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 TO ESTABLISH NOTIFICATION PROCEDURES AND APPROVE RESTRICTIONS ON CERTAIN TRANSFERS OF INTERESTS IN THE DEBTORS' ESTATES

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 to Establish Notification Procedures and Approve Restrictions on Certain Transfers of Interests in the Debtors' Estates* (the "Motion") and respectfully submit the following:

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 (a "Committee") 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. Any delay in granting the relief requested could hinder the Debtors' operations and

[1] The Debtors are RAAM Global Energy Company [2973] ("RAAM"), Century Exploration New Orleans, LLC [4948] ("Century New Orleans"), Century Exploration Houston, LLC [9624] ("Century Houston"), and Century Exploration Resources, LLC [7252] ("Century Resources").

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.

STATEMENT OF FACTS

A. Business Overview

7. 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 New Orleans, Century Houston, and Century Resources entered into a Fifth Amended and Restated Credit Agreement with Wilmington Trust,

[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.

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 New Orleans, Century Houston, and Century Resources. 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 New Orleans and the Bureau of Ocean Energy Management ("BOEM") entered into various leasing agreements for specific exploration and production activity. Century New Orleans is required to obtain one or more surety bonds in order to secure Century New Orleans' 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 New Orleans 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 New Orleans 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.

F. The Debtors' Tax Attributes

33. The Debtors have incurred and expect to continue to incur significant net operating losses ("NOLs"). The Debtors estimate that as of September 30, 2015, the Debtors have NOLs of $112 million and $123 million for federal and state tax reporting purposes, respectively. In addition, as of September 30, 2015, the Debtors have generated $4.6 million in minimum tax credits (the "AMT Credits" and, together with the NOLs, the "Tax Attributes") for federal tax reporting purposes.[3] The Tax Attributes are extremely valuable assets of the Debtors' estates because the Internal Revenue Code of 1986, as amended (the "IRC") allows a corporation to carry forward certain tax attributes to offset taxable income and tax liability, thereby enhancing the corporation's liquidity in the future. Specifically, IRC § 172 allows corporations to carry forward NOLs to offset future taxable income for up to twenty (20) taxable years, thereby reducing future aggregate tax obligations.[4] In addition, IRC § 53 allows corporations to carry forward AMT Credits indefinitely, thereby reducing future aggregate tax obligations.[5] The Debtors' federal NOLs begin expiring in 2029, and the majority of the Debtors' state NOLs begin expiring after 2023.

34. The Debtors' Tax Attributes may be worth as much as $52 million in potential future tax savings.[6] These potential future tax savings could provide a significant benefit to the Debtors' estates and should remain protected while the Debtors operate in chapter 11. Indeed, as

[3] Century New Orleans, Century Houston, and Century Resources are treated as disregarded entities of RAAM for U.S. federal income tax purposes. As such, the Tax Attributes of Century New Orleans, Century Houston, and Century Resources are treated as the Tax Attributes of RAAM for federal income tax purposes.

[4] *See* 26 U.S.C. § 172. NOLs also may be utilized to offset the Debtors' taxable income generated by transactions consummated during the Cases.

[5] *See* S. Rep. No. 313, 99th Cong., 2d Sess. 521, 536 (1986).

[6] This projection is based upon (a) tax savings generated by the NOLs based on a U.S. federal corporate income tax rate of 35% and a blended state corporate income tax rate of 7% and (b) a dollar-for-dollar reduction in U.S. federal income taxes for the AMT Credit.

one bankruptcy court has recognized, "what is certain is that the NOL has a potential value, as yet undetermined, which will be a benefit to creditors and will assist [the debtors] in their reorganization process. This asset is entitled to protection while [the debtors] move forward toward their reorganization." *In re Phar-Mor, Inc.*, 152 B.R. 924, 927 (Bankr. N.D. Ohio 1993).

35. The ability of a corporation to use its Tax Attributes to reduce future taxes is subject to certain statutory limitations. As a general matter, if a corporation undergoes an Ownership Change (as defined below), IRC §§ 382 and 383 limit such corporation's ability to use its Tax Attributes to offset future income.[7] Under IRC § 382, a change of ownership occurs where the percentage of a corporation's equity held by one or more 5% shareholders increases by more than fifty (50) percentage points over the lowest percentage of stock owned by such shareholders at any time during a three-year rolling testing period (an "Ownership Change").[8] Subject to certain adjustments, this limitation is generally equal to the product of (a) the equity value of the corporation immediately before the Ownership Change multiplied by (b) the long-term tax-exempt rate used to determine this limitation.[9]

36. If RAAM were to undergo an Ownership Change prior to consummation of a chapter 11 plan, such an Ownership Change would effectively eliminate the ability of the

[7] IRC § 383(e) provides that the AMT Credit is subject to the Ownership Change limitations described under IRC § 382.

[8] For purposes of IRC § 382, a sale of shares owned by a 5% shareholder is treated as creating a new 5% shareholder, even if none of the buyers of shares individually acquires a 5% block of shares. *See* Treas. Reg. § 1.382-2T(j)(3)(i).

[9] The long-term tax-exempt rate is the highest long-term tax-exempt rate prescribed by the U.S. Treasury for any month in the three-calendar month period ending with the calendar month in which the Ownership Change occurs. The long-term tax-exempt rate applicable to Ownership Changes occurring during October 2015 is 2.82%. *See* Rev. Rul. 2015-21, 2015-40 IRB.

Debtors to use the Tax Attributes, thereby resulting in a significant loss of value.[10] By contrast, the limitation imposed by IRC § 382 in the context of an Ownership Change that occurs pursuant to a confirmed chapter 11 plan is significantly more relaxed.[11]

37. It is likely RAAM will undergo an Ownership Change for purposes of IRC § 382 upon pursuant to any chapter 11 plan of reorganization. In such event, RAAM will seek to avail itself of the special relief afforded by IRC § 382 for an Ownership Change under a confirmed chapter 11 plan. However, if the relief requested herein is not granted, there is a risk that, as a result of pre-consummation trading and acquisitions of Stock (as defined below) in RAAM, this special relief would not be available to RAAM and the use of the Debtors' Tax Attributes may be permanently impaired. Simply put, if pre-plan trading in Stock (as defined below) results in a 50% change in ownership, IRC § 382's more stringent restrictions on prospective NOL treatment will apply. Accordingly, consistent with the automatic stay in the Cases, the Debtors seek certain restrictions on trading in Stock (as defined below) to ensure that: (a) a 50% change of ownership does not occur prior to the effective date of the chapter 11 plan in the Cases; and (b) with respect to a change of ownership occurring under a chapter 11 plan, the Debtors have the opportunity to avail themselves of the more lenient standard provided by IRC § 382 with respect to chapter 11 plan Ownership Changes.

RELIEF REQUESTED

38. By this Motion, the Debtors seek to enforce the automatic stay by implementing court-ordered procedures intended to protect the Debtors' estates against the possible loss of valuable tax benefits that could flow from inadvertent stay violations. Pursuant to Bankruptcy

[10] RAAM submits that it has not experienced an Ownership Change within the current three-year testing period.

[11] *See* 26 U.S.C. § 382(l)(6).

Code §§ 105(a), 362, and 541, the Debtors request entry of an interim order (the "Interim Order"), and subsequently a final order (the "Final Order") authorizing the Debtors to: (a) establish and implement restrictions and notification requirements regarding the Tax Ownership[12] and certain transfers of Stock (as defined below); and (b) notify holders of Stock of the restrictions, notification requirements, and procedures set forth herein.

39. The Debtors seek approval to implement the following Stock trading procedures and restrictions (the "Notification Procedures"):

> (a) Restrictions and Procedures for Trading in Stock. Any person or entity who after the entry of the Interim Order,
>
> > (i) is not a Substantial Equity Holder[13] and wishes to purchase or otherwise acquire Tax Ownership of an amount of Stock that would cause the person or entity to become a Substantial Equity Holder;
> >
> > (ii) is a Substantial Equity Holder and wishes to purchase or otherwise acquire Tax Ownership of any additional Stock; or
> >
> > (iii) is a Substantial Equity Holder and wishes to sell or otherwise dispose of Tax Ownership of any Stock,
>
> must, at least fifteen (15) calendar days prior to the consummation of any such transaction (the "Waiting Period"), file with the Court and serve on the Debtors, their counsel, and counsel for the Committee, if one has been appointed in the Cases, a notice in the form attached hereto as **Exhibit A-1** or **Exhibit A-2** (the "Proposed Stock Transaction Notice"), as applicable.[14] The Debtors shall follow

[12] "Tax Ownership" means beneficial ownership of Stock as determined in accordance with applicable rules under IRC § 382, and thus, includes, but is not limited to, direct and indirect ownership (*e.g.*, a holding company would be considered to beneficially own all shares owned or acquired by its subsidiaries and entities (as defined in Treas. Reg. § 1.382-3(a)) would be considered to beneficially own a ratable share of all interests owned by a pass-through entity), ownership by members of such person's family and persons acting in concert, and in certain cases, the creation or issuance of an Option (in any form). Any variation of the term "ownership" (*e.g.*, own) shall have the same meaning.

[13] "Substantial Equity Holder" means any person who is or becomes a Tax Owner of at least 2,764 shares, which represents approximately 4.50% of the issued and outstanding Stock as of the Petition Date.

[14] **Exhibit A-1** is the proposed Notice of Intent to Purchase, Acquire, or Otherwise Obtain Tax Ownership of Stock. **Exhibit A-2** is the proposed Notice of Intent to Sell, Exchange, or Otherwise Dispose of Tax Ownership of Stock.

the procedures set forth in subsection (b) below with respect to any Proposed Stock Transaction Notice received.

(b) Procedures Upon Receipt of a Proposed Stock Transaction Notice. If the Debtors file written approval of the proposed transaction with the Court after receipt of a Proposed Stock Transaction Notice, then the proposed transaction may proceed. If the Debtors do not file written approval of the proposed transaction with the Court within fifteen (15) calendar days after receipt of a Proposed Stock Transaction Notice, then the transaction may not be consummated unless approved by a final and non-appealable order of the Court; *provided, however*, the Debtors may subsequently approve the proposed transaction in writing, in which case a Court order is not necessary. Further transactions within the scope of this subsection (b) shall be the subject of additional notices as set forth herein with additional Waiting Periods.

(c) Sanctions for Noncompliance. Acquisitions and dispositions of Tax Ownership of Stock in violation of the restrictions and Notification Procedures set forth above shall be void *ab initio*, and the sanction for violating the Notification Procedures shall be reversal of the noncompliant transaction or such other (or additional) measures as the Court may consider appropriate.

(d) Discretionary Waiver by Debtors. The Debtors may waive, in writing, any and all restrictions, sanctions, and procedures required pursuant to the Notification Procedures; *provided, however*, the Debtors shall file any such waiver with the Court.

(e) Notice of the Interim Order. Within five (5) business days after the entry of an interim order approving the Notification Procedures (the "Interim Order"), a proposed form of which is attached hereto as **Exhibit B**, the Debtors shall: (i) submit a notice of the entry of the Interim Order, substantially in the form attached hereto as **Exhibit C**, for publication on the Bloomberg newswire service and the Depository Trust Company Legal Notice System (also known as LENS);[15] (ii) post such notice, together with a copy of the Interim Order, on the website maintained by Debtors' claims and notice agent (www.bmcgroup.com/RAAMGlobal); and (iii) serve such notice, together with a copy of the Interim Order, on (A) the Office of the United States Trustee ("UST"), (B) the United States Securities and Exchange Commission ("SEC"), (C) the Office of the United States Attorney General for the Southern District of Texas, (D) the Internal Revenue Service ("IRS"), (E) the Master Service List for the Cases, and (F) any identified Substantial Equity Holders.

(f) Definitions. For purposes of this Motion, the following terms have the following meanings:

[15] The proposed form of publication notice is attached hereto as **Exhibit D**.

> (1) Option. "Option" shall mean any contingent purchase, warrant, convertible debt, put, Stock subject to a risk of forfeiture, contract to acquire Stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.
>
> (2) Stock. "Stock" shall mean RAAM common stock. For the avoidance of doubt, by operation of the definition of "Tax Ownership," an owner of an Option to acquire Stock may be treated as the owner of such Stock.

40. Courts have uniformly held that a Debtor's NOLs constitute property of the estate and are protected by Bankruptcy Code § 362. The Second Circuit articulated this rule in its seminal case, *In re Prudential Lines, Inc.*, 107 B.R. 832 (Bankr. S.D.N.Y. 1989), *aff'd*, 119 B.R. 430 (S.D.N.Y. 1990), *aff'd*, 928 F.2d 565 (2d Cir. 1991), *cert. denied* 502 U.S. 821 (1991). In *In re Prudential Lines*, the court upheld the application of the automatic stay and enjoined the debtors' parent corporation from taking a worthless stock deduction with respect to its equity in the debtor—a wholly-owned subsidiary—on the grounds that allowing the parent to take such a deduction would adversely affect the debtor-subsidiary's NOLs. In issuing the injunction, the court held that a "debtors' potential ability to utilize NOLs is property of [its] estate" and that "the taking of a worthless stock deduction . . . [is] an exercise of control" over the debtors' NOLs that was properly subject to the automatic stay. *In re Prudential Lines*, 107 B.R. 832, 839-42; *see also In re Southeast Banking Corp.*, No. 91-14561-BKC-PGH, 1994 WL 1893514, at *2 (Bankr. S.D. Fla., July 21, 1994) (debtors' interest in its NOLs "constitutes property of the estate within the scope of [Bankruptcy Code § 541(a)(1)] and is entitled to the protection of the automatic stay"); *In re Phar-Mor. Inc.*, 152 B.R. at 926 ("the sale of stock is prohibited by [Bankruptcy Code] § 362(a)(3) as an exercise of control over the NOL, which is property of the estate"); *In re Grossman's, Inc.*, No. 970-695 (PJW), 1997 WL 33446314, at *1 (Bankr. D.

Del. Oct. 9, 1997) (finding the debtors' NOL carryforward is property of the debtors' estates and is protected by the automatic stay).

41. Bankruptcy Code § 362(a) operates as a stay of, among other things, "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Accordingly, "where a non-debtor's action with respect to an interest that is intertwined with that of a bankruptcy debtor would have the legal effect of diminishing or eliminating property of the bankrupt estate, such action is barred by the automatic stay." *In re Prudential Lines*, 928 F.2d 565, 574 (2d Cir. 1991) (quoting *48th St. Steakhouse v. Rockefeller Group, Inc. (In re 48th St. Steakhouse, Inc.)*, 835 F.2d 427, 431 (2d Cir. 1987)). The Second Circuit therefore held that "despite the fact that the [parent corporation's] action is not directed specifically at [the debtor-subsidiary], it is barred by the automatic stay as an attempt to exercise control over property of the estate." *Id.* The Second Circuit went on to uphold the permanent injunction set forth by the bankruptcy court as an exercise of the court's equitable powers under Bankruptcy Code § 105, and supported the bankruptcy court's finding that eliminating the debtor's ability to apply its NOL carryforwards to offset income on future tax returns would impede its reorganization. *Id.*

42. Similarly, in *In re Phar-Mor, Inc.*, the chapter 11 debtors moved to prohibit any transfer of the debtors' stock that could have an adverse effect on the debtors' ability to utilize NOL carryforwards. The court held that the NOL qualified as property of the estate and issued an injunction enforcing the automatic stay. *In re Phar-Mor. Inc.*, 152 B.R. at 927. Significantly, the court granted the relief requested even though the stockholders did not state any intent to sell their stock and even though the debtors did not show that a sale was pending that would trigger the prescribed change in ownership under IRC § 382. *Id.* Despite the uncertainty of the

applicability of IRC § 382 at that time, the court observed that "[w]hat is certain is that the NOL has *potential value, as yet undetermined,* which will be of benefit to creditors and will assist the [d]ebtors in their reorganization process. This asset is entitled to protection while the [d]ebtors move forward toward reorganization." *Id*. (emphasis added). The court also concluded that because the debtors sought to enforce the stay, they did not have to meet the more stringent requirements for the granting of a preliminary injunction:

> The requirements for enforcing an automatic stay under 11 U.S.C. § 362(a)(3) do not involve such factors as lack of an adequate remedy at law, or irreparable injury, or loss and a likelihood of success on the merits. The key elements for a stay . . . are the existence of property of the estate and the enjoining of all efforts by others to obtain possession or control of property of the estate.

Id. at 926 (quoting *In re Golden Distribs., Inc*., 122 B.R. 15, 19 (Bankr. S.D.N.Y. 1990)).

43. In short, numerous courts have held that the automatic stay enjoins actions under Bankruptcy Code § 362(a)(3) that would adversely affect a debtor's NOL carryforwards. In the Fifth Circuit, actions taken in violation of the stay are voidable. *In re Jones*, 63 F.3d 411, 412 (5th Cir. 1995), *cert. denied* (1996); *Picco v. Global Marine Drilling Co.*, 900 F.2d 846, 850 (5th Cir. 1990).

44. Various courts in this district and other districts have commonly granted relief that is similar to the relief requested herein. *See e.g., In re Delta Petroleum*, No. 11-14006 (KJC), Docket Nos. 187 and 383 (Bankr. D. Del. January 11, 2012 and March 7, 2012) (approving notification procedures and restrictions on certain transfer of equity interests in the debtors); *In re Gadzooks, Inc.*, No. 04-31486 (HDH), Docket No. 660 (Bankr. N.D. Tex. June 21, 2004) (approving notification procedures and sanctions); *In re Mirant Corp., et al.*, No. 03-46590 (DML), Docket No. 830 (Bankr. N.D. Tex. Sept. 17, 2003) (approving notification proceedings and sanctions); *In re Aventine Renewable Energy Holdings, Inc., et al.*, Case No. 09-

11214 (KG), Docket No. 127 (Bankr. D. Del. May 4, 2009) (approving notification procedures and restrictions on certain transfers of equity interests in the debtors); *In re Washington Mutual, Inc.*, No. 08-12229 (MFW), Docket No. 315 (Bankr. D. Del. Nov. 19, 2008) (same); *In re Dura Auto. Sys., Inc.*, No. 06-11202 (KJC), Docket No. 276 (Bankr. D. Del. Nov. 21, 2006) (same); *In re Owens Corning*, No. 00-03837 (JKF), Docket No. 14,921 (Bankr. D. Del. Apr. 15, 2005) (same).

The Proposed Procedures are Necessary and in the Best Interests of the Debtors and Their Estates

45. The proposed Notification Procedures are necessary to protect the value of the Tax Attributes, which are valuable assets of the Debtors' estates, while providing appropriate latitude for trading in Stock below specified levels. The Debtors' ability to meet the requirements of the applicable tax laws to protect their Tax Attributes may be seriously jeopardized unless procedures are established to ensure that certain trading in Stock is either precluded or closely monitored and made subject to Court approval.

46. The requested relief has been narrowly tailored to permit certain Stock trading to continue, subject only to Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws. The Debtors are seeking to obtain notice of certain transactions in order to have a meaningful opportunity to seek further relief from the Court, if necessary. The relief sought herein is critical because once a transfer acts to limit the utilization of the Tax Attributes, the ability to reverse such transaction and maximize the benefit of the Tax Attributes may be permanently lost.

47. It is in the best interests of the Debtors and their estates to restrict trading that could result in an Ownership Change prior to plan confirmation. Such a pre-confirmation

Ownership Change would effectively eliminate the Tax Attributes and prevent the Debtors from availing themselves of the favorable valuation rule of IRC § 382(l)(6), which requires that an Ownership Change must occur pursuant to a confirmed plan of reorganization. Specifically, IRC § 382(l)(6) provides that if a corporation experiences an Ownership Change pursuant to a chapter 11 plan of reorganization and IRC § 382(l)(5) does not apply, then the appropriate value of the debtor for the purpose of calculating the limitation under IRC § 382 shall reflect the increase in value of the debtor resulting from any surrender or cancellation of creditors' claims in the plan. Thus, assuming the value of the Debtors increases as a result of a reorganization, then IRC § 382(l)(6) will provide for a higher annual limitation than would otherwise result under IRC § 382. This may allow the Debtors to use an even greater portion of their Tax Attributes to offset post-petition future income. Therefore, it is in the best interests of the Debtors and their estates to grant the relief requested herein in order to prevent an Ownership Change prior to the consummation of a plan of reorganization.

Interim Order and Notice of Final Hearing

48. The Debtors seek the relief requested in this Motion in the form of the Interim Order attached hereto as **Exhibit B**. Within five (5) business days after entry of the Interim Order, the Debtors shall serve on (a) the UST, (b) the SEC, (c) the Office of the United States Attorney General for the Southern District of Texas, (d) the IRS, (e) the master service list for the Cases, and (f) any known Substantial Equity Holders a notice substantially the same as the form attached hereto as **Exhibit C** describing the authorized trading restrictions and notification requirements.[16]

[16] The Debtors shall also publish the form of publication notice attached hereto as **Exhibit D** on the Bloomberg newswire service and the Depository Trust Company Legal Notice System (also known as LENS).

49. The Tax Attributes are valuable assets of the Debtors' estates that could maximize value and benefit all parties in interest. If the Debtors are unable to monitor and preserve the meaningful ability to prevent certain transfers that could negatively impact the Tax Attributes, the Debtors' future use of their Tax Attributes may be jeopardized. Accordingly, the Debtors request that the Notification Procedures described herein be immediately approved on an emergency, interim basis and that a final hearing be scheduled to determine whether the relief should continue.

NOTICE

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

PRAYER

The Debtors respectfully request that this Court enter an Interim Order, and subsequently a Final Order, granting the relief requested herein and such other and further relief to which they 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