the Debtors' use of Cash Collateral. The Proposed Order also provides that the only permissible basis for the Debtors to challenge or object to the Prepetition Secured Parties' termination is solely with respect to the occurrence of the termination event—*i.e.*, whether a termination event validly occurred and had not been cured or waived. Taken together, these provisions grant the Prepetition Secured Parties unfettered discretion to simply pull the plug on these cases and take their collateral upon an event of default, with little or no recourse on the part of the Debtors. Such actions are completely

contrary to the fundamental principles underlying the Bankruptcy Code, which are intended to prevent one creditor from taking an action that would result in unfair harm to another.

23. Relatedly, the First Lien Lenders have inappropriately included a termination event upon "the Debtors' entry into or seeking approval by the Court of any plan, restructuring transaction, or asset sale that is not in form and substance acceptable to the Principal First Lien Lender." (Proposed Order ¶ 11(c)). The Proposed Order also provides for a plan and disclosure statement process on an accelerated timeline, with approval of the Plan and Disclosure Statement occurring *prior* to the closing date of the sale. These provisions improperly seek to replace the business judgment of a fiduciary with the self-serving motivation of a non-fiduciary. Not to mention, if the First Lien Lenders were, indeed, oversecured as they have asserted based upon their entitlement under section 506(b) to post-petition interest, fees and expenses, they need not worry that an expedited timeline would affect their recovery on account of their collateral, as they would receive nearly $1,000,000 monthly in adequate protection payments. Certainly, the glaring internal inconsistency in the Cash Collateral Motion reflects a bald-faced attempt at squeezing the Debtors' estates for the sole benefit of the First Lien Lenders, on parallel fast-track sale and plan processes.

E. The Proposed Order's Sale Milestones Are Not Appropriate For A Secured Lender Who Is Not Lending New Money But Instead Is Simply Consenting To Use of Cash Collateral.

24. The Sale Motion seeks to effectuate a rushed marketing and sale process between Thanksgiving and New Years, and yet, does not provide any business justification to conduct a sale process on this expedited timeline. Without adequate factual basis to support such a

timeline, the Committee believes this may be inappropriate and ill-advised.[7] Although the Debtors and the First Lien Lenders have represented to the Committee that a fulsome marketing process for their assets occurred pre-petition, as of the filing of this Objection, the Committee and its advisors do not have the appropriate information to properly assess whether this has been the case. Indeed, it is possible that an immediate sale is not in the Debtors' best interests under the current economic circumstances and in light of the fact that the Debtors can operate with their existing cash at least through the end of January 2016.

25. Additionally, the milestones set forth in the Proposed Order improperly restrict the Debtors' reorganization prospects. There may be circumstances in which an accelerated sale process is not advisable, but rather, consummation of the transactions contemplated by the Debtors and First Lien Lenders may be best suited for a plan of reorganization. Following the Court's comments on this topic at the First Day Hearing,[8] the Committee understands that the Debtors and First Lien Lenders held discussions over whether structuring the sale transaction through a plan of reorganization makes sense in these cases. They determined that it did not, and shortly thereafter filed the Sale Motion. Although the Committee does not have reason to discredit these discussions, it also is unable to assess whether the Debtors' estates would better be served under an alternative reorganization transaction. The entry of the Proposed Order would effectively strip the Committee of its ability to assess these questions. Currently, the failure of the Debtors to adhere to the sale milestones would lead to termination of cash

---

[7] Separately, the Committee has filed, or soon will file, its *Limited Objection of the Official Committee of Unsecured Creditors to the Debtors' Motion to Authorize and Approve (a) Stalking Horse Purchase Agreement, (b) Sale of Substantially All Assets Free and Clear of Claims, Liens, Encumbrances and Other Interests, (c) Assumption and Assignment of Executory Contracts and Unexpired Leases, (d) Bidding Procedures, (e) Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases, and (f) Related Relief.*

[8] *See* Transcript of Hearing, October 28, 2015, at 25:6-26:15; 26:23-27:5; 101:12-101:25 (encouraging parties to consider transaction through a plan of reorganization rather than through a sale motion).

collateral, thereby severely impinging upon the Debtors' ability to explore other value-maximizing reorganization alternatives under a different, yet still reasonable, timeframe and funding structure.

26. These provisions afford to the First Lien Lenders too much control over the Debtors. Absent new post-petition financing, the First Lien Lenders should not be granted effective veto power over strategic decisions concerning the direction of the Debtors' cases. These decisions should be made by the Debtors, in consultation with the Committee and other parties in interest.

27. What is clear is that the First Lien Lenders are seeking to control the direction of these cases in a fashion typically reserved only for DIP lenders. The Prepetition Secured Parties are not providing new financing for the Debtors. They are merely permitting the Debtors to use their cash collateral. Yet, they appear to have insisted on inclusion of terms that seek to exert control over these cases—through numerous "trip wires" and sale milestones, linked to termination provisions without oversight of the Court—that appear most commonly in DIP financing orders. In that context, where a lender is providing new money to a debtor, inclusion of such terms may be appropriate. But where, as here, the Prepetition Secured Parties are not providing new funding to the Debtors, it should not be entitled to anything but the most basic protections in return for the Debtors' use of its Cash Collateral.

28. Accordingly, these provisions are overly restrictive and should be removed from any order approving the Cash Collateral Motion.

F. The Lack Of Budgeted Fees For Committee Professionals Inhibits The Fulfillment Of The Committee's Statutory Duties.

29. Under the Bankruptcy Code, the Committee plays a crucial and active role in ensuring the integrity of the bankruptcy process by "monitor[ing] the conduct of the Debtor to

ensure its compliance with the Bankruptcy Code and advis[ing] the creditors of their rights." *First Merchs. Acceptance Corp. v. J.C. Bradford & Co.*, 198 F.3d 394, 403 (3d Cir. 1999). Competently and effectively performing these statutory duties in chapter 11 cases requires creditors' committees to engage the assistance of various professionals, including legal counsel and financial advisory services. *Id.* ("Responsible fulfillment of these duties may entail a substantial amount of work by committee members which is of value to the committee as a whole and may require services by a creditor's counsel.").

30. The Debtors' Cash Collateral Motion and Budget provides for (i) $1,200,000 on a monthly basis, reserved solely for Debtors' proposed counsel (Vinson & Elkins LLP), Debtors' proposed Chief Restructuring Officer (Blackhill Partners LLC), Debtors' proposed investment banker (Parkman & Whaling LLC), and counsel to the First Lien Lenders (Kirkland & Ellis LLP); and (ii) a Sale Carve Out which is intended to cover the wind-down administration of the Debtors' estates through a plan of liquidation, "in an amount, if any, determined by the First Lien Secured Parties in their sole discretion." The Budget does not include any amounts for the Committee's professionals, yet it allocates $500,000 monthly for Vinson & Elkins LLP (without inclusion of the $750,000 prepetition retainer paid the Debtors' attorneys), $300,000 monthly for Blackhill Partners LLC, $300,000 monthly for Kirkland & Ellis LLP, and $100,000 monthly for Parkman and Whaling LLC. Such generous funding of the Debtors' and First Lien Lenders' professionals and underfunding of the Committee's professionals serves to handcuff the Committee and inhibit the fulfillment of its statutory duties.

31. Here, the Committee professionals are being asked to get up to speed on the facts and understand a fairly complex situation on an extremely expedited basis. It is clear that the First Lien Lenders seek to prevent the Committee from having any meaningful ability to

participate in these cases. *See In re Cottrell Int'l, LLC*, Case No. 00-13592, 2000 Bankr. LEXIS 1093, at *9 (Bankr. D. Colo. July 26, 2000) (holding that bankruptcy courts should not unduly restrict the availability of funds to pay professionals in the case, including counsel for the creditors' committee). This is especially true here, where a significant constituency, the Second Lien Lenders are silenced by their inter-creditor agreement. This failure to budget for the Committee professionals would effectively preclude them from adequately representing the interests of unsecured creditors in order to faithfully exercise its fiduciary duties on behalf of the Committee's constituents.

G. Additional Provisions Of The Proposed Order Are Objectionable

32. The Committee is troubled by certain other provisions of the Proposed Order, which based upon the circumstances outlined above, reflect a strong-armed and one-sided "negotiation" designed for the sole or primary benefit of the First Lien Lenders. As a condition of approval of the Cash Collateral Motion, the Committee requests that the following provisions either be stricken or modified, as appropriate:

- 506(c) Waiver. The Proposed Order authorizes a waiver by the Debtors of their right to surcharge collateral pursuant to Bankruptcy Code section 506(c). Section 506(c) is a rule of fundamental fairness for all parties in interest, which provides that secured creditors share some of the burden of administrative expenses in a bankruptcy case where it is reasonable and appropriate for surcharges to be ordered. *See, e.g., Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A. (In re Hen House Interstate Inc.)*, 530 U.S. 1 (2000). Based on the facts of these cases, the proposed waiver of the right to seek a surcharge against the Prepetition Collateral under section 506(c) is an entirely inappropriate windfall for the First Lien Lenders. Indeed, the unique facts of oil cases creates circumstances in which ongoing expenditures directly benefit the secured lenders' collateral. Waiver of the Debtors' surcharge rights would impermissibly force the Debtors' unsecured creditors to bear the costs of preserving the First Lien Lenders' collateral.

- Waiver of Section 552(b). Section 552(b) provides that the secured lenders' liens will attach to proceeds of their collateral "except to the extent that the court, after notice and a hearing and based on the equities

of the case, orders otherwise. The Court cannot possibly determine what the "equities of the case" are after only three weeks, or today order the elimination of a remedy that could be based on "equities of the case" tomorrow. *See Sprint Nextel Corp. v. U.S. Bank Nat'l Ass'n (In re TerreStar Networks, Inc.)*, 457 B.R. 254, 272-73 (Bankr. S.D.N.Y. 2011) (denying request for 552(b) waiver as premature because factual record was not fully developed). Nor should the Court enter a barely-examined bargain between the Debtors and their secured creditors to eliminate a remedy that is intended to benefit unsecured creditors. The Committee believes this waiver is premature and inappropriate.

- Releases. The Proposed Order provides the First Lien Lenders with general releases. Such broad releases are inappropriate in the context of approving use of cash collateral. Indeed, the proposed releases are especially offensive where, as here, the First Lien Lenders through their control of the cash collateral and sale process, are dictating the outcome of these cases. The Committee should be given time to review and analyze the relationship between the Debtors and the First Lien Lenders to determine if any viable causes of action or claims should be brought. If full releases are ultimately warranted, they should be provided pursuant to a confirmed plan, rather than a cash collateral order.

- Investigation Limitations are Unreasonable. The final order approving the Cash Collateral Motion must provide the Committee with adequate funds necessary to conduct a thorough investigation of the First Lien Lenders' prepetition liens, claims and conduct. The $25,000 cap placed on the Committee's investigation fees and expenses is inappropriate for a case of this size and complexity. In addition, any final order approving the Cash Collateral Motion should confer standing on the Committee to commence an adversary proceeding challenging the Debtors' stipulations contained in such order.

RESERVATION OF RIGHTS

33. The Committee and its members reserve all of their respective rights, claims, defenses, and remedies including, without limitation, the right to amend, modify, or supplement this Objection, to seek discovery, and to raise additional objections during any hearing on final relief of the Cash Collateral Motion.

[remainder of page intentionally left blank]

CONCLUSION

WHEREFORE, the Committee respectfully requests that the Court deny the Cash Collateral Motion, or, in the alternative, approve the Cash Collateral Motion after making the modifications described herein and grant other and further relief as is just and proper.

Dated: November 24, 2015
Houston, Texas

DLA PIPER LLP (US)

By: /s/ *Vincent P. Slusher*

Vincent P. Slusher, State Bar No. 00785480
vince.slusher@dlapiper.com
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
Telephone: (214) 743-4500
Facsimile: (214) 743-4545

-and-

Thomas R. Califano (admitted *pro hac vice*)
thomas.califano@dlapiper.com
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, New York 10020-1104
Telephone: (212) 335-4500
Facsimile: (212) 335-4501

-and-

Daniel M. Simon (admitted *pro hac vice*)
daniel.simon@dlapiper.com
One Atlantic Center
1201 W Peachtree St NE #2800
Atlanta, GA 30309-3450
Telephone: (312) 368-3465
Facsimile: (312) 251-2854

Proposed Counsel for the Official Committee of Unsecured Creditors

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing document was forwarded by electronic transmission to all registered ECF users appearing in the case on November 24, 2015.

/s/ Vincent P. Slusher
Vincent P. Slusher