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

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

BGI GULF COAST, LLC & CHAMPION EXPLORATION, LLC'S OBJECTION TO CONFIRMATION OF THE DEBTORS' SECOND AMENDED JOINT PLAN OF LIQUIDATION

[Relates to Docket Nos. 263]

BGI Gulf Coast, LLC ("BGI") and Champion Exploration, LLC ("Champion"), creditors and parties in interest in the above captioned bankruptcy cases, file this Objection ("Objection") to confirmation of the Debtors' Second Amended Joint Plan of Liquidation [Docket No. 263] ("Plan") and respectfully represents as follows:

Preliminary Statement

1. Champion and BGI own working interests in a number of wells operated by the Debtors both on and offshore in the Gulf of Mexico. In addition, Champion owns a royalty interest in in the Breton Sound prospect area offshore Louisiana in state waters. As a co-working interest owner of some of the Debtors' properties, Champion and BGI are parties to a number of joint operating agreements with the Debtors. The Debtors are in possession of funds owned by Champion and BGI that are proceeds from the sale of production from wells jointly owned by Champion, BGI and the Debtors. In addition, a number of the jointly owned prospects are currently at or near the end of their productive life and will require plugging and abandonment

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

("P&A") work to be commenced in the near future. To the extent that the Debtors fail to satisfy their P&A liabilities, Champion and BGI may, as co-owners, be liable for such obligations.

Background

2. On October 26, 2015 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U .S.C. §§ 101 - 1330 (as amended, the "Bankruptcy Code"). Their cases are being jointly administered for procedural purposes only.

3. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On November 9, 2015, an official joint committee of unsecured creditors (the "Committee") was appointed in the Cases.

5. The Debtors filed the Plan on December 20, 2015. A hearing to consider confirmation of the Plan is set for January 14, 2016.

BGI and Champion's Objections

6. The Debtors' Plan is a liquidating plan – proposing to sell substantially all of the Debtors' assets or, at least, all of the Debtors' valuable assets, for the benefit of its secured lender. The Debtors then propose to abandon certain assets, including the Gulf of Mexico Federal Oil and Gas Properties. However, as acknowledged in the Plan, as a result of its ownership interests in the Gulf of Mexico Federal Oil and Gas Properties, the Debtors are subject to certain Safety Law Obligations[2], which include P&A obligations. Although the Plan states that the proposed abandonment will not "alter" the Debtors' Safety Law Obligations, the Plan fails to provide an adequate mechanism to satisfy the Safety Law Obligations.

[2] Capitalized terms not defined herein shall have the meanings set forth in the Plan Disclosure Statement.

7. Further, the Plan is unfairly discriminatory as to unsecured creditors. Pursuant to the Plan, General Unsecured Trade Claims ("Trade Claims") have been separately classified from General Unsecured Non-Trade Claims ("Non-Trade Claims"). Trade Claims will apparently receive approximately 100% of the value of their claim while Non-Trade Claims will receive little to no distribution depending upon recoveries from the Liquidating Trust.

8. Thus, the Plan cannot be confirmed for the following reasons:

- The Plan is not feasible and will likely be followed by a further financial reorganization or liquidation. *See* 11 U.S.C. §1129(a)(11).
- The Plan discriminates unfairly between claims of the same priority level.

The Plan is not feasible.

9. Section 1129(a)(11) codifies the feasibility requirement and requires that confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization, unless such liquidation or reorganization is proposed in the plan. 11 U.S.C. § 1129(a)(11). To allow confirmation, the bankruptcy court must make a specific finding that the plan as proposed is feasible. *Financial Sec. Assur. v. T-H New Orleans Ltd. Pshp. (In re T-H New Orleans Ltd. Pshp.)*, 116 F.3d 790, 801 (5th Cir. 1997) (citing *In re M & S Assoc., Ltd.*, 138 B.R. 845, 848 (Bankr.W.D.Tex.1992)). The standard of proof required by the debtor to prove a Chapter 11 plan's feasibility is by a preponderance of the evidence. *Id.* Where, as here, the proposed plan is a liquidating plan, this burden must be met by a showing that the Debtor has the funds necessary to effectuate the Plan as described therein. *See In re Kevco, Inc.*, 2002 Bankr. LEXIS 1995, *10 (Bankr. N.D. Tex. Nov. 21, 2002).

10. Pursuant to Section 4.14 of the Plan, the Debtor proposes to abandon certain Gulf of Mexico Federal Oil and Gas Properties. Significantly, the Plan provides, "Such abandonment and/or relinquishment does not alter the obligation of the Debtors to comply with laws

reasonably designed to protect the public health and safety from identifiable hazards, including, but not limited to, plugging and abandonment obligations (the "Safety Law Obligations") […]." Plan, p. 31. Thus, to satisfy §1129(a)(11), the Debtors must show by preponderance of the evidence that it has sufficient funds to satisfy its P&A obligations. *See In re Kevco*, 2009 Bankr. LEXIS 1995 at *10 (finding debtor's plan feasible upon a finding that debtor had sufficient cash to effectuate the plan). Should the Debtors fail to meet this burden, confirmation must be denied.

The Plan discriminates unfairly.

11. Section 1129(b) prohibits confirmation of a plan if such plan discriminates unfairly against a non-consenting class. Section 1129(b) does not define "discriminate unfairly," but in this case, the Plan discriminates unfairly by proposing to pay a greater percentage distribution to Class 6 creditors than it pays to Class 7 creditors, even though both have equal rank under state law and under the distribution priorities of the Bankruptcy Code. *In re Sentry Operating Co. of Tex., Inc.*, 264 B.R. 850, 862 (Bankr. S.D. Tex. 2001). As such, the Plan is presumptively subject to denial of confirmation. *Id.* at 863.

12. Further, the degree of discrimination between the percentage payouts to Class 6 and that to Class 7 weigh further in favor of such being unfair. As one bankruptcy court explained, "A crucial distinction, therefore [exists], between cases in which plans have been determined to be unfairly discriminatory and those that have not is the magnitude of the difference in the amount of recovery between similarly-situated classes." *See In re Sea Trail Corp.*, 2012 Bankr. LEXIS 4985 at *28 (Bankr. E.D.N.C. Oct. 23, 2012). "Consistent with the Code's requirement for unfairness, courts often conclude that a plan is unfairly discriminatory when there is a large discrepancy in the percentage recovery between similarly situated creditors.") *Id.* at *27 (citing *In re Tuscon Self-Storage, Inc.*, 166 B.R. 892 (9th Cir. BAP 1994)

(finding unfair discrimination when plan provided 100% recovery for unsecured trade creditors and 10% to deficiency claim); *Sentry Operating*, 264 B.R. at 863-64 (finding unfair discrimination when plan provided for 100% recovery for one class of unsecured creditors and 1% recovery to another class of unsecured creditors); *In re Barney & Carey Co.*, 170 B.R. 17 (Bankr. D. Mass. 1994) (finding unfair discrimination when plan paid deficiency claims 100% over ten years and paid trade creditors only 15% of claims within ninety days); *In re Aztec*, 107 B.R. 585, 589 (Bankr. M.D. Tenn. 1989) (finding unfair discrimination when plan paid insider unsecured claims in full while paying nonrecourse deficiency claim only 3%). "However, courts have been less likely to find that a plan is unfairly discriminatory when the percentage recovery of claims is relatively close." *Id.* (citing *In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 231-32 (Bankr. D.N.J. 2000) (applying rebuttable presumption test and finding that plan was not unfairly discriminatory even though one class only recovered 76% of its claims while another similarly situated class recovered 80% of its claims).

13. The magnitude of difference in the Debtors' Plan closely resembles the treatment found to be unfairly discriminatory in *Sentry Operating*. Class 6 Trade Claims will receive close to 100% of the value of their claim while the distribution to Class 7 Non-Trade Claims, if any, will be minimal. The Debtors' Plan, therefore, violates §1129(b) and may not be confirmed.

WHEREFORE, PREMISES CONSIDERED, BGI and Champion request that the Court deny confirmation of the Debtors' Second Amended Joint Plan of Liquidation and grant BGI and Champion such other and further relief to which it is entitled.

Respectfully submitted this 12th day of January 2015.

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COUN SEL FOR BGI GULF COAST, LLC AND CHAMPION EXPLORATION, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing pleading was served, upon filing, via the Court's CM/ECF system upon those parties subscribing thereto.

/s/ David L. Curry, Jr.
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