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

| | | |
|---|---|---|
| **IN RE:** | § | |
| | § | |
| **RAAM GLOBAL ENERGY COMPANY,** ***et al.*** | § | **CASE NO. 15-35615** |
| | § | |
| | § | **(Chapter 11)** |
| | § | **(Joint Administration Requested)** |
| **DEBTORS.** | § | **(Emergency Hearing Requested)** |

**EMERGENCY MOTION FOR ORDER AUTHORIZING DEBTORS TO CONTINUE INSURANCE POLICIES AND BONDING PROGRAM**

**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 OBJECT 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.**

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

The above-captioned debtors and debtors in possession (collectively, the "Debtors"),[1] file this *Emergency Motion for Order Authorizing Debtors to Continue Insurance Policies and Bonding Program* (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. As of the date hereof, an official committee of unsecured creditors has not yet been appointed in the Cases.

## EMERGENCY CONSIDERATION

6. The Debtors request emergency consideration of this Motion. The Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations. As discussed in detail below, any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. As such, the Debtors believe that emergency consideration is necessary and request that this Motion be heard at the Debtors' First Day Hearings.

[1] 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

7. 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 their subsidiaries.

8. 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. The Debtors own an office building in Houston, Texas. As of September 30, 2015, the Debtors had estimated total proved oil and natural gas reserves of 8,570 MMBoe (26% oil). For the six months ended June 30, 2015, the Debtors' net daily production averaged 7,116 barrels of oil equivalent per day (BOEPD), which generated revenue of approximately $33.4 million.

9. The Debtors have traditionally focused on acquiring assets in and around the United States Gulf Coast. Over the last decade the Debtors have worked to diversify their asset base through the acquisition and development of both conventional onshore assets and long-lived unconventional resource plays that are capable of supporting sustainable growth. The Debtors' projects during 2014 and the first half of 2015 were focused on three main areas: shallow waters offshore, onshore conventional assets in Texas, and conventional and unconventional assets in California and the Mid-Continent area. In recent years, the Debtors have invested close to $100 million on large 3-D seismic surveys in the Gulf of Mexico and onshore in Louisiana and Texas in order to enhance their prospect generation capabilities, and the Debtors have invested over $1.5 billion in developing oil and gas assets since their inception.

10. The Debtors' current drilling program focuses on their core area in Breton Sound located offshore in State of Louisiana waters. This has historically been a very successful field for the Debtors, and the Debtors recently completed a successful well that is currently in production. The Debtors presently have an ongoing development portfolio of prospects that it desires to drill.

11. Additional information concerning the Debtors and their financial condition and results of operations, on a consolidated basis, can be found in RAAM's annual, quarterly, and current reports filed with the Securities and Exchange Commission ("SEC") through May 5, 2015, which can be accessed at www.sec.gov and at RAAM's website, http://www.raamglobal.com/.[2]

**B. Common Stock**

12. RAAM is a privately held company, and as of September 30, 2015, RAAM had 61,433 outstanding shares of common stock. Howard Settle, RAAM's Chairman, and former Chief Executive Officer and President, holds approximately 48% of RAAM's outstanding common stock. As of that date, RAAM's directors and executive officers as a group (eight persons that include Mr. Settle) held approximately 66% of RAAM's common stock.

**C. Secured Debt**

13. On September 12, 2014, Century Exploration New Orleans, LLC, Century Exploration Houston, LLC, and Century Exploration Resources, LLC entered into a Fifth Amended and Restated Credit Agreement with Wilmington Trust, National Association, as administrative agent and the lenders party thereto (the "Fifth Amended and Restated Credit Agreement"), and RAAM entered into the Fourth Amended and Restated Guaranty in connection

[2] On May 5, 2015, RAAM filed Form 15 with the SEC to notify the Commission of its desire to terminate the filing of registration statements and related reports required under the Securities Exchange Act of 1934. Prior to that time, RAAM was a voluntary filer with the SEC.

therewith. The Fifth Amended and Restated Credit Agreement provides the Debtors with an $85.0 million term loan facility (the "Term Loan Facility") that is secured by a first lien on substantially all of the Debtors' real and personal property (with certain exceptions). As of September 30, 2015, approximately $63.8 million was outstanding under the Term Loan Facility.

14. On September 24, 2010, RAAM completed an offering of $150.0 million senior secured notes at a coupon rate of 12.5% (the "Original Notes"). On July 15, 2011, RAAM completed the issuance and sale of $50.0 million aggregate principal amount of additional 12.5% Senior Notes (the "Additional Notes"). The Additional Notes have identical terms, other than the issue date and issue price, and constitute part of the same series as the Original Notes.

15. On April 11, 2013, RAAM successfully completed the issuance and sale of $50.0 million aggregate principal amount of additional 12.5% senior secured notes due 2015 (the "New Additional Notes," and together with the Original and Additional Notes, the "Notes"). The New Additional Notes are additional notes issued pursuant to the indenture dated as of September 24, 2010 (the "Base Indenture"), pursuant to which RAAM issued the Original and Additional Notes, as supplemented by the First Supplemental Indenture dated as of July 15, 2011 (the "First Supplemental Indenture"), the Second Supplemental Indenture dated as of April 11, 2013 (the "Second Supplemental Indenture"), and the Third Supplemental Indenture dated as of April 11, 2013 (the "Third Supplemental Indenture," and together with the Base Indenture, First Supplemental Indenture and the Second Supplemental Indenture, the "Indenture"). The New Additional Notes have identical terms, other than the issue date and issue price, and constitute part of the same series as the Original and Additional Notes. As of September 30, 2015, a total of $238.0 million notional amount of the Notes was outstanding.

16. The Notes are guaranteed on a senior secured basis by Century Exploration New Orleans, LLC, Century Exploration Houston, LLC, and Century Exploration Resources, LLC. The Notes and the guarantees are secured by a security interest in substantially all of the Debtors' assets to the extent they constitute collateral under the Term Loan Facility, subject to certain exceptions. Pursuant to an Intercreditor Agreement, the lien securing the Notes is subordinated and junior to liens securing the Term Loan Facility.

17. The Debtors did not make the scheduled interest payment to the holders of the Notes that was due on April 1, 2015 which was a default under the Indenture. This non-payment also constituted a default under the Fifth Amended and Restated Credit Agreement. Total unpaid and accrued interest at July 31, 2015 was $25.4 million.

18. On April 30, 2015, the Debtors entered into the *Forbearance Agreement to 12.50% Senior Secured Notes Indenture* with holders of approximately 94% of the face value of the Notes and the *Forbearance Agreement and Second Amendment to the Fifth Amended and Restated Credit Agreement* with Wilmington Trust, National Association, as administrative agent, and the lenders under the Term Loan Facility (collectively, and as amended, the "Forbearance Agreements"). The Forbearance Agreements expired on September 14, 2015.

**D. Other Significant Obligations**

19. The Debtors have a promissory note dated August 8, 2005 with GE Commercial Finance Business Property Corporation ("GECF") related to the construction of their Houston office building. On October 1, 2012, EverBank purchased GECF and is now known as Business Property Lending, Inc. The balance owed to EverBank was $2.3 million at September 30, 2015. The note requires monthly installments of principal and interest in the amount of approximately $27,000 until September 1, 2025.

20. Century Exploration New Orleans, LLC and the Bureau of Ocean Energy Management ("BOEM") entered into various leasing agreements for specific exploration and production activity. Century Exploration New Orleans, LLC is required to obtain one or more surety bonds in order to secure Century Exploration New Orleans, LLC's performance under the obligations relating to such leasing agreements. Ace American Insurance Company ("ACE") agreed to issue certain of such bonds in the estimated aggregate amount of $39,630,000 in favor of BOEM and as required by BOEM under the leasing agreements. In connection with its issuance of such bonds, ACE and Century Exploration New Orleans, LLC entered into the Funds Disbursing Agreement dated October 23, 2014, and a related Escrow Agreement with Bank of America as escrow agent (collectively, the "ACE Bonding Agreement"), that requires Century Exploration New Orleans, LLC to provide funds for the escrow as security for ACE. The ACE Bonding Agreement contemplates the Debtors funding $750,000 per month until March 31, 2017 into an escrow account for the benefit of ACE (the "Escrow Account"), and the balance of the Escrow Account is approximately $9.9 million as of September 30, 2015. As of the Petition Date, the Debtors believe they are fully in compliance with the applicable regulatory requirements.

21. In the ordinary course of business, the Debtors utilize an assortment of vendors, including drilling contractors, labor and repair contractors, parts and equipment suppliers, pipeline companies, heavy machinery and equipment lessors, hydrocarbon transporters, laborers, professionals, and employee benefits providers. As of the Petition Date, unsecured trade and vendor claims aggregate approximately $3.3 million for all of the Debtors, which amount excludes deficiency claims for any secured creditors, if any.

**E. Events Leading to Chapter 11**

22. A confluence of factors in 2014 and 2015 led to the Debtors' need to pursue a financial restructuring.

23. First, there has been a historic decline in the prices of crude oil and natural gas since the summer of 2014. These declines have adversely affected the Debtors' revenues and cash flows from operations. The Debtors' realized pricing is primarily driven by market prices for crude oil and natural gas. The Debtors historically engaged in derivative activities that primarily included the use of floors, costless collars, and futures transactions in order to minimize the downside risk from adverse price movements but allow for the realization of upside profits if available. The Debtors' derivative counterparties were limited to their secured lenders, which helped to minimize any potential non-performance risk. On April 20, 2015, the Company liquidated its hedge positions for $10.8 million and used those funds to reduce the outstanding amount owed under the Term Loan Facility.

24. Second, although the Debtors have actively worked with investment banking advisors to refinance the Notes, due to the current economic environment the Debtors have been unable to raise cash or identify capital resources from other sources such as bank funding, private investment, or the public debt and equity markets.

25. Third, during September 2013, the Debtors determined that they could not meet the financial certifications required to obtain permits to develop its offshore Ewing Banks 920 (EB 920) Project in the Gulf of Mexico, due in large part to the substantially increased Worst Case Discharge assumptions imposed by BOEM. As a result, the proved undeveloped reserves associated with the EB 920 Project no longer met the requirements of reasonable certainty to remain booked as proved reserves at the end of the third quarter of 2013 which adversely impacted the Debtors' reserves and impacted the Debtors' ability to refinance the Notes. This

resulted in a write-off of 8.4 million barrels of oil and largely contributed to a ceiling test write-down of $277 million and an after-tax loss of $186 million for the nine months ended September 30, 2013.

26. Fourth, in May of 2013, the Flipper Field in Texas suffered a catastrophic collapse. In December 2012, this field was producing 1,960 BOEPD and in May 2013, after all four wells were severely damaged, the Field was producing 166 BOEPD – a loss of 1,794 BOEPD. Furthermore, the Company was forced to direct much of its technical efforts and drilling capital in 2013 and 2014 to drilling new wells to reestablish production, hold the leases, and maintain the reserves.

27. The combination of these factors has impaired the Debtors' liquidity and compelled the Debtors to seek a restructuring of their liabilities in order to maximize the value of their assets for the benefit of their creditors and other constituencies.

28. The Debtors previously sought to restructure their liabilities pursuant to an exchange offer and consent solicitation that was initiated on June 4, 2015 (the "Exchange Offer"). The Exchange Offer contemplated, among other terms, that if holders of all Notes tendered their Notes in the Exchange Offer, such holders of Notes would receive their pro rata share of $50,000,000 in the aggregate principal amount of new notes maturing on June 30, 2019 and an aggregate amount of 1.17 million shares of RAAM's common stock, which would represent 95% of the outstanding shares of RAAM's common stock following the Exchange Offer, subject to dilution pursuant to the exercise of certain warrants. The closing of the Exchange Offer was conditioned, among other things, on at least 99% of the aggregate principal amount of outstanding Notes having been validly tendered and not validly withdrawn in the Exchange Offer (the "Minimum Tender Condition").

29. The Exchange Offer terminated on August 20, 2015. Holders of approximately 94.77% of the principal amount of outstanding Notes tendered their Notes to be exchanged; however, this was insufficient to meet the Minimum Tender Condition.

30. The combination of the factors noted above and the failure of a sufficient number of holders of Notes to tender their Notes in the Exchange Offer to meet the Minimum Tender Condition compelled the Debtors to negotiate with their creditors regarding Chapter 11 proceedings in order to address liquidity concerns and maximize the value of their assets for the benefit of their creditors and other constituencies.

31. For the last several months, the Debtors and their investment bankers have undertaken a thorough marketing process seeking third party stalking horse bidders. The Debtors were at one point close to finalizing a purchase agreement with a stalking horse bidder for a portion of its assets, but the potential agreement fell through due to market conditions. While there remains interest in the Debtors' assets by third parties, the Debtors have been unable to secure an acceptable third party stalking horse bid at this time after a significant marketing process.

32. The Debtors are presently negotiating a credit bid stalking horse purchase agreement with the holders of approximately 99% of the outstanding debt under the Term Loan Facility, and the Debtors are seeking to present a credit bid stalking horse purchase agreement and bid procedures to the Court before November 6, 2015. Such credit bid stalking horse purchase agreement and bid procedures will create a defined sale process, and the Debtors hope that interested parties will bid on its assets in such process to maximize the value of their estates.

## RELIEF REQUESTED

33. The Debtors request an interim order (the "Interim Order"), and subsequently a final order (the "Final Order"), authorizing them, subject to any Court approved budget and any order authorizing the use of the Debtors' cash collateral, to: (a) continue to (i) administer insurance coverage currently in effect, as set forth below (collectively, the "Insurance Policies"), and pay any premiums, administrative fees, deductibles, and other obligations related to the Insurance Policies and related programs (including the fees and commissions due to Upstream (as defined below)) that accrued but remain unpaid as of the Petition Date (the "Pre-Petition Insurance Claims") and (ii) pay any obligations owed to issuers of surety bonds on the Debtors' behalf that accrued but remain unpaid as of the Petition Date (the "Pre-Petition Bonding Obligations"), to the extent the Debtors determine in their absolute discretion that such payments are necessary or appropriate; (b) in the ordinary course of business, pay all post-petition premiums, administrative fees, deductibles, and other obligations (including the fees and commissions due to Upstream), (i) relating to the Insurance Policies and related programs, and any other additional, revised, or supplemented insurance policies or programs obtained by the Debtors (the "Post-Petition Insurance Claims" and, together with the Pre-Petition Insurance Claims, the "Insurance Claims")[3] and (ii) owed to issuers of surety bonds on the Debtors' behalf (the "Post-Petition Bonding Obligations" and, together with the Pre-Petition Bonding Obligations, the "Bonding Obligations"), as such payments become due, provided, however, the Debtors shall contribute additional funds into the Escrow Account solely in accordance with any order authorizing the use of the Debtors' cash collateral; (c) in the ordinary course of business and subject to the mutual consent of the Debtors and ACE, utilize funds in the Escrow Account

[3] The Debtors do not anticipate paying any amounts on account of the Insurance Policies or the Insurance Claims during the period between the entry of the Interim Order and the Final Order (the "Interim Period").

(as defined below) for the payment of vendors and the related expenses of plugging and abandonment operations (incurred both pre- and post-petition); and (d) revise, extend, supplement, or change the Debtors' insurance coverage or purchase new, supplemental, or replacement surety bonds (together with the surety bonds outstanding as of the Petition Date, the "Bonding Program")[4] as needed in the ordinary course of business.[5]

34. The Debtors employ Upstream Brokers ("Upstream") as their insurance broker and agent. The Debtors pay Upstream either a commission or a fee[6] to find and sell the Insurance Policies to the Debtors. Upstream also advises the Debtors on the appropriate policies for the Debtors' businesses.

35. In the ordinary course of business, the Debtors maintain certain Insurance Policies covering, *inter alia*, physical damage to oil and gas infrastructure, operator's extra expense, general liability, workers' compensation, United States Longshore and Harbor workers' compensation, aviation, maritime employer's liability, inland marine and related property, boiler and machinery, oil pollution liability, director and officer, and flood. The Insurance Policies are essential to the Debtors' ongoing operations. A summary of the Insurance Policies is attached hereto **Exhibit A**.

36. The Bonding Program is required to, *inter alia*, permit the Debtors to continue operating under various leasing agreements with BOEM, and maintaining the Bonding Program throughout the Cases is necessary to ensure the Debtors are able to continue to operate under

[4] The Debtors anticipate paying approximately $80,000 for bond renewals during the Interim Period.

[5] Contemporaneously herewith, the Debtors have filed the *Emergency Motion (a) Authorizing Debtors to (i) Pay Pre-Petition Wages and Salaries to Employees and Independent Contractors and (ii) Pay Pre-Petition Benefits and to Continue Benefit Programs in the Ordinary Course and (b) Directing Banks to Honor Pre-Petition Checks for Payment of Pre-Petition Employee Obligations* through which the Debtors seek this Court's authority to, *inter alia*, continue to pay insurance policies related to employee benefits and workers' compensation.

[6] The offshore and onshore energy packages reflected on **Exhibit A** are fee-based; the remaining insurance packages are commission-based.

BOEM's authority. A summary of the Debtors' current Bonding Obligations is attached hereto as **Exhibit B**.

37. As stated previously, historically, the Debtors have paid $750,000 each month into the Escrow Account for the benefit of ACE to secure the Debtors' obligations to ACE as part of the Bonding Program. However, the Debtors are requesting authority, in their discretion, to contribute post-petition funds into the Escrow Account solely in accordance with any Court approved budget and any order authorizing use of the Debtors' cash collateral.

38. While the Debtors do not believe Court approval is required to maintain their existing Insurance Policies and Bonding Program or to amend, extend, or renew the Insurance Policies or the Bonding Program in the ordinary course of business, out of an abundance of caution, the Debtors seek entry of an order authorizing them to pay Pre-Petition Insurance Claims and Pre-Petition Bonding Obligations, if any, which are necessary to maintain the Insurance Policies and the Bonding Program in current effect. The Debtors also seek Court authority to continue to pay the fees and costs of Upstream in connection with the Insurance Policies and the Insurance Claims in the ordinary course of business, including any amounts accruing pre-petition. The Debtors do not believe that any significant pre-petition amounts are due to Upstream.

39. In addition, the Debtors request that, to the extent of funds on deposit, all applicable banks and other financial institutions be directed to receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors relating to the Insurance Claims and the Bonding Obligations, whether such checks were presented or fund transfer requests were submitted prior to or subsequent to the Petition Date. Further, the Debtors request authority to issue post-petition checks or to effect post-petition

funds transfer requests in replacement of any checks or funds transfer requests with respect to the Debtors' Pre-Petition Insurance Claims and Pre-Petition Bonding Obligations dishonored or denied as a consequence of the commencement of the Cases.

**BASIS FOR REQUESTED RELIEF**

40. Courts in this district and in others generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of pre-petition obligations in appropriate circumstances. *See e.g., In re ASARCO LLC*, No. 05-21207 (Bankr. S.D. Tex. Aug. 10, 2005); *In re ATP Oil & Gas Corp.*, No. 12-36187 (Bankr. S.D. Tex. Aug. 21, 2012); *In re Univ. Gen. Health Sys., Inc., et al.*, No. 15-31086 (Bankr. S.D. Tex. Mar. 2, 2015); *see also In re Tropicana Entm't LLC*, No. 08-10856 (KJC) (Bankr. D. Del. May 6, 2008); *In re Leiner Health Prods, Inc.*, No. 08-10446 (KJC) (Bankr. D. Del. March 12, 2008); *In re Wickes Holdings, LLC*, No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); *In re Polymer Group, Inc.*, No. 02-05773-JW (Bankr. D.S.C. May 29, 2002).

41. Pursuant to Bankruptcy Code §§ 1107(a) and 1108, a debtor in possession is a fiduciary "holding the bankruptcy estate and operating the business for the benefit of [its] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor in possession is the obligation to "protect and preserve the estate, including an operating business's going-concern value." *Id*. Some courts have noted there are instances in which a debtor can fulfill this fiduciary duty solely "by the preplan satisfaction of a pre-petition claim." *Id*. In *CoServ*, the court specifically noted that pre-plan satisfaction of pre-petition claims would be a valid exercise of the Debtors' fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate . . . ." *Id*.

42. Consistent with the debtors' fiduciary duties, courts have also authorized payment of pre-petition obligations 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).

43. Additionally, Bankruptcy Code § 105(a), which provides in relevant part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," permits bankruptcy courts to authorize payments on account of certain pre-petition claims when fundamentally necessary to the continuation of a debtor's operations. *See* 11 U.S.C. § 105(a); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 (3d Cir. 1972); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174 (Bankr. S.D.N.Y. 1989).

44. Under Bankruptcy Code § 105(a), courts may permit pre-plan payments of pre-petition obligations when essential to the continued operation of the debtor's business. Specifically, the court may use its power under Bankruptcy Code § 105(a) to authorize payment of pre-petition obligations pursuant to the "doctrine of necessity," where such payment is essential to the debtor's continued operation. *See, e.g., In re Lehigh & New Eng. Ry. Co.*, 657 F.2d at 581; *In re Penn Cent. Transp. Co.*, 467 F.2d at 102 n.1; *In re United Am., Inc.*, 327 B.R. 776, 782 (Bankr. E.D. Va. 2005) (explaining that "doctrine of necessity" requires three prongs to be met: "(1) the [pre-petition creditor] must be necessary for the successful reorganization of the debtor; (2) the transaction must be in the sound business judgment of the debtor; and (3) the favorable treatment of the [pre-petition creditor] must not prejudice other unsecured creditors.");

*In re Synteen Tech., Inc.*, No. 00-02203, 2000 WL 33709667, at *2 & n.5 (Bankr. D.S.C. April 14, 2000) (distinguishing the Fourth Circuit decision in *Official Comm. of Equity Sec. Holders v. Mabey (In re A.H. Robbins Co., Inc.)*, 832 F.2d 299, 302 (4th Cir. 1987), which limited the applicability of Bankruptcy Code § 105(a) with respect to the authorization of payment of pre-petition creditors, and applying the "doctrine of necessity" as an exception to that ruling); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (Bankr. D. Del. 1999); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994); *In re NVR L.P.*, 147 B.R. 126, 127 & n.2 (Bankr. E.D. Va. 1992) (noting the *In re A.H. Robbins Co., Inc.* limitation on Bankruptcy Code § 105(a) and explaining that the "doctrine of necessity" is a well-recognized exception to that rule).

45. Further, the rationale behind the "doctrine of necessity" (*i.e.*, the rehabilitation of a debtor) is "the paramount policy and goal of Chapter 11." *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *see also Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987); *In re Synteen Tech., Inc.*, 2000 WL 33709667, at *2 & n.5 (the "necessity of payment" doctrine is applied to issues that are "critical to the reorganization of debtor's business or fundamentally necessary to the continuation of debtor's operations"); *In re Just for Feet, Inc.*, 242 B.R. at 826; *In re NVR L.P.*, 147 B.R. at 127 & n.2; *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987); 3 COLLIER ON BANKRUPTCY, 105.02[4][a] (16th ed. rev. 2011) (discussing cases in which courts have relied on the "doctrine of necessity" or the "necessity of payment" rule to pay pre-petition claims immediately).[7]

[7] In *In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004), the Seventh Circuit held that Bankruptcy Code § 105(a), by itself, was insufficient authority for a court to order payment of pre-petition creditors prior to a plan being confirmed. However, the Seventh Circuit did not rule that the "necessity of payment" doctrine no longer existed and suggested that other provisions, inapplicable under the instant facts of the case, might support payment of pre-

46. Courts have permitted post-petition payment of pre-petition claims pursuant to Bankruptcy Code § 105(a) in other situations, such as if non-payment of a pre-petition obligation would trigger a withholding of goods or services essential to the debtors' business operations. *See In re Ionosphere Clubs*, 98 B.R. at 167-77 (finding that Bankruptcy Code § 105 empowers bankruptcy courts to authorize payment of pre-petition debt when such payment is needed to facilitate the debtor's rehabilitation).

47. This flexible approach is particularly critical where a pre-petition creditor provides vital goods or services to a debtor that would be unavailable if the debtor did not satisfy its pre-petition obligation. In *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated it "may exercise its equity powers under [Bankruptcy Code] § 105(a) to authorize payment of pre-petition claims where such payment is necessary to 'permit the greatest likelihood of survival of the debtors and payment of creditors in full or at least proportionately.'" *Id.* The court explained that "a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code." *Id.* at 932.

**A. Insurance Policies**

48. The success of the Debtors' efforts to operate effectively and efficiently in chapter 11 will depend on the maintenance of the Insurance Policies on an uninterrupted basis. In addition, the Debtors believe that any unsecured creditors' committee appointed in the Cases

---

petition vendors. *Id.* at 872-73. Furthermore, bankruptcy courts in the Fourth Circuit have continued to apply the "necessity of payment" doctrine post-*Kmart*. *See, e.g.*, *In re United Am., Inc.*, 327 B.R. at 782 (reconciling the "doctrine of necessity" and *Kmart* by explaining that the doctrine must be narrowly construed by requiring that the debtor show that the pre-petition creditor is necessary to the debtor's successful reorganization, the transaction is within the sound business judgment of the debtor, and that the favorable treatment of the creditor will not prejudice other unsecured creditors); *see also In re Whitaker's Inc. of Sumter*, No. 06-03636-HB, Docket No. 14 (Bankr. D.S.C. August 24, 2006); *In re MPI Mgmt., Inc., dba Stroud Nursing Home*, No. 06-00609-JW, Docket Nos. 11 and 21 (Bankr. D.S.C. Feb, 23, 2006).

would expect and demand that the Debtors maintain, at a minimum, certain property and liability Insurance Policies. Furthermore, pursuant to the Operating Guidelines and Reporting Requirements of the Office of the United States Trustee for Region 7 (the "Guidelines"), the Debtors have a fiduciary obligation and a legal duty to maintain the Insurance Policies. *See* the Guidelines at 3 (providing that "[a]ll debtors must maintain insurance and make all premium payments thereon when due.").

49. The Debtors' failure to pay the Insurance Claims, as and when they become due, could affect their ability to renew the Insurance Policies, which could have a material adverse effect on the Debtors' operations. If the Insurance Policies are allowed to lapse or are terminated, or if the Debtors default under the Insurance Policies based on their non-payment of Insurance Claims, the Debtors could be exposed to substantial liability for damages resulting to persons and property of the Debtors and others. This exposure would negatively impact the Debtors' ability to operate in chapter 11. Additionally, to ensure the retention of qualified and dedicated senior management, the Debtors must continue the directors' and officers' liability policies.

50. Furthermore, Bankruptcy Code § 1112 provides that a chapter 11 bankruptcy case may be converted to chapter 7 or dismissed upon the motion of a party in interest, and after notice and a hearing, "for cause." 11 U.S.C. § 1112(b)(1). The term "cause" is defined in Bankruptcy Code § 1112 as including "failure to maintain appropriate insurance that poses a risk to the estate or to the public." 11 U.S.C. § 1112(b)(4); *see also* the Guidelines at 14 (providing that failure to comply with the Guidelines, which requires a debtor to maintain various insurance policies, may result in, *inter alia*, conversion or dismissal of the case). Thus, any failure by the

Debtors to maintain appropriate insurance would create a risk that the Cases could be converted or dismissed.

51. Given the importance of maintaining pre-petition insurance coverage, bankruptcy courts routinely grant authority for a debtor's payment of claims similar to the Insurance Claims and continuation of policies similar to the Insurance Policies. *See, e.g., In re ATP Oil & Gas Corp.*, No. 12-36187, Docket No. 137 (Bankr. S.D. Tex. Aug. 21, 2012); *In re Autoseis, Inc., et al.*, No. 14-20130, Docket No. 61 (Bankr. S.D. Tex. Mar. 27, 2014); *In re Buccaneer Res., LLC, et al.*, No. 14-60041, Docket No. 177 (Bankr. S.D. Tex. Jul. 1, 2014); *In re Mosaic Group (US) Inc.*, No. 02-81440, Docket No. 25 (Bankr. N.D. Tex. Dec. 19, 2002); *In re Joe Gibson's Auto World, Inc.*, No. 08-04215, Docket No. 39 (Bankr. D.S.C. Jul. 21, 2008); *In re Linens Holding Co.*, No. 08-10832, Docket No. 59 (Bankr. D. Del. May 2, 2008); *In re Hoop Holdings, LLC*, No. 08-10544, Docket No. 50 (Bankr. D. Del. Mar. 28, 2008); *In re Sharper Image Corp.*, No. 08-10322, Docket No. 48 (Bankr. D. Del. Feb. 20, 2008); *In re Calpine Corp.*, No. 05-60200, Docket No. 267 (Bankr. S.D.N.Y. Jan. 4, 2006).

52. In light of the importance of maintaining insurance coverage with respect to their business operations, the Debtors respectfully submit that it is in the best interest of the Debtors' estates to maintain the Insurance Policies and to pay the Insurance Claims as well as to revise, extend, supplement, or change insurance coverage, as necessary, pursuant to Bankruptcy Code § 363(b)(1). Failure to pay premiums when due would harm the Debtors' estates, would constitute cause for conversion or dismissal of the Cases under Bankruptcy Code § 1112, and would run afoul of the Guidelines.

53. It is therefore critical that the Debtors be authorized to maintain the Insurance Policies in the same manner as maintained pre-petition, to pay any Pre-Petition Insurance

Claims, to continue to make all payments for Post-Petition Insurance Claims, and to revise, extend, supplement, or change insurance coverage as needed through renewal of the Insurance Policies or the purchase of new policies.[8]

**B. Bonding Program**

54. The Debtors, primarily through Century Exploration New Orleans, LLC, 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. Through the operation of their oil and gas interests, the Debtors explore for, and produce, hydrocarbons.

55. 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, and the rules and regulations promulgated by, among others, the Department of Interior and BOEM (collectively, the "Lease Compliance Requirements"). Pursuant to the Lease Compliance Requirements, the Debtors must establish their financial capability to comply therewith, including, *inter alia*, the financial ability to (a) pay royalties and (b) cause (i) the plugging of wells, (ii) removal of platforms, and (iii) restoration of the seabed once oil and gas production ceases from any given lease (collectively, the "Financial Responsibility Obligations"). BOEM periodically reviews the Financial Responsibility Obligations and can increase the amount needed to fulfill the Debtors' compliance therewith.

[8] Nothing herein shall be deemed to be an assumption of any executory contract that could bind the Debtors in the future. Authorization to pay all amounts on account of Insurance Claims and Bonding Obligations and continuation of the Insurance Policies and the ACE Bonding Agreement shall not be deemed to constitute a post-petition assumption or adoption of any contract, program, or policy pursuant to Bankruptcy Code § 365. Moreover, authorization to pay amounts on account of Insurance Claims and Bonding Obligations shall not affect the Debtors' rights to contest the amount or validity of any Insurance Claims or Bonding Obligations. The debtors reserve all rights to reject any contract related to Bonding Obligations.

56. An entity may satisfy the Financial Responsibility Obligations by, among other means, (a) qualifying for exempt status, (b) providing surety bonds in an amount determined by BOEM, (c) obtaining a guaranty of such obligations from a third party that would otherwise qualify for exempt status, or (d) posting collateral (in the form of cash or treasury securities) with BOEM.

57. The Debtors do not meet BOEM's requirements for exempt status and are unable to obtain a third party guaranty of the Financial Responsibility Obligations by an otherwise exempt entity. Further, due to liquidity constraints, the Debtors have been unable to post cash or treasury securities as a means to meet their Financial Responsibility Obligations. As a result, the only feasible option that enables the Debtors to meet the Financial Responsibility Obligations without necessitating a significant outlay of cash is by maintaining the Bonding Program. Failure to meet the Financial Responsibility Obligations (and remaining in compliance therewith) could result in BOEM (a) suspending the Debtors' operations under the Gulf of Mexico Leases, thereby prohibiting the Debtors from producing oil and gas therefrom, (b) taking legal action to cancel the Gulf of Mexico Leases, and (c) assessing other penalties against the Debtors.

58. The Gulf of Mexico Leases comprise a significant part of the Debtors' assets[9] and are a key component to Debtors' ability to operate in chapter 11. The success of the Debtors' efforts to operate effectively and efficiently will likewise depend on the maintenance of the Bonding Program on an uninterrupted basis.

59. The Debtors' failure to pay the Bonding Obligations, as and when they become due, could result in a default under the applicable bonding agreements. If the Debtors default

[9] Specifically, the Gulf of Mexico Leases comprise 6,327 MMBoe at June 30, 2015 (or 64% of total reserves). The Debtors have also purchased surety bonds on onshore oil and gas leases and leases in Louisiana state waters.

under the bonding agreements, the surety bond issuers may assert that they have the right to terminate the surety bonds. If the issuers terminate the surety bonds, the Debtors would no longer be compliant with the Financial Responsibility Obligations, and thus, the Debtors would not be legally permitted to continue their drilling operations under the Gulf of Mexico Leases. The Debtors would need to post different collateral to BOEM to the extent needed to continue operating. It is unlikely that any other entity will provide such bonds to the Debtors; thus, the Debtors would have to provide cash collateral or other security to BOEM. The Debtors, however, lack the cash to do so.

60. No feasible alternative to maintaining the Bonding Program exists. Therefore, if the Bonding Program is not maintained on an uninterrupted basis, the Debtors' operations could ultimately be shut down, the Debtors' ability to operate effectively and efficiently in chapter 11 would be significantly impaired, and the Debtors ability to resume its operations post-bankruptcy would be severely hampered. Further, the Debtors believe that any unsecured creditors' committee appointed in the Cases would expect, and demand, that the Debtors continue to pay their Bonding Obligations and maintain the Bonding Program to allow Century Exploration New Orleans, LLC to continue to operate under the leasing arrangements with BOEM.

61. Bankruptcy courts have granted authority for a debtor's payment of surety bonds and the continuation of programs similar to the Bonding Program. *See, e.g.*, *In re WCI Communities, Inc., et al.*, No. 08-11643, Docket No. 87 (Bankr. D. Del. August 6, 2008) (authorizing debtors in the residential development business to maintain surety bond program to enable the debtors to maintain compliance with contractual, statutory, and regulatory obligations); *In re Unitek Global Serv., Inc., et al.*, No. 14-12471, Docket No. 192 (Bankr. D. Del. December 3, 2014) (directing the debtor to maintain its surety bond program—which

secured the debtor's performance under certain key contracts that were vital to the debtor's operations—without interruption and to pay all post-petition obligations relating to such surety bond program); *In re Pinnacle Airlines Corp., et al.*, No. 12-11343, Docket No. 169 (Bankr. S.D.N.Y. April 23, 2012) (authorizing debtors in the aviation industry to maintain surety bond program without interruption where failure to do so would jeopardize the debtors' ability to conduct their operations).

62. In light of the importance of maintaining the Bonding Program with respect to the Debtors' oil and gas activities, the Debtors respectfully submit that it is in the best interest of the Debtors' estates to maintain the Bonding Program and to pay the Bonding Obligations as set forth herein as well as to cause the issuance of new surety bonds as necessary pursuant to Bankruptcy Code § 363(b)(1).

63. The Debtors therefore request that they be authorized to maintain the Bonding Program in the same manner as maintained pre-petition, subject to any Court approved budget and any order authorizing the use of the Debtors' cash collateral, to (a) pay any Pre-Petition Bonding Obligations, (b) continue to make all payments for Post-Petition Bonding Obligations, and (c) revise, extend, supplement, or change the Bonding Program as needed through the issuance of new surety bonds. The Debtors further request authority to utilize, in the ordinary course of business and subject to the mutual consent of the Debtors and ACE, funds in the Escrow Account for the payment of vendors and the related expenses of plugging and abandonment operations (incurred both pre- and post-petition).

## REQUEST FOR IMMEDIATE RELIEF

64. Pursuant to Bankruptcy Rule 6003, the Court may grant relief regarding a motion to pay all or a part of a pre-petition claim within twenty-one days after the Petition Date if the relief is "necessary to avoid immediate and irreparable harm." FED. R. BANKR. P. 6003. If the Insurance Policies are allowed to lapse or are terminated based on the Debtors' non-payment of Insurance Claims or Bonding Obligations, the Debtors may be exposed to substantial liability for damages resulting to persons and property of the Debtors and others. This exposure would negatively impact the Debtors' ability to operate their businesses. Payment of the Pre-Petition Insurance Claims and Pre-Petition Bonding Obligations would avoid such immediate and irreparable harm.

65. Based on the foregoing, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of pre-petition obligations related to the Insurance Policies and the Bonding Program.

66. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. As set forth above, the continued payment of the Insurance Policies and Bonding Obligations to the extent provided for herein is essential to prevent potentially irreparable damage to the Debtors' operations and the value of the Debtors' estates. Accordingly, the Debtors submit that ample cause exists to justify a waiver of any stay imposed by the Bankruptcy Rules, to the extent applicable.

## NOTICE

67. 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.

## PRAYER

68. The Debtors respectfully request that the Court enter an Interim Order, and subsequently a Final Order: (a) authorizing the Debtors, subject to any Court approved budget and any order authorizing the use of the Debtors' cash collateral, to (i) continue to administer the Insurance Policies, including payment of Pre-Petition Insurance Claims and Pre-Petition Bonding Obligations, to the extent the Debtors determine in their absolute discretion that such payments are necessary or appropriate, (ii) in the ordinary course of business, pay all Post-Petition Insurance Claims and Post-Petition Bonding Obligations as such payments become due, provided, however, the Debtors shall contribute any additional funds into the Escrow Account solely in accordance with any order authorizing the Debtors' use of cash collateral, (iii) in the ordinary course of business and subject to the mutual consent of the Debtors and ACE, utilize

funds in the Escrow Account for the payment of vendors and the related expenses of plugging and abandonment operations (incurred both pre- and post-petition), and (iv) revise, extend, supplement, or change the Debtors' insurance coverage or purchase new, supplemental, or replacement surety bonds as needed in the ordinary course of business; and (b) granting such other and further relief to which the Debtors may be justly entitled.

Dated: October 27, 2015

Respectfully submitted,

**VINSON & ELKINS LLP**

By: */s/ Bradley R. Foxman*
Harry A. Perrin, SBT # 1579800
John E. West, SBT # 21202500
Reese A. O'Connor, SBT # 24092910
First City Tower
1001 Fannin Street, Suite 2500
Houston, TX 77002-6760
Tel: 713.758.2222
Fax: 713.758.2346
hperrin@velaw.com; jwest@velaw.com
roconnor@velaw.com

and

William L. Wallander, SBT # 20780750
Bradley R. Foxman, SBT # 24065243
Trammell Crow Center
2001 Ross Avenue, Suite 3700
Dallas, Texas 75201
Tel: 214.220.7700
Fax: 214.999.7787
bwallander@velaw.com; bfoxman@velaw.com

**PROPOSED ATTORNEYS FOR THE DEBTORS**

## CERTIFICATE OF SERVICE

I certify that on October 27, 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/ Bradley R. Foxman*
One of Counsel