

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

In re:

RAAM GLOBAL ENERGY COMPANY,
et al.,

Debtors

Case No. 15-35615

Chapter 11

Docket No. 90, 204

Hearing Date: 1/14/16 @ 2:00 p.m. (CT)

Objection Deadline: 1/11/16 @ 4:00 p.m. (CT)

**ORACLE’S RIGHTS RESERVATION AND RIGHTS NOTICE REGARDING
(1) 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; AND (2) NOTICE OF POSSIBLE
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES (“RIGHTS RESERVATION”)
(Related Docket No. 90)**

Oracle America, Inc. (“Oracle”), a creditor and contract counter-party in the above-captioned Chapter 11 cases, submits this Rights Reservation, and to the extent applicable, Rights Notice, in response to 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 (“Sale Motion”), and the related Notice of Possible Assumption and Assignment of Executory Contracts and Unexpired Leases (“Assumption Notice”), filed by RAAM Global Energy Company, et al. (the “Debtors”).

I. INTRODUCTION

1. By the Sale Motion and Assumption Notice, the Debtors seek Bankruptcy Court authority to, among other things, assume and assign certain executory contracts in connection with the sale of the Debtors’ assets. Although the Debtors have not, at this time, expressly

identified any Oracle agreements for assumption and assignment, Oracle files this Rights Reservation in the event any Oracle agreement is subsequently identified. To the extent the Sale Motion operates to seek to authorize the Debtors to assume and assign or transfer any Oracle software license agreement, Oracle does not consent to such assumption and assignment, for the following reasons.

2. First, Oracle's agreements are, or pertain to, licenses of intellectual property that are not assignable absent Oracle's consent, pursuant to both the underlying license agreements and applicable law. In addition, via the Assumption Notice, the Debtors request a judicial determination that any anti-assignment provision in contracts to be assumed and assigned is unenforceable and void. Oracle objects to this sweeping determination being made regarding its agreements with the Debtors.

3. Second, the Sale Motion and APA (defined below) do not provide Oracle with adequate assurance regarding the purchaser's ability to perform the terms of Oracle's contracts.

4. Third, because the Sale Motion and APA do not currently describe any Oracle contracts, but suggest a possible inconsistency in the description of the assets to be transferred and the contracts targeted for potential assumption and assignment, Oracle cannot assess whether its agreements are at issue.

5. Finally, if assumption and assignment is contemplated, the Debtors must cure all defaults with respect to Oracle's agreements.

6. Accordingly, Oracle requests that the Court deny the Sale Motion to the extent it seeks to authorize the Debtors to assume and assign or transfer any Oracle agreements. Alternatively, in the event that the Debtors do not intend to assume and assign any Oracle agreements, all Oracle licensed software must be removed from Debtors' computer hardware prior to the sale

II. FACTUAL BACKGROUND

7. The above captioned case was filed on October 26, 2015. An Order approving joint administration was entered on October 27, 2015.

8. On November 6, 2015, the Debtors filed their Sale Motion. Pursuant to the Sale Motion, the Debtors propose to effectuate the sale as proposed through the APA. However, the assets being sold are subject to overbid and have been divided into nine lots. Therefore, one or more bidders may emerge.

9. On December 7, 2015, the Debtors filed the Assumption Notice identifying those contracts the Debtors may seek to assume and assign in connection with the Sale Motion. The Assumption Notice currently does not identify any Oracle agreements¹. In fact, no software license agreements of Debtors with any counterparty appear to be identified.

10. However, the scope of the assets to be sold pursuant to the Sale Motion is potentially broader than the Assumption Notice suggests. The Asset Purchase Agreement (“APA”) entered into between the Debtors and Highbridge Principal Strategies - Specialty Loan Fund III, L.P., Highbridge Specialty Loan Sector A Investment Fund, L.P., Highbridge Specialty Loan Institutional Holdings Limited, Highbridge Principal Strategies - Specialty Loan Institutional Fund III, L.P., Highbridge Principal Strategies - Specialty Loan VG Fund, L.P., Highbridge Principal Strategies - NDT Senior Loan Fund, L.P., Highbridge Principal Strategies - Jade Real Assets Fund, L.P., Highbridge Aiguilles Rouges Sector A Investment Fund, L.P., Lincoln Investment Solutions, Inc., and American United Life Insurance (“Stalking Horse Bidder”), attached as Exhibit “A” to the Sale Motion, includes as part of the assets being sold “.....(ii) all of Seller’s communications or computer hardware, networks, systems, printers, routers, and other computer equipment and all proprietary or licensed computer software.....” See, Section 2.1(r) of the APA. Among other things, this broad provision of the APA, if intended to transfer Oracle’s software and related license agreements to any purchaser pursuant to the Sale Motion, the APA or any subsequent APA that may be entered into between the Debtors and any potential purchaser(s), gave rise to this Rights Reservation’s filing.

¹ Pursuant to the Assumption Notice, the Debtors have until the closing date to add or delete Desired 365 Contracts (as defined in the Sale Motion). Although additional time is provided to object, Oracle reserves its rights in the event Oracle agreements subsequently are identified as Desired 365 Contracts.

III. ARGUMENT

A. **The Debtors May Not Assume And Assign Any Oracle Agreement Absent Oracle's Consent Because Oracle Agreements Pertain To Licenses Of Intellectual Property.**

11. Section 365(c) of the Bankruptcy Code provides, in relevant part:

The trustee may not assume or assign any executory contract ... of the debtor ... if (1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor ..., whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and (B) such party does not consent to such assumption or assignment.

12. Federal law makes non-exclusive patent licenses non-assignable absent consent of the licensor. *See In re Catapult Entertainment, Inc.*, 165 F.3d 747 (9th Cir. 1999), *cert. dismissed*, 528 U.S. 924 (1999) (patent law renders non-exclusive patent licenses personal and non-assignable under Bankruptcy Code § 365(c)(1)); *see also In re Trump Entm't Resorts, Inc.*, 526 B.R. 116, 126 (Bankr. D. Del. 2015) (“Non-exclusive patent and copyright licenses create only personal and not property rights in the licensed intellectual property and so are not assignable.”).

13. The Debtors must obtain Oracle's consent before seeking to assume and assign their agreements with Oracle, which are integrated agreements for the licensing of non-exclusive, patented software. At this time, for the reasons discussed below, Oracle does not consent to such an assignment.

14. In addition, the Assumption Notice requests that any anti-assignment provision in contracts to be assumed and assigned be deemed unenforceable and void. The request is framed by the Debtors as follows:

Further, your Desired 365 Contract will remain in full force and effect for the benefit of the Potential Buyer or the buyer under an Alternative Transaction, as applicable, in accordance with its terms, notwithstanding any provision in any such Desired 365 Contract which prohibits, restricts or conditions such assignment or transfer thereof or its rights thereunder.

Assumption Notice, pg 3.

15. Oracle objects to this proposed finding as to Oracle's agreements because, as discussed above, the agreements involve the licensing of non-exclusive, patented software, which are non-assignable in the absence of Oracle's consent. Because Bankruptcy Code section 365 expressly preserves Oracle's right to consent to any assignment of its license agreements, the Debtors may not unilaterally nullify the anti-assignment provisions of any Oracle agreement.

16. Accordingly, Oracle requests that, as to Oracle, the Debtors be denied this blanket authorization, to assume and assign or transfer any Oracle agreement.

B. The Debtors Have Not Provided Adequate Assurance Of Future Performance By The Purchaser.

17. Before assuming and assigning any executory contract, the Debtors must provide adequate assurance of future performance. 11 U.S.C. § 365(b)(1). At this time, Oracle does not have such assurance with respect to the Stalking Horse Bidder. In addition, the Debtors' assets could potentially be sold in nine different lots and the sale is subject to overbid and auction. One or more alternative successful bidders may emerge. As a result, Oracle cannot evaluate the ultimate purchaser's acceptability as an assignee, or whether the prerequisites of 11 U.S.C. § 365(b) will be met.

18. To satisfy section 365(b), to the extent the Debtors seek to assume and assign Oracle's agreements, Oracle requests that the Debtors provide the following information: (1) financial bona fides; (2) confirmation that the purchaser is not an Oracle competitor; and (3) confirmation that the purchaser will (a) execute an Oracle Assignment Agreement and related documentation which identifies all of the Oracle executory contracts to be assigned, and (b) if appropriate, enter into an Oracle Master Licensing Agreement. Absent these assurances, Oracle cannot determine the Stalking Horse Bidder's, or other eventual successful bidder's, creditworthiness, suitability as an Oracle customer, or ability to adequately perform the terms of the agreements.

19. Until the information described above is provided, the Debtors have not complied with the requirements of section 365(b)(1)(C) and the Sale Motion must be denied to the extent it seeks to authorize the Debtors to assume and assign or transfer any Oracle agreement.

C. The Debtors Have Not Adequately Identified Any Oracle Agreements To Assume and Assign.

20. At this time the Sale Motion and APA do not expressly identify any Oracle agreements to be assumed and assigned, so Oracle cannot evaluate how the Sale Motion and the APA may affect it. To the extent the Debtors ultimately seek to assume and assign any Oracle agreement, Oracle requests that the Debtors provide a specific contract (1) name; (2) identification number; (3) date; (4) whether the targeted contract pertains to support or support renewals; and (5) the governing license agreement for each contract. This information will enable Oracle to evaluate whether the agreements are assignable, whether the Debtors are in default and, if so, what the appropriate cure amount is, and whether Oracle may accept performance from an entity other than the Debtors. Oracle reserves its right to be heard on this issue after any Oracle contracts the Debtors seek to assume and assign are identified with greater specificity.

D. To The Extent the Debtors Seek To Assume And Assign Oracle Agreements, An Adequate Cure Amount Must Be Provided.

21. If one object of the Sale Motion and the APA is to authorize the Debtors to assume and assign Oracle agreements, the Debtors cannot accomplish this unless all defaults are cured. At present, there may be amounts owed under Oracle's agreements with the Debtors, and Oracle has no assurance that the Debtors, the Stalking Horse Bidder, or another successful purchaser intend to pay the required cure amounts. The Debtors cannot assume and assign any Oracle agreements unless all arrearages are cured, and Oracle reserves its right to object to the cure amount in the event the Debtors ultimately seek to assume and assign, or transfer, any Oracle agreements.

E. If No Assumption And Assignment Of The Oracle Agreements Is Contemplated, Oracle Requests That Its Software Be “Scrubbed” And The Debtors Confirm The “Scrubbing” In Writing.

22. If, as the language quoted above from the APA suggests, the APA contemplates the sale or transfer of certain computer equipment or licenses, an unauthorized transfer of Oracle’s intellectual property may result. A transfer of installed software is prohibited by Oracle’s license agreements and would constitute a violation of the Debtors’ obligations to Oracle. If the Debtors do not intend to assume or assign any Oracle agreement, or if the Debtors intend to transfer any computer hardware to any party other than an authorized assignee of any Oracle agreement, then Oracle requests that prior to the transfer: (i) all of its software be scrubbed to avoid the unintended and unauthorized transfer of, use of, and/or access to, Oracle’s software; and (ii) the Debtors execute Oracle’s standard form Certificate of System Termination.

IV. CONCLUSION

For the foregoing reasons, Oracle respectfully requests that the Court deny the Sale Motion solely to the extent it seeks to authorize the Debtors to assume and assign or transfer any Oracle agreement, and Oracle reserves all of its rights as set forth herein.

Dated: January 11, 2016

Respectfully submitted,

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ATTORNEYS FOR ORACLE AMERICA, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that on January 11, 2016, a true and correct copy of the foregoing document was served via ECF notification and/or regular US mail on all parties listed on the attached service list.

/s/ Sabrina L. Streusand
Sabrina L. Streusand