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 AUTHORITY TO PAY ROYALTY AND WORKING INTEREST OBLIGATIONS, LEASE OPERATING EXPENSES, JIBS, AND TRADE, AND POTENTIAL HOLDERS OF STATUTORY LIENS

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 Authority to Pay Royalty and Working Interest Obligations, Lease Operating Expenses, JIBs, and Trade, and Potential Holders of Statutory Liens* (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 bankruptcy 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 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

[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].

emergency consideration is necessary and request that this Motion be heard at the Debtors' First Day Hearings.

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.

[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.

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 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, and the balance of such 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.

THE DEBTORS' OIL AND GAS LEASES AND OPERATIONS

33. As set forth above, the Debtors' operations are focused on the exploration, development, and production of oil and gas. The Debtors own an interest in approximately 947 oil, gas, and mineral leases, and are parties to numerous joint operating agreements ("JOAs") governing operations of the wells. All of the Debtors' leasehold interests are subject to or burdened by one or more of: royalty interests, overriding royalty interests, non-participating royalty interests, and third party working and non-working interests.

34. As noted in detail below, the Debtors, as operators, among other things: (a) often market and sell hydrocarbons produced from the operated wells on behalf of the holders of (i) non-operating working interest owners and (ii) Mineral and Other Interests (as defined below); (b) distribute the proceeds from the sale of such production to such holders; and (c) pay the Lease Expenses (as defined below) and other costs associated with the operation of the oil and gas wells.

A. The Mineral and Other Interests

35. In connection with their oil and gas assets, the Debtors are obligated, pursuant to their oil and gas leases and other agreements, to remit to the lessors of the oil and gas leases and potentially other parties their share of revenue from the producing wells located on the respective

leases (the "Royalties"). In addition, overriding royalties (the "ORRI")[3] must be remitted to the owners of those interests, and the holders of non-executive mineral interests (the "Non-Executive Interests") as well as the holders of non-participating royalty interests (the "NPRI" and, together with the Royalties, ORRI, and Non-Executive Interests, the "Mineral and Other Interests") must receive the proceeds due to them pursuant to the applicable agreement.[4] Failure to forward the aforementioned required amounts would have a material adverse effect upon the Debtors and their operations, including, without limitation, potential cancellation, forfeiture, or termination of oil and gas leases, penalties and interest, turnover actions, conversion claims, significant lien claims, constructive trust claims, litigation, and, in some instances, removal as operator.[5]

36. As of the Petition Date, the Debtors estimate that they owe approximately $3,900,000[6] (a) to the holders of the Mineral and Other Interests and (b) on account of the

[3] For purposes of this Motion, the ORRIs include, without limitation, overriding royalty interests that have been (a) granted to the Debtors' employees pursuant to the After Payout Overriding Royalty Plan disclosed in 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 Obligations* filed contemporaneously herewith, and (b) recorded by such employees prior to the Petition Date.

[4] For the avoidance of doubt, the Debtors are also obligated to remit a portion of the revenue from producing wells that remains after deducting the amounts attributable to the foregoing interests to the owners of the working interests in those wells.

[5] In certain circumstances, the Debtors have received payment for the share of proceeds due to the holders of Mineral and Other Interests; however, due to timing, such proceeds have not been remitted to such holders of Mineral and Other Interests prior to the Petition Date.

[6] Under the Debtors' current revenue distribution system, the Debtors are unable to separate amounts attributable to Mineral and Other Interests and Marketing Obligations. *See* Section D below for more detail on the Marketing Obligations.

Marketing Obligations (as defined and described in more detail below).[7] Of this amount, approximately $600,000 is attributable to suspended funds (the "Suspended Funds").[8]

37. The Debtors request authority to: (a) pay outstanding and undisputed pre-petition amounts owed on account of Mineral and Other Interests as such have been paid by the Debtors in the ordinary course of business; and (b) continue to pay post-petition amounts attributable to the Mineral and Other Interests in the ordinary course of business.

B. Lease Expenses

38. The Debtors are operators for a number of the oil and gas wells in which the Debtors hold an interest, many under JOAs with other parties. In connection with the daily operation of those wells, the Debtors incur numerous lease operating expenses (the "LOEs"). Many of the invoices for the LOEs will cover both pre-petition and post-petition expenses. Given the number of such invoices, the Debtors' limited accounting staff, and the Debtors' need to focus on and prioritize more imperative issues during the early stages of the Cases, separating the pre-petition portions from the post-petition portions of each individual invoice will be very difficult for the Debtors to timely accomplish. Failure by the Debtors to satisfy their LOE obligations as they arise could have material adverse consequences on the Debtors and their operations, including, *inter alia*, being removed as operator and the assertion of significant

[7] The Debtors anticipate paying approximately $3,300,000 ($3,900,000 less the $600,000 in Suspended Funds) to the holders of the Mineral and Other Interests and on account of the Marketing Obligations during the period between entry of the Interim Order and the Final Order (the "Interim Period").

[8] The Suspended Funds represent amounts that are due and owing to certain holders of Mineral and Other Interests but are otherwise unpayable for a variety of reasons, including, *inter alia*, incorrect contact information, ongoing disputes over ownership of the underlying interest, and failure to meet minimum payout requirements. To the extent that the issue preventing payment of Suspended Funds to a particular interest holder is resolved, the Debtors release the Suspended Funds in question.

secured claims (statutory and contractual) against property of the estates by holders of LOE claims or other non-operating interests.[9]

39. Often the Debtors are also required to make rental payments during a term of a lease (the "Delay Rentals"). Payment of the Delay Rentals postpones the Debtors' obligation for initial exploration and development of each lease for the entire period for which they are paid. Thus, if the Delay Rentals are paid on or before the anniversary date for each year during the primary term of each lease, each lease will be maintained in full force in effect and the Debtors will not be required to engage in exploration and development. If the Delay Rentals are not paid and the Debtors do not engage in initial exploration and development, the lease will terminate. Accordingly, failure to pay the Delay Rentals could similarly have a material adverse effect upon the Debtors and their operations, including, *inter alia*, the loss of the underlying lease.[10]

40. Although the Debtors generally operate the wells in which they own an interest, there are certain instances in which the Debtors hold non-operating working interests in wells under various JOAs. In such instances, the Debtors receive payment representing their share of production revenues. The Debtors receive revenue receipts from the operators and directly from the purchasers, and then reimburse the operators for their share of the production costs through payment of joint-interest billings ("JIBs"). Rights to payment of JIBs are often secured under contractual lien rights or statutory lien rights in favor of the operator against the Debtors' interest in the well.[11]

[9] The Debtors anticipate paying approximately $2,950,000 in LOEs during the Interim Period.

[10] The Debtors anticipate paying approximately $5,000 in Delay Rentals during the Interim Period.

[11] The Debtors' JOA and JIB obligations are immaterial.

41. In addition to the various expenses owed in connection with existing wells, the Debtors incur liabilities through their efforts to secure additional oil and gas leases and extend certain others. The Debtors often solicit potential and current lessors by sending a letter expressing a desire to enter into (or extend) a lease arrangement and enclosing a proposed lease or lease amendment, as applicable. To entice the potential and current lessors to execute and return the appropriate documentation, the Debtors may also include an Offer to Lease (an "OTL" and, together with the LOEs, Delay Rentals, and the JOA and JIB obligations, the "Lease Expenses"). An OTL is the mechanism by which cash and additional cash consideration is provided to the lessor if the lease (or lease amendment) and OTL are both signed and returned to the Debtors. Once both executed documents are received, the Debtors send a check in the amount required under the OTL. As of the Petition Date, the Debtors estimate that they have approximately $500 in outstanding OTL liabilities.[12]

42. The Debtors seek to: (a) pay outstanding and undisputed pre-petition Lease Expenses, including, but not limited to, LOEs, Delay Rentals, and the JOA and JIB obligations, as such have been paid in the Debtors' ordinary course of business; and (b) continue to pay such Lease Expenses post-petition, in the ordinary course of business.

C. Marketing Obligations

43. The Debtors are also obligated under various agreements to market the oil and gas production (the "Marketed Production") of certain owners of working interests (the "Working Interests") to potential purchasers and remit the amounts due to the appropriate parties (the

[12] While OTLs executed and returned post-petition may arguably constitute administrative expenses of the Debtors' estates, out of an abundance of caution the Debtors are requesting authority to continue honoring amounts due in connection with the OTLs that are signed and returned after the Petition Date. The Debtors anticipate paying approximately $500 in outstanding OTL liabilities during the Interim Period.

"Marketing Obligations"). Specifically, following the sale of Marketed Production and the receipt of proceeds attributable thereto, the Debtors are obligated to remit the amount of those proceeds belonging to the owner of the Working Interest, net of all applicable Mineral and Other Interests, gathering costs, processing and transportation expenses, and production taxes. The Marketing Obligations also require that the Debtors process and forward to the appropriate parties, from funds otherwise belonging to third parties, the amounts due on account of the Mineral and Other Interests, gathering costs, processing and transportation expenses, and production taxes. Failure to forward all required amounts could have a material adverse effect upon the Debtors, including, without limitation, penalties and interest, turnover actions, conversion and constructive trust claims, assertion of significant secured claims against property of the estate, litigation, and, in some instances, removal as operator.[13]

44. The Debtors request authority to: (a) pay outstanding and undisputed pre-petition Marketing Obligations as such have been paid in the Debtors' ordinary course of business; and (b) continue to post-petition Marketing Obligations in the ordinary course of business.

D. Obligations to Third Parties with Statutory and Contractual Lien Rights

45. As part of their exploration and production operations, the Debtors rely to a significant degree on a number of third parties, including vendors, contractors, and suppliers (collectively, the "Potential Lien Claimants"), who provide services, supplies, and materials necessary to ensure that the Debtors' operations continue in a timely manner. In the ordinary course of their business, the Debtors incur obligations to the Potential Lien Claimants (the

[13] In certain circumstances, the Debtors have received payment for the share of proceeds due to the appropriate parties in connection with the Marketing Obligations; however, due to timing, such proceeds have not been remitted to such parties prior to the Petition Date. The Debtors do not anticipate having to pay any material amounts on account of the Marketing Obligations during the Interim Period.

"Potential Lien Obligations" and, together with the Mineral and Other Interests, the Lease Expenses, the Marketing Obligations, and the § 503(b)(9) Claims (defined below), the "Obligations")[14] and pay the Potential Lien Claimants for their services.

46. Although the Debtors generally make timely payments to the Potential Lien Claimants, as of the Petition Date, certain Potential Lien Claimants have not received payment for pre-petition goods and services or have failed to cash checks received prior to the Petition Date. As a result, the Potential Lien Claimants may assert a right under applicable state laws to assert a materialmens', mechanics', or other statutory liens (collectively, the "Statutory Liens").

47. The Debtors request authority to: (a) pay outstanding and undisputed pre-petition obligations to the Potential Lien Claimants as such have been paid in the Debtors' ordinary course of business;[15] and (b) continue to satisfy post-petition obligations to the Potential Lien Claimants in the ordinary course of business.

RELIEF REQUESTED

48. The Debtors' inability to timely pay the Obligations will result in immediate and irreparable harm to the Debtors' estates. Accordingly, the Debtors submit this Motion pursuant to Bankruptcy Code §§ 105(a), 363(b), 503(b)(9), and 541 and Bankruptcy Rules 6003 and 6004 requesting entry of an interim order (the "Interim Order") and a final order (the "Final Order") authorizing: (a) the Debtors in their business judgment to (i) deliver the funds owed to the holders of Mineral and Other Interests and to the Potential Lien Claimants, and amounts owed on

[14] Potential Lien Obligations include those amounts that the Debtors believe, in good faith, are subject to Statutory Liens.

[15] The Debtors anticipate paying approximately $422,500 to the Potential Lien Claimants during the Interim Period. To the extent funds owed to the Potential Lien Claimants have been included in the above-referenced LOEs expected to be paid during the Interim Period, the Debtors shall not pay such Potential Lien Claimants more than they are owed.

account of the Lease Expenses, § 503(b)(9) Claims, and under the Marketing Obligations as required by the applicable leases and other agreements, and (ii) continue to satisfy and honor their post-petition Obligations in the ordinary course of business;[16] and (b) all banks and financial institutions (collectively, the "Banks") to (i) honor pre-petition checks and electronic requests for payment of the Obligations and (ii) honor post-petition checks and electronic requests for payment of the Obligations in the ordinary course of business.

49. The Debtors also request that the Court schedule a hearing (the "Final Hearing") on the entry of the Final Order within thirty days of the date hereof or as soon thereafter as practicable; provided, however, that in the event no objections to entry of the Final Order are timely received, the Debtors request that the Court enter the Final Order without need for the Final Hearing.

BASIS FOR REQUESTED RELIEF[17]

A. Mineral and Other Interests and Marketing Obligations

50. Owners of the Mineral and Other Interests may assert that the Debtors merely hold bare legal title to the accrued pre-petition amounts due to them from the proceeds of oil and gas sales as bailees. *In re MCZ, Inc.*, 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987) (ordering the debtor-operator to turn over amounts due to the interest owners because the debtor-operator had no interest in such amounts beyond a "bare possessory interest as a bailee or agent"). Assuming, *arguendo*, the Mineral and Other Interests are arguably not the Debtors' property, such holders

[16] Notwithstanding the relief requested herein, the Debtors will continue to apply their business judgment as to which Obligations are paid in the ordinary course.

[17] Nothing in this Motion shall constitute an admission of liability, a concession as to applicable law, or a waiver of any rights or defenses to the claims or potential claims of any creditor or party in interest. The Debtors expressly reserve all rights in that regard.

of Mineral and Other Interests may assert that certain proceeds of oil and gas sales should be turned over in the ordinary course of business.

51. Courts have held that Bankruptcy Code § 541 expressly provides that if a debtor holds only a legal, but not an equitable, interest in property as of the petition date, such property is not property of the estate. *See, e.g., In re Lenox Healthcare, Inc.*, 343 B.R. 96, 100 (Bankr. D. Del. 2006). Because holders of the Mineral and Other Interests may assert that the Debtors have only legal title, and not an equitable interest, in the proceeds of the oil and gas sales attributable to the holders of the Mineral and Other Interests, any funds held by the Debtors on account of the holders of the Mineral and Other Interests may not be property of the Debtors' estates, and thus the Debtors may not be entitled to distribute any such funds to their creditors. Similarly, the holders of the Mineral and Other Interests may assert that the Debtors hold no legal or equitable interests in the proceeds of Marketed Production and that the Debtors are simply a conduit that receive a fee in exchange for marketing and ensuring that other parties receive the amounts due to them (*i.e.*, the amounts received on account of the Marketed Production is not property of the estate). *See, e.g.* TEX. BUS. & COM. CODE § 9.343 (providing a security interest in favor of interest owners, as secured parties, to secure the obligations of the first purchaser of oil and gas production, as debtor, to pay the purchase price);[18] *see also* LA. REV. STAT. ANN. §§ 31:140-146

[18] Texas law grants an automatically perfected statutory lien to "interest owners" to secure the obligations of the "first purchaser of oil and gas production, as debtor, to pay the purchase price." TEX. BUS. & COM. CODE ANN. § 9.343(a) & (r). The operator may qualify as the "first purchaser" under the statute where the "operator . . . receives production proceeds from a third-party purchaser who acts in good faith under a division order or other agreement authenticated by the operator under which the operator collects proceeds of production on behalf of other interest owners." TEX. BUS. & COM. CODE ANN. § 9.343(r)(3); *see also In re Tri-Union Dev. Corp.*, 253 B.R. 808, 815 (S.D. Tex. 2000) (finding an automatically perfected security interest in the oil and gas production and its proceeds in the debtor's possession). The Debtors must avoid the potential expenses and burdens associated with these rights and associated issues by continuing to pay such claimants in the ordinary course of business. Otherwise, under applicable non-bankruptcy law, the unpaid Mineral and Other Interests encumber the Debtors' assets with Statutory Liens and the Debtors become confronted by claims for enhanced damages and interest. Because payment of such

& 31:212.23 (providing that (a) if a lessee fails to pay royalties, a court may award as damages double the amount of royalties due, interest, and attorneys' fees and (b) such lessor royalties may be secured by a lien and privilege on all property placed on the leased premises).

52. If the Debtors merely hold bare legal title to the accrued pre-petition amounts due to them from the proceeds of oil and gas sales, no creditors will be prejudiced by the relief requested in this Motion. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to satisfy their pre-petition and post-petition obligations on account of the Mineral and Other Interests and the Marketing Obligations in the ordinary course of business.

B. Lease Expenses

Satisfaction of the Lease Expenses is in the Best Interests of the Debtors and Their Estates

53. If the Debtors fail to satisfy the pre-petition Lease Expenses as they become due, the Debtors' operations will be severely impacted, production may completely cease for certain wells, and leases may be lost. *See, e.g., Trigg v. United States (In re Trigg)*, 630 F.2d 1370, 1374 (10th Cir. 1980) (affirming bankruptcy court's finding that the debtor's mineral leases terminated automatically for failure to pay delay rentals); *Good Hope Refineries, Inc. v. Benavides*, 602 F.2d 998, 1003 (1st Cir. 1979) (affirming the District Court's holding that the debtor's mineral lease terminated automatically upon failure to pay delay rentals and nothing in the Bankruptcy Code enabled the debtor in possession to cure such failure). These occurrences would directly, immediately, and negatively impact the Debtors, their creditors, and other parties in interest. Accordingly, the Debtors submit that satisfaction of the Lease Expenses as they become due is in the best interest of the Debtors and their estates.

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claims is not a question of if, but only when, these controversies can and must be avoided to preserve the Debtors' value.

54. Furthermore, failure by the Debtors to continue to pay or otherwise honor the Lease Expenses as they become due may give rise to litigation and numerous Statutory Liens, which would burden the Debtors' assets and diminish the value of those assets to potential purchasers. *See, e.g.*, TEX. PROP. CODE ANN. §§ 53.001 – 53.260 & 56.001 – 56.045 (lien applies for work done on oil and gas wells and extends to mineral interests in the estate, including access, equipment, and production); TEX. CIV. PRAC. & REM. CODE § 12.002; *see also* LA. REV. STAT. ANN. §§ 9:4801 – 9:4861, 38:2242 & 38:2247 (lien applies for work done for oil and gas properties and extends to, *inter alia*, proceeds, the lease, and equipment used).

55. Additionally, under applicable law, certain parties may assert claims for costs and attorneys' fees relating to their lien rights.[19] If the Debtors are unable to pay these expenses, as requested herein, there may be numerous administrative costs incurred by the Debtors' estates, as well as lien claims on the production and underlying oil and gas interests. The ongoing and regular payment of these expenses will protect the Debtors' assets and will obtain the greatest possible value for the Debtors' creditors and other parties in interest.

56. In instances where the Debtors hold a non-operating working interest in their leases, the JOAs often grant the operator a contractual lien upon the Debtors' interest in a well and the underlying lease that may include: (a) all equipment installed on the lease; (b) all hydrocarbons or other minerals severed and extracted from or attributable to the lease; (c) all accounts and proceeds of sale, contract rights, and general intangibles arising in connection with the sale; (d) fixtures; and (e) any and all accessions, additions, and attachments thereto and the proceeds and products therefrom. The lien sometimes purports to secure the payment of all

[19] The Debtors' reserve the right to contest any such claims for costs and attorneys' fees.

charges, fees, court costs, and other directly related collection costs. If the Debtors do not pay charges when due, the operator may also attempt to assert additional rights to collect from the purchaser of the Debtors' hydrocarbon production until the amount owed has been paid or setoff or recoup such amounts from funds owed to the Debtors.

57. As such, failure to timely pay JIBs owing by the Debtors is likely to lead to instances of attempted setoff or recoupment. Moreover, because the Debtors intend to assume virtually all of the JOAs, granting the requested relief will merely affect the timing of the payment and operating interest owners will not receive more than they are otherwise entitled to under state laws and the Bankruptcy Code.

58. Satisfaction of the Lease Expenses at this early stage in the Cases is warranted because the harm to the estates that may result from non-payment of such claims will most likely exceed the amount of such claims by a significant margin. The Debtors' ongoing operations depend, to a significant degree, on their relationship with the parties to whom Lease Expenses are owed. If these relationships are harmed, either through the non-payment of Lease Expenses as they become due or through the perceived difficulties of dealing with chapter 11 debtors, the Debtors will likely encounter particularized controversies with each counterparty, unnecessary costs and distractions, and corresponding harm to their businesses with the possible loss of the Debtors' going concern value.

Payment of Lease Expenses is Warranted
Under Bankruptcy Code §§ 105(a), 363(b), 1107(a), and 1108

59. Bankruptcy courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay (or provide special treatment for) certain pre-petition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) ("The Supreme

Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11."); *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (citing *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that "[i]f payment of a pre-petition claim 'is essential to the continued operation of [the debtor] payment may be authorized'")); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding sound business justification for payment of certain pre-petition claims); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (holding that "section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks"). When authorizing such payments, bankruptcy courts have relied upon several legal theories rooted in Bankruptcy Code §§ 1107(a), 1108, 363(b), and 105(a).

60. Pursuant to Bankruptcy Code §§ 1107(a) and 1108, a debtor in possession is a fiduciary charged with "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). Inherent in a debtor in possession's fiduciary duties is the obligation to "protect and preserve the estate, including an operating business's going-concern value," which, in certain instances, can be fulfilled "only . . . by the preplan satisfaction of a prepetition claim." *Id.* Indeed, the *CoServ* court specifically noted that the pre-plan satisfaction of pre-petition claims would be a valid exercise of the debtor's fiduciary duty when the payment is "the only means to effect a substantial enhancement of the estate . . . ." *Id.* Consistent with a debtor's fiduciary duties, where there is a sound business purpose for the payment of pre-petition obligations, and where the debtor is able to "articulate some business justification, other than the mere appeasement of major creditors," courts have authorized debtors to make such payments

under Bankruptcy Code § 363(b). *In re Ionosphere Clubs, Inc.*, 95 B.R. at 175 (finding that a sound business justification existed to pay pre-petition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying upon Bankruptcy Code § 363 as a basis to allow a contractor to pay the pre-petition claims of suppliers who were potential lien claimants).

61. Courts have also authorized payment of pre-petition claims in appropriate circumstances pursuant to Bankruptcy Code § 105(a), which codifies the inherent equitable powers of the bankruptcy court and empowers the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under Bankruptcy Code § 105(a), courts may permit pre-plan payments of pre-petition obligations when such payments are essential to the continued operation of the debtor's business and, in particular, where non-payment of a pre-petition obligation would trigger a withholding of services essential to the debtor's business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay pre-petition claims of suppliers or employees whose continued cooperation is essential to the debtors' successful reorganization); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 117 (finding that Bankruptcy Code § 105 empowers bankruptcy courts to authorize payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor).

62. In addition to the authority granted a debtor in possession under Bankruptcy Code §§ 1107(a), 1108, 363(b), and 105(a), courts have developed the "doctrine of necessity" or the "necessity of payment" rule, which originated in the landmark case of *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286, 310 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor's

reorganization, including the United States Court of Appeal for the Third Circuit which recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581-81 (3d Cir. 1981). *See also Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding that the court was not "helpless" to apply the rule to supply creditors where the alternative was the cessation of operations).

63. In *In re Lehigh & New England Ry. Co.*, the Third Circuit held that a court could authorize the payment of pre-petition claims if such payment was essential to the continued operation of the debtor. *In re Lehigh & New England Ry. Co.*, 657 F.2d at 581 (noting that courts may authorize payment of pre-petition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (noting that the necessity of payment doctrine permits "immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid"); *In re Just for Feet, Inc.*, 242 B.R. at 824-25 (noting that, in the Third Circuit, debtors may pay pre-petition claims that are essential to the continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

64. Today, the rationale for the necessity of payment rule (*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 In re Just for Feet, Inc.*, 242 B.R. at 826 (finding that payment of pre-petition claims to certain trade vendors was "essential to the survival of the debtor during the chapter 11 reorganization"); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of pre-petition unsecured claims of tool makers as "necessary to avert a serious threat to the Chapter 11 process"); *Burchinal v. Cent. Wash. Bank (In re Adams Apple,*

Inc.), 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the "unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation").

65. Here, satisfaction of the Lease Expenses is necessary to the Debtors' business operations. Failure to satisfy those commitments would have a material and devastating impact on the Debtors' operations and would undoubtedly force the Debtors to spend significant time and resources focusing on particularized disputes with the very parties on whom they depend. If the relationships established by the Debtors with the parties that are owed the Lease Expenses are harmed, whether through non-payment or perceived difficulties of working with a chapter 11 debtor, the Debtors may be unable to secure future opportunities with those parties and other third parties may be unwilling to engage in new business with the Debtors going forward. If that were to occur, the Debtors' business, their estates, and creditors would be negatively impacted.

C. Payments to Lien Claimants

66. In the ordinary course of business, the Debtors rely upon and routinely contract with a number of third parties who, under state law, may be entitled to assert claims against the Debtors' property to secure payment for prepetition goods and services provided to the Debtors.

67. Specifically, many of the Potential Lien Claimants are likely to assert rights under applicable state laws that provide for statutory or other liens that attach to the Debtors' interest in the oil and gas leases. Pursuant to Bankruptcy Code § 362(b)(3), the act of perfecting Statutory Liens, to the extent consistent with Bankruptcy Code § 546(b), is expressly excluded from the automatic stay. 11 U.S.C. § 363(b)(3). Under Bankruptcy Code § 546(b), a debtor's lien avoidance powers are "subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against any entity that acquires rights in such property before the date of perfection . . . ." 11 U.S.C. § 546(b)(1)(A). Therefore, notwithstanding the automatic

stay imposed by Bankruptcy Code § 362, the Potential Lien Claimants may be entitled to assert and perfect Statutory Liens against the Debtors' property during the Cases and with respect to any prepetition claims against the Debtors.

68. Texas and Louisiana, states in which a majority of the Debtors' oil and gas leases are located, both have laws that protect the rights of the Potential Lien Claimants by granting them Statutory Liens to secure payment for their services.[20] Chapter 56 of the Texas Property Code grants a "mineral contractor" or "mineral subcontractor" a lien to secure payment for labor or services related to "mineral activities." TEX. PROP. CODE ANN. § 56.002. "Mineral contractor" and "mineral subcontractor" are broadly defined to include, *inter alia*, persons performing labor or furnishing or hauling material, machinery, or supplies used in mineral activities. *Id.* § 56.001(2) & (4). The statutory lien may be secured by filing the lien affidavit with the county clerk of the county in which the property is located, and the contractor may have six months from the date of accrual of indebtedness to file the lien affidavit. *Id.* § 56.021. However, for purposes of priority, the statutory lien may incept back to the date of first work, provided that the lien is otherwise timely filed. *Id.* § 53.124(a); *MEG Petroleum Corp. v. Halliburton Servs. (In re MEG Petroleum Corp.)*, 61 B.R. 14, 18 (Bankr. N.D. Tex. 1986). Further, Texas Property Code § 56.004 provides that "[t]he lien on material, machinery, supplies, or a specific improvement takes priority over an earlier encumbrance on the land or leasehold on

[20] The Debtors also have assets located in California, New Mexico, and Oklahoma, each of which have similar laws that protect the Potential Lien Claimants by granting them Statutory Liens to secure payment for their services. *See, e.g.*, CAL. CIV. CODE §§ 8000-8848 & 9000 – 9566 (West 2012) (lien for work and materials provided to an oil and gas well attaches to land, improvements, and proceeds); N.M. STAT. ANN. §§ 48-3-2 – 48-2-17 & 48-2A-1 – 48-2A-12 (2014) (lien for work on oil and gas wells extends leasehold and equipment, but not to underlying fee or royalty interest); OKLA STAT. tit. 42, §§ 141-189 (2011) (applies to work or materials furnished pursuant to an oil or gas lease, and lien extends to interest of owner or leaseholder of the mineral estate including the oil and gas of the mineral estate and proceeds).

which the material, machinery, supplies, or improvement is placed or located." TEX. PROP. CODE ANN. § 56.004.

69. The Louisiana Oil, Gas, Water Wells Lien Act ("Oil Well Lien Act") creates a statutory lien and privilege in favor of those who supply labor, services, or materials to the oil and gas industry. LA. REV. STAT. ANN. § 9:4861 *et seq.* (1995); *see also Lor, Inc. v. Martin Exploration Co.*, 489 So.2d 1326 (La. App. 1st Cir. 1986); *see generally* Patrick H. Martin & J. Lanier Yeates, *Louisiana And Texas Oil & Gas Law: An Overview Of The Differences*, 52 LA. L. REV. 769, 847- 49 (1992). This lien attaches to a broad class of property enumerated in the statute and includes, without limitation: (a) the oil and gas wells for or in connection with which services or materials are supplied; (b) leases where the same are located; (c) certain related equipment; and (d) all oil and gas produced from the wells and the proceeds thereof inuring to the working interests. LA. REV. STAT. ANN. § 9:4863 (1997). Further, under the Oil Well Lien Act, the statutory lien attaches to all property listed in the statute. *Guichard Drilling v. Alpine Energy Servs., Inc.*, 657 So.2d 1307, 1312 (La. 1995) (citations omitted). Similar to Texas law, under the Louisiana Oil Well Lien Act, the statutory lien relates back in time to the commencement of work, as the effective date of the lien. *In re Jack/Wade Drilling, Inc.*, 213 B.R. 493, 498 (Bankr. W.D. La. 1997) ("The lien attaches when the person performs labor or services").

70. Accordingly, in order to preserve the *status quo*, avoid the incurrence of unnecessary Statutory Liens, and eliminate the risk of pervasive litigation over the existence of Statutory Liens, lien priorities, and the amounts of claims of the various Interest Owners and the Potential Lien Claimants, the Debtors hereby request the authority to pay the Potential Lien

Obligations that accrued pre-petition and to continue to make post-petition payments in the ordinary course of business.

D. Bankruptcy Code § 503(b)(9) Claims

71. In addition to the arguments above, certain parties may have potential Bankruptcy Code § 503(b)(9) claims (the "§ 503(b)(9) Claims"). Bankruptcy Code § 503(b)(9) provides for the allowance of administrative expenses, including "the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). Accordingly, to the extent that the parties are deemed to have provided goods to the Debtors within 20 days prior to the Petition Date, in order to avoid the incurrence of unnecessary § 503(b)(9) Claims, and eliminate the risk of any litigation over the existence of such claims, the Debtors hereby request authority to pay those parties who have provided goods to the Debtors within 20 days of the Petition Date.

E. Additional Relief

72. To implement the requested relief, the Debtors request that all of their Banks be authorized and directed to receive, process, honor, and pay all checks presented for payment of, and to honor all funds transfer requests made by the Debtors related to, the claims that the Debtors seek authority in this Motion to pay, regardless of whether such checks were presented or funds transfer requests were submitted prior to or after the Petition Date; provided, however, (a) funds are available in the Debtors' accounts to cover such checks and funds transfers, and (b) the Banks are authorized to rely upon the Debtors' designation of any particular check or funds transfer as approved through the Order.

73. Bankruptcy courts in this district and in other districts have granted authority for a debtor's payment of obligations similar to the Obligations sought to be paid by the Debtors in this Motion. *See, e.g., In re ATP Oil & Gas Corp.*, No. 12-36187, Docket No. 191 (Bankr. S.D. Tex. Aug. 24, 2012); *In re Dune Energy, Inc., et al.*, No. 15-10336, Docket No. 36 (Bankr. W.D. Tex. Mar. 10, 2015); *In re Endeavour Operating Corp., et al.*, No. 14-12308, Docket No. 147 (Bankr. D. Del. Nov. 6, 2014); *In re Quicksilver Res. Inc., et al.*, No. 15-10585, Docket No. 212 (Bankr. D. Del. April 15, 2015); *In re Sabine Oil & Gas Corp., et al.*, No. 15-11835, Docket No. 178 (Bankr. S.D.N.Y. Aug. 17, 2015); *In re. Am. Eagle Energy Corp., et al.*, No. 15-15073, Docket No. 285 (Bankr. D. Colo. Aug. 6, 2015).

COMPLIANCE WITH BANKRUPTCY RULE 6003

74. The Debtors believe that the relief sought in this Motion is critical to enabling an effective transition to operating as chapter 11 debtors and preserving their going-concern value. Accordingly, the Debtors seek first day approval of this Motion. Courts which have reviewed similar requests for relief under Bankruptcy Rule 6003 have determined that interim relief may be appropriate. *See, e.g., In re First NLC Fin. Svcs., L.L.C.*, 382 B.R. 547 (S.D. Fl. 2008).

75. Moreover, the relief sought herein is essential to the Debtors' operations and is necessary to avoid irreparable harm. Without such relief, the Debtors' business operations may face disruption through attempted creditor actions and certain vendors ceasing to provide the Debtors with goods or services necessary for the continued operation of their businesses. If this occurs, regardless of whether the Court may eventually be able to provide sanctions against the offending claimants, the value of the bankruptcy estate may be significantly impacted.

76. In light of the foregoing, the Debtors respectfully submit that the relief requested is essential for the Debtors' operations, represents an exercise of the Debtors' sound business

judgment, provides no creditor with more than such creditor will otherwise receive in the Cases, and is in the best interests of the Debtors' estates and creditors.

WAIVER OF BANKRUPTCY RULE 6004(a) AND (h)

77. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a) and (b) the fourteen-day stay under Bankruptcy Rule 6004(h), to the extent that either rule is applicable.

RESERVATION OF RIGHTS

78. The Debtors expressly reserve, and do not waive, any and all rights with respect to the Obligations, including, but not limited to: (a) the right to dispute the amount, validity, or priority of any and all liens, claims, or causes of action asserted against their respective estates on any basis; and (b) the right to assert that any post-petition actions taken by any creditor, including the holders of Mineral and Other Interests and the Potential Lien Claimants, are in violation of any laws or provisions of the Bankruptcy Code, specifically including Bankruptcy Code § 362. In addition, nothing in this Motion or the relief requested herein should be interpreted as the assumption or rejection of any executory contract or unexpired lease.

NOTICE

79. 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) the Securities and Exchange Commission; (l) the Internal Revenue Service; and (m) all other applicable government agencies to the extent required by the Bankruptcy Rules and the Bankruptcy Local Rules.

PRAYER

The Debtors respectfully request that the Court enter an Interim Order, and subsequently a Final Order: (a) authorizing the Debtors, subject to any order authorizing the use of the Debtors' cash collateral, to (i) pay in the ordinary course of business all undisputed, liquidated, pre-petition amounts owing with respect to the Obligations and (ii) pay post-petition Obligations in the ordinary course of business; (b) authorizing and directing the Banks to receive, process, honor, and pay all checks presented for payment of, and to honor all funds transfer requests made by the Debtors related to, the claims that the Debtors seek authority in this Motion to pay; and (c) granting such additional and further relief to which the Debtors may be justly entitled.

Dated: October 27, 2015

Respectfully submitted,

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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