

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>	§	(Chapter 11)
	§	
DEBTORS.	§	JOINTLY ADMINISTERED

**EXPEDITED MOTION FOR ORDER AUTHORIZING DEBTORS TO PAY
PRE-PETITION PENALTY ASSESSED BY UNITED STATES COAST GUARD**

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 *Expedited Motion for Entry of Order Authorizing Debtors to Pay Pre-Petition Penalty Assessed by United States Coast Guard* (the “Motion”), and in support respectfully state as follows:

JURISDICTION AND PROCEDURAL BACKGROUND

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. On October 26, 2015 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), thereby commencing the above-captioned cases (the “Cases”).
4. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.
5. On November 9, 2015, an official joint committee of unsecured creditors was appointed in the Cases.

STATEMENT OF FACTS

A. Business Overview

6. 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-

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].

owned subsidiaries of RAAM, and RAAM provides administrative, technical, financial, and strategic planning support to the subsidiaries.

7. 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. Additional information concerning the Debtors can be found in the *Declaration of James R. Latimer, III in Support of First Day Pleadings* [Docket No. 20].

B. The Penalty

8. On November 3, 2015, the United States Coast Guard ("Coast Guard") issued a notice of violation (the "Violation Notice"), attached hereto as **Exhibit A**, assessing a \$500 penalty (the "Penalty") for an estimated single gallon oil discharge that occurred on September 23, 2015 (prior to the Petition Date) from one of the Debtors' oil and gas wells in Breton Sound 52.² The Violation Notices requires the Debtor to pay the Penalty by December 17, 2015 (the "Deadline").

RELIEF REQUESTED AND BASIS FOR RELIEF

9. The Debtors request authority to pay the Penalty to the Coast Guard.

10. Pursuant to federal law, if the Debtors fail to pay the Penalty by the Deadline, "the Coast Guard will enter a finding of default in the case file and proceed with the civil penalty in the amount recommended on the Notice of Violation" 33 C.F.R. § 1.07-11.

11. The oil discharge that led to the issuance of the Violation Notice may be a violation of the Clean Water Act. Section 1319(g)(9) of the Clean Water Act provides:

(9) Collection. If any person fails to pay an assessment of a civil penalty—

² The incident description in the Violation Notice reads: "Discharge occurred as a result of a crack on the swaging connecting the 3" and 4" flow lines from BS52."

- (A) after the order making the assessment has become final, or
- (B) after a court in an action brought under paragraph (8) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be,

the Administrator or the Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to such amount and interest, attorney's fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

33 U.S.C. 1319(g)(9).

12. Bankruptcy Code § 363(b)(1) provides that a debtor in possession “may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). A debtor in possession seeking to use or sell property of the estate under Bankruptcy Code § 363 must articulate a sound business justification for the proposed use or sale. *See In re Continental Airlines*, 780 F.2d 1223, 1226 (5th Cir. 1986). Based on this principle, bankruptcy courts have authorized payment of pre-petition obligations with funds that are property of the estate under Bankruptcy Code § 363(b) where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of pre-petition wages).

13. While the Debtors believe that any action by the Coast Guard or the Attorney General to *collect* the penalty would be stayed under Bankruptcy Code § 362, it is possible the

Coast Guard or the Attorney General, in their capacity as governmental units, might be authorized to pursue a civil action against the Debtors pursuant to the “police and regulatory power” exception to the automatic stay. *See, e.g., In re Gandy*, 327 B.R. 796, 804-06 (Bankr. S.D. Tex. 2005); *In re Halo Wireless, Inc.*, 684 F.3d 581, 587 (5th Cir. 2012). Such an action would be distracting to the Debtors’ counsel and management and would consume valuable estate funds.

14. Given the *de minimis* amount of the Penalty and the potential adverse consequences that may result if the Debtors do not timely pay the Penalty, the Debtors submit that a sound business justification exists for paying the Penalty and that such payment would be in the best interests of their estates and creditors. Accordingly, the Debtors request authority to pay the Penalty.

EXPEDITED RELIEF IS APPROPRIATE

15. The Debtors submit that an expedited hearing on this Motion is appropriate to allow the Debtors to pay the Penalty by the Deadline and thereby prevent the above-described potential adverse consequences from materializing.

NOTICE

16. 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; and (h) counsel to the indenture trustee and collateral agent under the Notes.

PRAYER

17. The Debtors respectfully request that the Court enter an order authorizing the relief requested herein and granting such other and further relief to which the Debtors may be justly entitled.

Dated: December 8, 2015

Respectfully submitted,

VINSON & ELKINS LLP

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ATTORNEYS FOR THE DEBTORS

CERTIFICATE OF SERVICE

I certify that on December 8, 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/ Reese A. O'Connor
One of Counsel