UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	Chapter 11
RAAM GLOBAL ENERGY COMPANY et al.,	:	Case No. 15-35615
	:	Jointly Administered
Debtors.[1]	:	**Re: Docket No. 157**

OBJECTION OF AD HOC GROUP OF SENIOR SECURED NOTEHOLDERS TO THE DEBTORS' EXPEDITED MOTION TO (I) APPROVE DISCLOSURE STATEMENT AND THE FORM AND MANNER OF SERVICE RELATED THERETO; (II) SET DATES FOR THE OBJECTION DEADLINE AND HEARING RELATING TO CONFIRMATION OF THE PLAN; AND (III) AUTHORIZE RELATED RELIEF

The Ad Hoc Group of Senior Secured Noteholders (the "**Ad Hoc Group**") hereby submits this objection and reservation of rights (the "**Objection**") with respect to the Debtors' *Expedited Motion to (I) Approve Disclosure Statement and the Form and Manner of Service Related Thereto; (II) Set Dates for the Objection Deadline and Hearing Relating to Confirmation of the Plan; and (III) Authorize Related Relief* [Docket No. 157] (the "**Disclosure Statement Motion**") and respectfully represents as follows:

BACKGROUND

1. On October 26, 2015 (the "**Petition Date**"), the above-captioned debtors and debtors in possession (the "**Debtors**") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") commencing the above-captioned cases (the "**Cases**").

[1] The Debtors in these chapter 11 cases, along with the 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].

2. Prior to the Petition Date, RAAM[2] issued certain 12.5% senior secured notes due 2015 (the "**Notes**"). As of September 30, 2015, there was a total of $238.0 million in principal amount of the Notes outstanding and the total unpaid and accrued interest was $25.4 million as of July 31, 2015. As of the Petition date, the Ad Hoc Group held approximately 90% of the outstanding principal amount of the Notes.

3. The Notes are guaranteed on a senior secured basis by each of the other Debtors. 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 First Lien Credit Agreement Loan Documents, subject to certain exceptions. Pursuant to an Intercreditor Agreement, the lien securing the Notes is subordinated and junior to the liens on the First Lien Credit Agreement Collateral. It should be noted, however, that the Intercreditor Agreement provides for lien subordination only. *See* Intercreditor Agreement, at § 2.1. The claims of the Senior Secured Noteholders are not subordinated in right of payment to any claims against the Debtors, whether arising pursuant to the First Lien Credit Agreement or otherwise. Accordingly, the Senior Secured Noteholders, the First Lien Secured Parties, and general unsecured creditors have an equal right to repayment of their respective claims from any of the Debtors' unencumbered assets.

4. 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*

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in either the Disclosure Statement Motion or the Liquidating Plan (as defined below), as applicable.

Determining Cure Amounts for Executory Contracts and Unexpired Leases, and (f) Related Relief [Docket No. 90] (the "**Bidding Procedures Motion**").

5. On November 24, 2015, the Debtors filed their proposed *Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 154] (the "**Liquidating Plan**") and their proposed *Disclosure Statement for the Debtors' Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 155] (the "**Disclosure Statement**").

6. On November 27, 2015, the Debtors filed the Stipulation by and among the Debtors, Highbridge Principal Strategies, LLC ("**Highbridge**"), on behalf of the lender parties under the First Lien Credit Agreement, the Official Committee of Unsecured Creditors (the "**Committee**"), and Ace Insurance Company and its affiliates (collectively, "**ACE**") [Docket No. 160] (the "**Stipulation**") as a proposed exhibit to the order granting the Bidding Procedures Motion. The Court granted the Bidding Procedures Motion pursuant to an order dated December 2, 2015 [Docket No. 180], but expressly reserved the rights of all parties with respect to the terms of the Stipulation, the Disclosure Statement and the Liquidating Plan.

7. Under the Stipulation, the Liquidating Plan will be amended to provide, among other things, that holders of General Unsecured Trade Claims shall receive a *pro rata* distribution of $800,000 of the Sale Proceeds (subject to the terms of the Stipulation), as well as 50% of all other proceeds of the Liquidating Trust Assets. The Senior Secured Noteholders, on the other hand, will receive no distribution on account of their claims, which exceed $260 million.

8. On December 1, 2015, the Ad Hoc Group filed its *Objection of Ad Hoc Group of Senior Secured Noteholders to Stipulation* [Docket No. 172]. The Committee filed the

Response of Official Committee of Unsecured Creditors to Objection of Ad Hoc Group of Senior Secured Noteholders to Stipulation [Docket No. 175] (the "**Committee Response**"), also on December 1, 2015.

9. On December 2, 2015, the Debtors filed the First Amendment to Asset Purchase and Sale Agreement, dated as of December 1, 2015, by and among the Debtors and certain affiliates of Highbridge [Docket No. 181] (the "**Amended Purchase Agreement**"). Pursuant to the Amended Purchase Agreement, certain affiliates of Highbridge, as Stalking Horse Bidder, propose to purchase substantially all of the Debtors' assets in exchange for a credit bid in an amount equal to $58.8 million, cash in an amount equal to $6.05 million, and the assumption of certain obligations. *See* Amended Purchase Agreement, at ¶ 2.

10. As of the date hereof, $63.8 million was outstanding under the Term Loan Facility. *See* Bidding Procedures Motion, at ¶ 8. Accordingly, if the Plan Sale is consummated, the Senior Secured Noteholders will hold unsecured deficiency claims in the total face amount of their debt of $260 million (the "**Noteholder Deficiency Claims**"). Such Noteholder Deficiency Claims rank *pari passu* with all other general unsecured claims, including those of trade creditors. It is the Ad Hoc Group's understanding that the General Unsecured Trade Claims equal approximately $1.4 million in the aggregate. *See* Committee Response, at ¶ 12. Accordingly, based on the information available to the Ad Hoc Group at this time, the Noteholder Deficiency Claims may constitute more than 98% of the unsecured claims against the Debtors.

11. The Ad Hoc Group intends to work with the Committee and the Debtors to hopefully reach a resolution of the issues set forth in this Objection. Nevertheless, the Ad Hoc Group files this Objection out of an abundance of caution in order to advise the Court and parties

in interest of the concerns it has with respect to the adequacy of the Disclosure Statement and the ability of the Debtors to confirm the Liquidating Plan.

OBJECTION

I. THE DISCLOSURE STATEMENT

A. The Disclosure Statement Fails to Provide Adequate Information

12. The Disclosure Statement fails to provide adequate information regarding certain material terms of the Liquidating Plan that may affect the rights of the Ad Hoc Group.

13. *Scope of Liquidating Trust Assets*. Section 4.07 of the Liquidating Plan provides that "All property of the Estate constituting the Liquidating Trust Assets, subject to the consent of Highbridge, shall be conveyed and transferred by the Debtors to the Liquidating Trust, free and clear of all interests, Claims, Liens and encumbrances *except as otherwise provided by the Plan*." Liquidating Plan, at § 4.07 (emphasis added). The Liquidating Plan, in turn, defines the Liquidating Trust Assets to include "any and all Causes of Action not assigned to the Purchaser in accordance with the Purchase Agreement or released or settled under the Plan." Liquidating Plan, at § 1.02. Likewise, Section 4.13 of the Liquidating Plan provides that "*except as otherwise provided by the Plan*, … any and all claims and causes of action that were owned by the Debtors or their Estates as of the Effective Date, including but not limited to all Rights of Action, D&O Claims, and Avoidance Actions, shall vest in the (a) if provided in the Purchase Agreement, the Purchaser or (b) the Liquidating Trust on the Effective Date…." Liquidating Plan, at § 4.13 (emphasis added).

14. These provisions are vague and fail to provide parties in interest with sufficient information to determine which, if any, Causes of Action constitute Liquidating Trust Assets that will vest in the Liquidating Trust. In addition, it is unclear whether the Liquidating Trust Assets are to be transferred to the Liquidating Trust free and clear of all interests, Claims,

Liens, and encumbrances. Parties should not be required to analyze the Purchase Agreement, which is subject to change prior to closing of the Plan Sale, to determine whether Causes of Action are included among the Liquidating Trust Assets. The Disclosure Statement and the Liquidating Plan should be modified to expressly state which, if any, Causes of Action (including D&O Claims and Avoidance Actions) will be conveyed to the Purchaser, which will vest in the Liquidating Trust, and whether any Liquidating Trust Assets to be transferred to the Liquidating Trust will be free and clear of all interests, Claims, Liens, and encumbrances.

15. *Value of Unencumbered Assets*. The Ad Hoc Group is further concerned about the sufficiency of the disclosures surrounding the Plan Sale. The Amended Purchase Agreement provides for the sale of unencumbered assets without providing any indication of the value of those assets or the value of the consideration to be given in exchange for those assets. The Senior Secured Noteholders, the First Lien Secured Parties, and unsecured creditors are entitled to share *pro rata* in the proceeds of all unencumbered assets. Accordingly, the Disclosure Statement should be modified to make clear which unencumbered assets are proposed to be purchased by Highbridge and the value of the consideration that Highbridge proposes to provide in exchange for such assets.

16. *Scope of Releases*. The Disclosure Statement also fails to provide adequate information to parties in interest with respect to the scope of the releases contained in the Liquidating Plan. Specifically, included within the definition of Released Parties in the Liquidating Plan is "those signatories to the Plan Support Agreement." Liquidating Plan, at § 1.02(117). Plan Support Agreement is not defined in the Liquidating Plan, nor has a Plan Support Agreement been filed in these Cases. Accordingly, the Disclosure Statement should be modified to state clearly which parties constitute Released Parties entitled to the benefit of the

releases in the Liquidating Plan. In addition, Section 14.08 of the Liquidating Plan provides that "each Releasing Party who affirmatively votes to accept the Plan and does not indicate its election to opt-out of the releases contained in this Section on its Ballot" is bound by the third-party releases. Liquidating Plan, at § 14.08. Accordingly, it is the Ad Hoc Group's understanding that these third-party releases will not be applicable to creditors who either vote to reject the Liquidating Plan or who abstain from voting. To the extent the Ad Hoc Group's understanding of Section 14.08 is incorrect and the releases are intended to apply more broadly, then the third-party releases should be modified to exclude claims or liabilities relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, gross negligence, bad faith, or a breach of fiduciary duty.

17. *Amount of Ace Claims*. Finally, the Disclosure Statement should be modified to provide further information regarding ACE's Claims. Under the Stipulation, ACE is entitled to receive $1,150,000 of the Sale Proceeds and share in the proceeds of the Liquidating Trust Assets, which are to 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." *Id.* at ¶ 7. Given this sharing arrangement between ACE and the unsecured trade creditors, the Disclosure Statement should be modified to provide further information regarding the nature and total amount of ACE's Claims.

B. The Proposed Disclosure Statement Order Should Be Modified to Clarify Certain Ambiguities

18. The Ad Hoc Group has additional concerns with respect to certain provisions of the Disclosure Statement Order as set forth in the summary chart below:

Provision of Disclosure Statement Order	Proposed Modification
Paragraph 22(f) provides that "Facsimile Ballots, or Ballots submitted via email or other electronic transmission, will not be counted, unless the holder receives the consent of the Debtors…."	This provision should be modified to provide that facsimile Ballots or Ballots submitted via email or other electronic transmission shall be permitted subject to the Debtors' reasonable discretion and, to the extent any party is permitted to submit facsimile or email Ballots, then all parties should be permitted to do so.
Paragraph 24 provides that "Beneficial Holders of Senior Secured Notes must vote all of their Claims either to accept or reject the Plan."	There is no basis for requiring that any party vote on the Liquidating Plan. Parties are entitled to abstain from voting. To the extent this provision is intended to provide that the Holders of Senior Secured Notes who do vote on the Liquidating Plan must vote the entirety of their Claims either to accept or to reject the Liquidating Plan, it is unclear why this provision applies only the Holders of Senior Secured Notes.
Paragraph 26 provides that the "Debtors and other parties in interest may seek further clarification from the Court on vote tabulation and the solicitation process, and retain the right to object or raise any issue with respect to any Ballot…." Paragraph 28 provides that "Unless otherwise directed by the Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots will be determined by the Balloting Agent and the Debtors in their sole discretion, which determination the Debtors propose to be final and binding."	Paragraph 28 should be modified to provide that (i) it is subject to Paragraph 26 and (ii) the Debtors' determinations regarding questions of validity, form, eligibility, acceptance, and revocation or withdrawal of Ballots should not be final but should instead by subject to review of the Court.

Provision of Disclosure Statement Order	Proposed Modification
Paragraph 38 provides that "in the event of a dispute with respect to any Senior Secured Note, any vote to accept or reject the Plan cast with respect to such Senior Secured Note will not be counted for purposes of determining whether the Plan has been accepted or rejected, unless the Bankruptcy Court orders otherwise."	This provision is vague and ambiguous. Moreover, it is unclear why this paragraph refers only to Senior Secured Notes and to no other types of claims.

II. THE LIQUIDATING PLAN

19. The Liquidating Plan (including the proposed amendments thereto under the Stipulation) contains numerous provisions that render it unconfirmable. The Ad Hoc Group recognizes that these issues are to be heard in connection with confirmation and intends to fully brief these issues prior to the Confirmation Hearing. However, the Ad Hoc Group raises certain of these issues now in order to afford parties in interest notice of the deficiencies in the Liquidating Plan and to allow the Debtors time to modify the Disclosure Statement as appropriate. All rights and objections of the Ad Hoc Group with respect to confirmation of the Liquidating Plan are hereby reserved, whether described below or otherwise.

A. The Classification Scheme Under the Liquidating Plan is Inappropriate

20. As an initial matter, the classification of unsecured claims in the Liquidating Plan is inappropriate. The Liquidating Plan provides for the separate classification of General Unsecured Trade Claims (Class 5) and General Unsecured Non-Trade Claims (Class 6). General Unsecured Trade Claims include all unsecured claims held by trade creditors that are not Priority Tax Claims or Other Priority Claims. General Unsecured Non-Trade Claims include all unsecured claims against the Debtors that are not General Unsecured Trade Claims, Priority Tax Claims, or Other Priority Claims. The Noteholder Deficiency Claims are General Unsecured Non-Trade Claims.

21. Although the Bankruptcy Code does not require that all similar claims be placed in the same class, courts have generally held that the separate classification of otherwise substantially similar claims is acceptable only if there is a "reasonable" justification for such separate classification. *See In re Graystone III Joint Venture*, 995 F.2d 1274 (5th Cir. Tex. 1991) (stating that Section 1122 of the Bankruptcy Code "must contemplate some limits on classification of claims of similar priority. A fair reading of both subsections suggests that ordinarily 'substantially similar claims,' those which share common priority and rights against the debtor's estate, should be placed in the same class."); *In re LightSquared Inc.*, 513 B.R. 56, 83 (Bankr. S.D.N.Y. 2014) ("separate classification of otherwise substantially similar claims and interests is appropriate so long as the plan proponent can articulate a 'reasonable' (or 'rational') justification for separate classification….However, the separate classification of substantially similar …claims…[must not] offend one's sensibility of due process and fair play."). The majority of courts have held that deficiency claims are substantially similar to general unsecured claims. *See, e.g.*, *Bank of New York Trust Co., N.A. v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229, 251 (5th Cir. 2009) ("The bifurcation of unsecured 'trade' claims and the Noteholders' deficiency claim is even more troubling…Legally, these unsecured claims are on equal footing."); *John Hancock Mut. Life Ins. Co. v. Route 37 Business Park Assocs.*, 987 F.2d 154, 160-62 (3d Cir. 1993) (rejecting the argument that a deficiency claim should be classified differently from unsecured trade creditors). Thus, there must be some reasonable justification for separately classifying deficiency claims from other unsecured claims. In *Graystone III*, the Fifth Circuit found that a plan that separately classified deficiency claims from unsecured trade claims was improper because the debtor failed to offer any justification for classifying the trade debt separately from the deficiency claim. *In re Greystone III*, 995 F.2d at

1281 (stating that "[t]here is no evidence in the record of a limited market…for trade goods and services. Nor is there any evidence that Greystone would be unable to obtain any of the trade services if the trade creditors did not receive preferential treatment under the Plan. Thus, the bankruptcy court's finding that there were good business reasons for separate classification is without support in the record and must be set aside as clearly erroneous.").

22. Here, like in *Graystone III*, there is no justification for the separate classification of the General Unsecured Trade Claims from the Noteholder Deficiency Claims. Under the Liquidating Plan, the Debtors' estates will be liquidated and there will be no continuing operations. Thus, trade creditors will have no continuing relationship with the Debtors. Under these circumstances, there is simply no legitimate reason to provide preferential treatment to such trade creditors. Accordingly, the separate classification of the Noteholder Deficiency Claims from the General Unsecured Trade Claims is inappropriate.

B. The Liquidating Plan Unfairly Discriminates Against Holders of General Unsecured Non-Trade Claims

23. Even if separate classification of the General Unsecured Trade Claims and the General Unsecured Non-Trade Claims were appropriate, the treatment provided for these classes under the Liquidating Plan is impermissible under the Bankruptcy Code. Section 1129(b)(1) of the Bankruptcy Code provides that a plan must not "discriminate unfairly." 11 U.S.C. § 1129(b)(2). To determine whether a plan unfairly discriminates, courts generally focus on the treatment of claims and interest vis-à-vis other claims and interests. *See, e.g.*, *In re Landing Assocs., Ltd.*, 157 B.R. 791, 822 (Bankr. W.D. Tex. 1993) ("The test is not, after all, whether the plan is generally *unfair*, but whether the plan's treatment of a particular class is unfairly *discriminatory vis-à-vis* similarly situated classes of creditors."); *In re Sentry Operating Co. of Tex., Inc.*, 264 B.R. 850, 865 (Bankr. S.D. Tex. 2001) (unfair discrimination prohibition

"protects each class of creditors against an involuntary loss of their equal distribution rights vis-à-vis other creditors of equal rank.").

24. Courts have held that a plan unfairly discriminates between classes of equal rank where it provides excessively disparate treatment to one class of unsecured claims compared to another. *In re Sentry Operating Co.*, 264 B.R. at 863-64 (denial of confirmation of plan that paid 100% to one class of unsecured creditors, with whom the reorganized debtor believed it would have to deal, while remaining unsecured creditors were paid 1% of claims). Under the Stipulation, the Liquidating Plan will be amended to provide that holders of General Unsecured Trade Claims shall receive a *pro rata* distribution of $800,000 of the Sale Proceeds (which is an approximate recovery of 57.5%), as well as 50% of all other proceeds of the Liquidating Trust Assets. Thus, while it is possible that the holders of General Unsecured Trade Claims will receive substantially more than a 57.5% recovery, the Senior Secured Noteholders, on the other hand, will receive no distribution on account of their claims (which exceed $260 million). There is no justification for such grossly disparate treatment, particularly in a liquidation, where there are no continuing operations dependent on the cooperation of trade creditors. This proposed distribution scheme is simply impermissible under the Bankruptcy Code.

25. In the Committee Response, the Committee asserts that the different treatment of the Senior Secured Noteholders compared to the holders of General Unsecured Trade Claims is appropriate because "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." Committee Response, at ¶ 13. The Ad Hoc Group

disputes the argument that such junior lien permits the discriminatory treatment between the unsecured trade creditors and the Senior Secured Noteholders. Nevertheless, pursuant to a letter dated December 4, 2015 (the "**Sharing Letter**"), a copy of which is attached hereto as Exhibit A, the Ad Hoc Group has offered to share with the holders of allowed General Unsecured Trade Claims, on a *pro rata* basis, any collateral proceeds generated from the auction in excess of the claims of the First Lien Secured Parties (which collateral proceeds would otherwise be distributed to the Ad Hoc Group on account of their junior liens). In other words, holders of allowed General Unsecured Trade Claims would also stand to benefit from the marketing and auction process to the same extent as if they held a *pari passu* lien with the Ad Hoc Group. Accordingly, the Committee's argument that the claims of the Senior Secured Noteholders are somehow different than the General Unsecured Trade Claims due to the junior liens is rendered moot.

C. The Liquidating Plan Violates the Best Interests of the Creditors Test

26. Even if the separate classification and the discriminatory treatment of the General Unsecured Trade Claims and the General Unsecured Non-Trade Claims were appropriate under the Liquidating Plan, the proposed distribution to the Senior Secured Noteholders violates the "best interest of the creditors test." Section 1129(a)(7) of the Bankruptcy Code mandates that, absent consent, each creditor must receive property that has a present value equal to or greater than the recovery such holder would receive in a hypothetical chapter 7 liquidation. 11 U.S.C. § 1129(a)(7).

27. As noted above, the Stipulation provides that the proceeds of the Liquidating Trust Assets will 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 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." Stipulation, at ¶ 7. In a chapter 7 liquidation, however, the Senior Secured Noteholders would share in the proceeds of all unencumbered assets of the estates *pro rata* with the First Lien Secured Parties and the unsecured trade creditors. Thus, by definition, a chapter 7 liquidation would provide higher recovery to the Senior Secured Noteholders as compared to the zero recovery contemplated by the Liquidating Plan. This proposed distribution scheme clearly violates the best interest of the creditors test.

D. The Liquidating Plan Contains Additional Provisions That Are Inappropriate Under the Circumstances

28. The Ad Hoc Group has additional concerns regarding the current provisions of the Liquidating Plan.

29. *Liquidating Trustee and Liquidating Trust Committee*. It is undisputed that the Noteholder Deficiency Claims constitute the overwhelming majority of the unsecured claims against the Debtors. Nevertheless, the Liquidating Plan provides that the Liquidating Trustee is to be appointed by the Debtors, in consultation with Highbridge and the Committee. *See* Liquidating Plan, at § 10.04. Given that the Liquidating Trustee will be the exclusive trustee of the Liquidating Trust Assets, which represent the main source of recovery to unsecured creditors, the Senior Secured Noteholders should appoint the Liquidating Trustee. Additionally, while the Ad Hoc Group questions the necessity of a Liquidating Trust Committee under the circumstances, to the extent a Liquidating Trust Committee is required in these Cases, the Senior Secured Noteholders, as the parties with the greatest economic incentives, should constitute a majority of the Liquidating Trust Committee.

30. *Releases and Exculpation*. The Liquidating Plan includes overly broad release and exculpation provisions. Under the Liquidating Plan, the Released Parties include,

among others, all current *and former* officers, directors, principals, employees, and agents of the Debtors. *See* Liquidating Plan, at § 1.02. There is no justification for providing releases of any kind to parties who are no longer employed by the Debtors as of the Effective Date. The Debtors are liquidating and will have no continuing indemnification obligations with respect to such parties. *See* Liquidating Plan, at § 6.11 (providing that any obligation of the Debtors to indemnify any person, including any officer or director of the Debtors, shall be deemed to be rejected, canceled and discharged as of the Effective Date). Accordingly, subsection (d) of the definition of "Released Party" in the Liquidating Plan should be modified to include only officers, directors, and employees who served in such capacity as of the Effective Date.

31. Moreover, the Debtor releases set forth in Section 14.07 of the Liquidating Plan release the Released Parties from all claims, causes of action, and liabilities other than those relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence. *See* Liquidating Plan, at § 14.07. This release should be modified to also carve out claims or liabilities relating to any act or omission of a Released Party that constitutes bad faith or a breach of fiduciary duty. Likewise, the exculpation provided under Section 14.05 of the Liquidating Plan should not apply to any exculpated party that has engaged in bad faith or a breach of fiduciary duty in addition to any willful misconduct, gross negligence, or fraud.

WHEREFORE, the Ad Hoc Group respectfully requests that the Court (i) deny approval of the Disclosure Statement Motion and (ii) grant such other relief as is just and proper under the circumstances.

Dated: December 9, 2015

Respectfully submitted,

By: /s/ Annemarie V. Reilly

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