

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

IN RE:	§	
	§	
RAAM GLOBAL ENERGY COMPANY, <i>et al.</i>,¹	§	Case No. 15-35615-H1-11
	§	(Chapter 11)
DEBTORS.	§	(Jointly Administered)
	§	

**CITY NATIONAL BANK'S OBJECTION TO DEBTORS'
SECOND AMENDED JOINT PLAN OF LIQUIDATION
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE
[This instrument relates to Docket No. 263]**

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

City National Bank ("CNB") files this Objection (the "Objection") to the Debtors' Second Amended Joint Plan of Liquidation pursuant to Chapter 11 of the Bankruptcy Code (Docket No. 263) (the "Plan").

OVERVIEW OF OBJECTION²

1. The Plan cannot be confirmed because it fails to provide for the allowance and satisfaction of CNB's putative Administrative Claims related to any unpaid post-petition royalties in violation of § 1129(a)(9)(A) of the Bankruptcy Code. Additionally, the Plan cannot be confirmed because it fails to provide for the satisfaction of the Debtors' P&A Liabilities in connection with the Wells subject to the Lease Agreements between CNB, as Lessor, and Century Exploration Resources, LLC ("CER"), as Lessee. Pursuant to the Plan, the Debtors

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

² Certain capitalized terms used in the Overview of Objection are defined later in this Objection. All other undefined, capitalized terms appearing in this Objection shall have the meanings ascribed to them in the Plan. Additionally, all references to the "Bankruptcy Code" shall mean title 11 of the U.S. Code.

intend to abandon the Wells without satisfying the P&A Liabilities that will accrue soon after the Plan is confirmed and these estates are liquidated.

2. Prevailing authority and applicable statutory regulations require CER to satisfy its imminent P&A Liabilities in connection with the Wells. The Plan's failure to provide for the same violates § 1129(a)(3) of the Bankruptcy Code. The Plan also violates § 1129(a)(9)(A) of the Bankruptcy Code because it fails to provide for the allowance and satisfaction of an Administrative Claim in favor of CNB, in connection with CER's indemnity obligations under the Lease Agreements, to the extent that CNB must satisfy the P&A Liabilities as a co-owner under the Lease Agreements. As such, the Plan, in its current form, cannot be confirmed.

OBJECTION

3. CNB, as Trustee for the A. L. Gump Testamentary Trust and its beneficiaries (the "Trust"), is the owner and lessor of certain tracts of real property on which CER has a lease to operate oil and gas wells (the "Wells") pursuant to certain Lease Agreements. True and correct copies of the Lease Agreements are attached hereto as **Exhibits A** and **B** and are incorporated herein for all purposes. In connection with the Lease Agreements and CER's operation of the Wells, CNB is entitled to royalties based on the production generated from the Wells. As a result of CER's failure to pay such royalties, CNB has both unsecured Claims for unpaid pre-petition royalties, and potential Administrative Claims, pursuant to § 503(b) of the Bankruptcy Code, for unpaid post-petition royalties.

4. CNB will file its Proof of Claim for unpaid pre-petition royalties by the Bar Date, however, because CER has not yet provided its required production reporting to CNB setting forth the amount of production generated and royalties owing on a post-petition basis, CNB is unsure of the amount of its potential Administrative Claim. Section 503(b)(1)(A) provides that

administrative expense priority claims are allowed for "the actual, necessary costs and expenses of preserving the estate" As a general rule, a showing of direct benefit to the estate is required. *See NL Indus., Inc. v. GHR Energy Corp.*, 940 F.2d 957, 966 (5th Cir. 1991) (asserting that "[c]ourts have construed the words 'actual' and 'necessary' narrowly: the debt must benefit [t]he estate and its creditors."); *In re Tri-City Health Centre, Inc.*, 283 B.R. 204, 206-07 (Bankr. N.D. Tex. 2002). CNB's permitting CER to use the property on which the Wells reside so as to generate production provided a direct benefit to these estates insofar as CER operated the wells and/or production was generated after the Petition Date.

5. The royalty and/or Delay Rental (as defined in the Lease Agreements) payments due under the applicable Lease Agreements covering Wells that CER operated on a post-petition represent actual and necessary costs of preserving these estates given that the Debtors, and certainly CER, benefitted from the operation of the Wells and the proceeds of such production, which operation and production were possible only through the Lease Agreements afforded by CNB. Therefore, the Debtors should be required to provide reporting for production from the Wells from and after October 2015, and this Court should grant CNB an Administrative Claim for royalty and/or Delay Rental payments related to CER's continued post-petition operation of and/or production from the Wells.³ CER's failure to account for the allowance and satisfaction of CNB's putative Administrative Claim renders the Plan unconfirmable pursuant to § 1129(a)(9)(A) of the Bankruptcy Code.

6. Additionally, as set forth on Exhibit C (Docket No. 266) of the Debtors' Second Amended Disclosure Statement for the Debtors' Second Amended Joint Plan of Liquidation

³ On December 22, 2015, this Court entered its Order setting Administrative and Priority Claims Bar Date (Docket No. 272) (the "Administrative Claim Bar Date Order") setting January 13, 2016 (the "Administrative Claim Bar Date") as the deadline for parties to file requests to allow Administrative Claims. Notwithstanding the lack of necessary reporting from CER, in order to preserve its rights, CNB intends to file a motion to allow any Administrative Claim by the Administrative Claim Bar Date.

pursuant to Chapter 11 of the Bankruptcy Code (Docket No. 265) (the "Disclosure Statement"), the Lease Agreements are listed on Schedules 2.2(d) and (m) of the APA as assets that will not be sold in connection with the Plan. Also, the Debtors' Notice of Additional Information regarding certain Oil and Gas Properties in California (Docket No. 298) (the "California Notice") counts the Lease Agreements and the Wells among those for which the Debtors will not provide funds to satisfy plugging and abandonment obligations and decommissioning and bonding requirements promulgated by applicable state and regulatory authorities (the "P&A Liabilities"). As set forth in the California Notice, the Debtors admit that they have not procured bonds to cover the P&A Liabilities for the Wells. Instead, the Debtors intend to leave the satisfaction of the P&A Liabilities to predecessors-in-interest and co-owners, such as CNB. *See* California Notice; Disclosure Statement, §§ 3.02, 3.05(n), Exhibit C. On information and belief, the P&A liabilities for the Wells is \$120,000 per well.

7. The Plan cannot be confirmed as is because it violates § 1129(a)(3) of the Bankruptcy Code by failing to provide for the satisfaction of the P&A Liabilities pertaining to the Wells, which responsibility belongs primarily to CER. Under prevailing authority, CER cannot simply abandon its responsibilities in connection with the Wells insofar as doing so would contravene a "state statute or regulation that is reasonably designed to protect the public health and safety from identified hazards." *See Midlantic Nat'l Bank v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 507 (1986); *Lowe v. Texas (In re H.L.S. Energy Co.)*, 151 F.3d 434, 438 (5th Cir. 1998).

8. Pursuant to § 3206 of the California Public Resources Code, "idle wells" are those that have not produced or that have not been operated for six (6) consecutive months during a five year period. If the Wells have not been operated or generated production since September

2015 and are no longer producing or being operated, then they may be approximately four (4) consecutive months into the six (6) consecutive month timeframe for being deemed idle and thereby requiring expenses for concomitant decommissioning, indemnity bonding, and P&A Liabilities. Such a threat is palpable and imminent, and as it stands, the Debtors' proposed abandonment of the Lease Agreements and the Wells would result in an obligation to remit funds pertaining to any idle wells, including P&A Liabilities, which obligations may be borne by CNB as co-owner. *See, e.g.*, CAL. PUB. RES. CODE §§ 3200, 3205, 3206, 3237, 3251, *et seq.*; *see also* CAL. CODE REGS. tit. 14, § 1722, *et seq.* In light of the Plan's proposal to abandon the Wells upon confirmation, the P&A Liabilities and other obligations appurtenant to idle wells that will accrue from abandonment of the Wells, and which may already be accruing if the Wells have generated no post-petition production, are certainly not attenuated; that is, the Debtors' failure to satisfy or provide for the satisfaction of the P&A Liabilities and related obligations poses "an imminent threat to the environment as opposed to a long-term concern." *See In re Tri-Union Dev. Corp.*, 314 B.R. 611, 627 (Bankr. S.D. Tex. 2004).

9. The Debtors cite no authority or facts pertaining to the Wells that supports their theory that they can simply abandon the Wells and leave predecessors-in-interest and/or co-owners to satisfy the outstanding P&A Liabilities. Moreover, the Debtors cite no evidence of the solvency or ability of any co-owners or predecessors-in-interest to satisfy the P&A Liabilities. *See* Disclosure Statement, §§ 3.02, 3.05(n). As such, to the extent that any P&A Liabilities must be satisfied in short order, the Plan cannot be confirmed as is because it fails to set forth the amount of or provide funds or tangible resources to satisfy the same in violation of applicable law. Additionally, to the extent that CNB is required to satisfy any P&A Liabilities, the Plan also fails because it does not provide for the satisfaction of an Administrative Claim to which

CNB would be entitled as a result of the benefit conferred upon the estates through the elimination of the P&A Liabilities and in connection with CER's requirement to indemnify CNB for such costs under the Lease Agreements. *See* Lease Agreements, ¶¶ 15; *see also GHR Energy Corp.*, 940 F.2d at 966.

10. In light of the foregoing, this Court should deny confirmation of the Plan because it violates § 1129(a)(3) and (a)(9)(A) of the Bankruptcy Code.

RESERVATION OF RIGHTS

11. CNB reserves all rights applicable under the Lease Agreements, the Bankruptcy Code, and other applicable law with respect to the allowance and determination of the amount of any all claims against CER and/or the Debtors. CNB also reserves the right to amend or supplement the information set forth in this Objection at any time prior to any hearing to consider confirmation of the Plan.

PRAYER

CNB respectfully requests that the Court: (i) sustain this Objection; (ii) enter an order denying confirmation of the Plan as currently filed; (iii) require CER and/or the Debtors to produce and file with this Court verified statements and reports pertaining to post-petition operation and/or production of the Wells; (iv) allow and require CER, in connection with the Plan, to provide for the satisfaction of an Administrative Claim in favor of CNB to the extent of any post-petition royalties due and owing in connection with post-petition production from the Wells; (v) require CER to determine the amount of and satisfy any P&A Liabilities in connection with the Wells and/or allow and require CER, in connection with the Plan, to provide for the satisfaction of an Administrative Claim in favor of CNB to the extent CNB must satisfy any

P&A Liabilities in connection with the Wells; and, (vi) grant CNB such other and further relief to which it may be justly entitled, both at law and in equity.

DATED: January 12, 2016

Respectfully submitted,

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**ATTORNEYS FOR CITY NATIONAL
BANK**

CERTIFICATE OF SERVICE

Pursuant to BLR 9013-1(f), I hereby certify that on January 12, 2016, notice of this document will be mailed via first class mail, postage prepaid, to the parties listed below. Additionally, notice will be electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in these cases pursuant to the Electronic Filing Procedures in this District.

 /s/ Sean B. Davis

One of Counsel

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