

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

In re:	§	
	§	Case No.: 15-35615
RAAM GLOBAL ENERGY COMPANY, <i>et al.</i> , <sup>1</sup>	§	
	§	Chapter 11
	§	
Debtors.	§	Jointly Administered
	§	
	§	Re: Dkt. No. 160 & 172

**RESPONSE OF OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS TO OBJECTION OF AD HOC GROUP OF  
SENIOR SECURED NOTEHOLDERS TO STIPULATION**

**TO THE HONORABLE MARVIN ISGUR:**

The Official Committee of Unsecured Creditors (the “Committee”) of RAAM Global Energy Company, *et al.* (collectively, the “Debtors”), by and through its undersigned proposed counsel, hereby files this response (the “Response”) to the *Objection of Ad Hoc Group of Senior Secured Noteholders to Stipulation* [Doc. No. 172] (the “Objection”).<sup>2</sup> In support of this Response, the Committee respectfully states as follows:

**BACKGROUND**

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

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

<sup>2</sup> Capitalized terms that are not defined herein shall have the meanings given to them in the Bid Procedures Motion.

2. On October 26, 2015, the Debtors filed the *Emergency Motion for Approval of Interim and Final Use of Cash Collateral and Granting Adequate Protection* [Docket No. 11] (the “Cash Collateral Motion”). On October 28, the Court entered an interim order approving the Cash Collateral Motion. On November 18, 2015, the Court entered the *Second Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 507, Bankruptcy Rules 2002, 4001 and 9014 and Local Bankruptcy Rule 4001-2 (I) Authorizing Debtors’ Limited Use of Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Scheduling a Final Hearing* [Docket No. 131] (the “Second Interim Cash Collateral Order”).

3. On November 6, 2015, the Debtors filed the *Motion to Authorize and Approve (a) Stalking Horse Purchase Agreement, (b) Sale of Substantially All Assets Free and Clear of Claims, Liens, Encumbrances and Other Interests, (c) Assumption and Assignment of Executory Contracts and Unexpired Leases, (d) Bidding Procedures, (e) Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases, and (f) Related Relief* [Doc. No. 90] (the “Bid Procedures Motion”).<sup>3</sup> The Bid Procedures Motion seeks approval, in the first instance, of the Stalking Horse Purchase Agreement and corresponding bid procedures relating to a sale of substantially all of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code.

4. On November 10, 2015, the Office of the United States Trustee for the Southern District of Texas, Houston Division appointed an official committee to represent the interests of unsecured creditors of the Debtors pursuant to section 1102 of the Bankruptcy Code. The

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<sup>3</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bid Procedures Motion.

members of the Committee are: (a) Montco Oilfield Contractors, LLC; (b) Island Operating Company, Inc.; and (c) Quality Energy Services, Inc.

5. Immediately following the Committee's appointment and selection of its counsel and financial advisor, the Committee engaged in numerous discussions with both Debtors' counsel and counsel to the First Lien Lenders in an effort to informally express the Committee's concerns regarding both the Cash Collateral Motion and the Bid Procedures Motion. Given the fact that the final hearing on the Cash Collateral Motion and the hearing on the Bid Procedures Motion were scheduled only three weeks following the Committee's appointment, the Committee engaged on a dual track to both engaging with the Debtors and the First Lien Lenders toward a consensual and holistic resolution to these cases (including the relief requested in the Cash Collateral Motion and the Bid Procedures Motion), while also preparing for a potential contested hearing on both motions. With regard to the latter approach, on or around November 20, 2015, the Committee served Requests for Document Production and Deposition Notices pursuant to Federal Rule of Bankruptcy Procedure 30(b)(6) to (i) the Debtors, (ii) Blackhill Partners LLC, the Debtors' proposed chief restructuring officer, (iii) the First Lien Lenders, (iv) Parkman & Whaling LLC, the Debtors' proposed financial advisor and investment banker, and (v) Moelis & Company LLC, the Debtors' former investment banker. Depositions were scheduled for November 30 and December 1, 2015 in advance of the hearing scheduled for December 2. In addition, on November 24, 2015, the Committee filed the *Objection of the Official Committee of Unsecured Creditors to the Emergency Motion for Approval of Interim and Final Use of Cash Collateral and Granting Adequate Protection* [D.I. 152]. The Committee also had an objection to the Bid Procedures Motion prepared and finalized, but based upon

subsequent developments, was able to avoid filing that objection and ultimately canceled the scheduled depositions.

6. Simultaneously with these discovery efforts, the Committee engaged in extensive negotiations with the Debtors and the First Lien Lenders in an effort to reach resolution on the pending motions. These discussions continued into the Thanksgiving holiday and culminated in the filing of the Stipulation, by and among the Debtors, Highbridge Principal Strategies, LLC on behalf of the First Lien Lenders, the Committee, and Ace Insurance Company and its affiliates (“Ace”), filed on November 27, 2015 [Docket No. 160] (the “Stipulation”) as a proposed exhibit to the order approving the Bid Procedures Motion. The principal terms of the Stipulation are as follows:<sup>4</sup>

- Payment to Ace of \$1,150,000 of the Sale Proceeds plus certain additional amounts in full and final satisfaction of any and all claims of ACE. Ace agrees to satisfy any unpaid claims against the Debtors on account of P&A liabilities secured by ACE bonds. Ace shall also continue to apply the proceeds of the Escrow Account in the ordinary course of business and pay past and future P&A liabilities on behalf of the Debtors;
- Holders of General Unsecured Trade Claims shall receive a *pro rata* distribution of \$800,000 of the Sale Proceeds plus certain additional amounts in full and final satisfaction of such claims; *provided* that in the event the Debtors or the First Lien Lenders satisfy any such claims whether through any motion filed by the Debtors or through Cure Payments paid pursuant to the Sale, then the amount provided to Holders of General Unsecured Trade Claims shall be reduced by 57.5% of the amount of such Satisfied Claims;
- The Plan shall be amended to provide (i) that the Liquidating Trustee shall be appointed by the Committee, in consultation with the Debtors, Ace and First Lien Lenders, and (ii) any such other amendments as may be necessary or reasonable for the Liquidating Trust, to be negotiated in good faith by the Parties;

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<sup>4</sup> The following summary of the Stipulation is provided for the convenience of the parties and is not intended to be a comprehensive summary. To the extent there is a conflict between the summary contained herein and the Stipulation, the terms of the Stipulation shall govern. Capitalized terms not otherwise defined in this summary shall have the meanings ascribed to them in the Stipulation.

- The Plan shall provide that all other proceeds of the Liquidating Trust Assets shall be distributed (a) first (1) 50% to satisfy any Claims of ACE and (2) 50% to Holders of General Unsecured Trade Claims, until the Claims set forth in (1) or (2) have been satisfied in full, (b) second, to satisfy any unpaid Claims of the First Lien Credit Agreement Claims up to the full amount of such Claims, and (c) third, to Holders of Senior Secured Note Claims on a pro rated basis;
- In the event the Debtors determine that another Sale transaction is higher or otherwise better than the Purchase Agreement, any Sale Proceeds in excess of the amount provided in the Purchase Agreement shall be applied after the payments contemplated under the Stipulation are paid, first to satisfy all First Lien Credit Agreement Claims up to the full amount of such Claims and, second, to Holders of Senior Secured Note Claims on a pro rata basis; and
- The Debtors, First Lien Lenders, the Committee and Ace shall (i) support, and shall not directly or indirectly, or encourage any other entity to directly or indirectly, object to, delay, impede, or take any other action or any inaction to interfere with the acceptance, implementation, or consummation of the Plan or approval by the Court of the Plan, the Cash Collateral Order, the Sale, and the Ace Motion or any related transactions, documents, or settlements, (ii) withdraw any and all and not engage in any further, discovery requests, litigation, appeals, or objections related to the foregoing; and (iii) not agree to, consent to, or provide any support to any other Plan or Sale that is inconsistent with the terms set forth in the Stipulation.

7. On December 1, 2015, the Ad Hoc Group of Senior Secured Noteholders (the “Second Lien Lenders”) filed the Objection.

### **RESPONSE**

8. For the reasons set forth herein, the Committee believes that the Court should overrule the Objection.

9. *First*, the Second Lien Lenders claim that the Stipulation is inappropriate because it “improperly and arbitrarily subordinates the Noteholder Deficiency Claims to the General Unsecured Trade Claims in clear violation of the absolute priority rule set forth in Section 1129(b)(2) of the Bankruptcy Code.” Objection, at ¶ 5. The Second Lien Lenders are incorrect.

The proposed credit bid of the Stalking Horse Bidder is \$58,800,000, with an additional cash portion equal to the aggregate amounts set forth in the Stipulation. The total amount of the First Lien Lenders' claim is \$63,817,859.57, plus fees, costs, and additional obligations owing under the First Lien Loan Documents. Thus, even after the payments made under the Stipulation, the Second Lien Lenders are still out of the money and not entitled to any recovery on account of their claims. Any payments made under the Stipulation only cut into the First Lien Lenders' recovery.

10. Recently, in *In re ICL Holding Co.*, the Third Circuit upheld a very similar arrangement to the one proposed here. 802 F.3d 547 (3d Cir. 2015). In that case, the creditors' committee struck a deal with the secured lender group (also acting as purchaser under a section 363 sale) in exchange for the Committee's promise to drop its objections and support the sale. *Id.* at 551. There, the secured lenders agreed to deposit \$3.5 million in trust for the benefit of the general unsecured creditors, and to fund certain professional fees and wind-down expenses in connection with a plan of liquidation. In affirming the lower court, the Third Circuit upheld the arrangement by concluding that "the settlement sums paid by the purchaser were not proceeds from its liens, did not at any time belong to [debtor's] estate, and will not become part of its estate even as a pass-through." *Id.* at 556. Accordingly, the absolute priority rule—which provides that "junior creditors do not receive distributions under plans of reorganization until more senior creditors, unless they consent, are paid or allocated value in full"—is not compromised. *Id.* at 552 n.4. Here, the First Lien Lenders did not take any amounts that would otherwise be earmarked for the Second Lien Lenders; rather, they simply, and appropriately, elected to take less, and avoid further expense, delay and uncertainty. *See, e.g., In re 56 Walker LLC*, Case No. 13-11571, 2014 WL 2927809 (Bankr. S.D.N.Y. June 27, 2014) ("Assuming that [senior lender] is entitled to all of the proceeds of the Property sale, there is no principle of bankruptcy law that precludes it from agreeing to waive interest or fees or even

principal to allow a distribution to other creditors, which distribution is itself in strict conformity with the absolute priority rule . . . . [because its] secured claim—without its voluntary reduction made solely for purposes of the Proposed Order—is greater than the available sale proceeds.”).

11. *Second*, the Objection states that the Stipulation “limits the Committee’s ability to pursue potentially valuable claims against the directors, officers, and former management of the Debtors,” and moreover that “[t]he Committee, by agreeing to the Stipulation and the proposed amendments to the Plan, has given up the opportunity to investigate and pursue such claims to the detriment of all unsecured creditors.” Objection at ¶ 7. These statements are flatly wrong. The Committee has not given up any ability to pursue these “insider claims,” nor does the Stipulation in any way affect the Liquidating Trust’s ability to pursue such claims. The Committee is still reviewing and providing comments to the Plan (which was only filed last week); however, the Committee has no intention of, nor any reason to, waive such claims and will pursue such claims consistent with its fiduciary duty to its creditor constituencies.

12. In fact, the Stipulation expressly preserves the ability of the Second Lien Lenders to benefit from proceeds obtained outside of the Sale. Specifically, Paragraph 7 of the Stipulation provides that all other proceeds of the Liquidating Trust Assets shall be distributed (a) first (1) 50% to satisfy any Claims of ACE and (2) 50% to Holders of General Unsecured Trade Claims, until the Claims set forth in (1) or (2) have been satisfied in full, (b) second to satisfy any unpaid Claims of the First Lien Credit Agreement Claims up to the full amount of such Claims, and (c) third to Holders of Senior Secured Note Claims on a pro rata basis. Thus, in the event that substantial recoveries are obtained in all other proceeds of the Liquidating Trust Assets, the Second Lien Lenders may obtain a recovery on their claims. Nor does the fact that both Ace and the holders of General Unsecured Trade Claims are to be paid first affect this conclusion. Ace’s participation in the Stipulation was necessary because Ace potentially holds

significant administrative claims that would be payable before any claims of the Second Lien Lenders and would otherwise render any plan of liquidation unfeasible. Likewise, the mere fact that the General Unsecured Trade Claims are included in this paragraph should not affect the Second Lien Lenders. Based upon the Committee's analysis, after payment of the \$800,000 to holders of General Unsecured Trade Creditors (which represents an approximate 57.5% recovery on account of their claims), payment in full of the General Unsecured Trade Creditors would require less than an additional \$600,000. Thus, under the formula provided in Paragraph 7 of the Stipulation, only \$1,200,000 in proceeds of Liquidating Trust Assets would be required to pay holders of General Unsecured Trade Claims in full, and yet the Committee believes that Ace's claim—which may have administrative priority—would require a substantial amount of additional proceeds to be satisfied in full. And again, as stated before, these amounts come before payment of the First Lien Lenders' claims in full. Although the Committee remains optimistic, the likelihood of proceeds of Liquidating Trust Assets reaching the Second Lien Lenders is low.

13. *Third*, the Second Lien Lenders are not in the same position as other general unsecured creditors. They hold an alleged junior lien on substantially all of the Debtors' property, and stand to benefit from the marketing and auction process proposed by the Debtors under the Bid Procedures Motion. The Committee likewise supports this process to determine whether any third party bidders are able to outbid the Stalking Horse Bid. Unless and until the Second Lien Lenders waive their security interest, they should not be treated the same as other unsecured creditors without the benefit of their junior liens. Nor is the Committee in a position to forego the settlements provided in the Stipulation, and continue in extensive and costly litigation which likely will lead to the same end result., all the while depleting the Debtors' estates with increased professional fees.



14. *Finally*, the Objection is the Second Lien Lender's attempt to rewrite the bargained-for agreements set forth in the Intercreditor Agreement, a copy of which is attached hereto as **Exhibit A**. Among other things, the Second Lien Lenders are prohibited from filing any motions or taking any positions at hearings regarding the First Lien Obligations, participating in a DIP financing, obtaining relief from the automatic stay, contesting the First Lien Lenders' adequate protection, opposing any sale that is supported by the First Lien Lenders, and supporting or voting in favor of a plan of reorganization unless accepted by the First Lien Lenders. Of course, all of these rights that the Second Lien Lenders bargained away in the Intercreditor Agreement can be defeated by proposing an alternative transaction that would pay off all First Lien Obligations. Indeed, the Committee (through its advisors) has engaged with counsel to the Second Lien Lenders to provide the Committee's view on the necessary financial commitments to fund a plan that would allow the Second Lien Lenders to succeed to discharge its covenants under the Intercreditor Agreement. To date, the Second Lien Lenders have shown no willingness to fund such a plan. Although the Committee remains sympathetic to the Second Lien Lenders' holding of a \$260 million claim that may end up being worthless, it is neither the role of the Committee nor this Court to rewrite a contract that bound the Second Lien Lenders to the subordination of their claims.

#### **RESERVATION OF RIGHTS**

15. The Committee reserves the right to amend or supplement this Response prior to the conclusion of the hearing currently scheduled for December 2, 2015, and further reserves the right to assert additional arguments at such hearing.

*[remainder of page intentionally left blank]*

**CONCLUSION**

**WHEREFORE**, the Committee respectfully requests that the Court (i) overrule the Objection, (ii) approve the Bid Procedures Motion and the Stipulation, and (iii) grant other and further relief as is just and proper.

Dated: December 1, 2015  
Houston, Texas

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