

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

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

**CITY NATIONAL BANK'S MOTION FOR ALLOWANCE OF
ADMINISTRATIVE EXPENSE CLAIMS PURSUANT TO 11 U.S.C. § 503(b)**

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.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

City National Bank ("CNB") files this Motion for Allowance of Administrative Expense Claims pursuant to 11 U.S.C. § 503(b) (the "Motion").

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).

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1334 and the standing order of reference from the District Court. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2). The statutory predicate for relief is 11 U.S.C. § 503(b).

SUMMARY OF RELIEF REQUESTED²

2. CNB requests conditional allowance of Administrative Claims it may have pursuant to § 503(b) of the Bankruptcy Code as it pertains to its Leases with Century Exploration Resources, LLC ("CER"). Prior to the Petition Date, CNB, as Trustee for the A. L. Gump Testamentary Trust, certain sub-trusts created thereunder, and their beneficiaries (the "Trust"), entered into two separate Leases whereby CNB, is Lessor, and CER, is Lessee, and pursuant to which CER is entitled to drill and operate oil and gas Wells on properties in California co-owned by the Trust. The Wells under one or both Leases have continued to produce oil and gas through at least November 2015. Pursuant to the Leases, CNB is entitled to receive royalties from such production for distribution to the Trust. CNB, however, has received no royalty or Delay Rental (as defined in the Leases) payments since May 2015.

3. CER is required to provide CNB with monthly statements of production and applicable royalties payable under the Leases. Through counsel, CER has provided reports from June 2015 through November 2015 with respect to production from the Wells under the Tilbury Lease. CER, however, has not provided any reporting reflecting production under the Maverick Lease and has not provided any reporting related to post-November 2015 production under the Tilbury Lease. As such, CNB is unaware of whether and how much production has been

² Certain capitalized terms used in the Summary of Relief Requested are defined later in this Motion. All other undefined, capitalized terms appearing in this Motion shall have the meanings ascribed to them in the Notice of Administrative and Priority Claims Bar Date (Docket No. 274) (the "Administrative Claim Notice") and the Debtors' Second Amended Joint Plan of Liquidation pursuant to Chapter 11 of the Bankruptcy Code (Docket No. 263) (the "Plan"). Additionally, all references to the "Bankruptcy Code" shall mean title 11 of the U.S. Code.

generated or the amount of royalties payable under the Leases for a significant amount of time, and at least since November 2015 as it pertains to the Tilbury Lease.

4. CER's continued operation of the Wells as part its ongoing business activities since the Petition Date has only been permissible due to CNB's allowance of the same under the Leases. Therefore, the resultant royalty and/or Delay Rental payments payable to CNB in connection with CER's operations under the Leases constitute and should be allowed as Administrative Claims under § 503(b)(1)(A) and/ or (b)(3)(D) of the Bankruptcy Code given that they are actual and necessary costs and expenses of preserving these estates and are a function of CNB's substantial contribution to the estates. As such, CNB's attorneys' fees and costs incurred in connection with preserving CNB's rights pertaining to the Leases constitute and should be allowed as Administrative Claims under § 503(b)(4) of the Bankruptcy Code.

5. Additionally, to the extent that CNB, as a co-owner under the Leases, must satisfy any P&A Liabilities pertaining to the Wells, which obligations are CER's primary responsibility and may not be abandoned prior to satisfaction under prevailing authority, such costs and expenses will constitute actual and necessary costs and expenses of preserving these estates, will represent a substantial contribution to these estates by CNB, will represent costs and expenses for which CER must indemnify CNB under the Leases, and therefore constitute and should be allowed as Administrative Claims under § 503(b)(1)(A) and/or (b)(3)(D) of the Bankruptcy Code.³

³ In light of the uncertainty surrounding the amount of its Administrative Claims, CNB reserves the right to amend or supplement this Motion, and/or the amount of the requested Administrative Claims, up to and as of the date of any hearing on this Motion, and/or the date of the Court's final determination of the amount of CNB's allowed Administrative Claims under § 503(b) of the Bankruptcy Code, as further amounts may accrue in the interim due to CNB's continued preservation of its rights under the Leases and based upon the provision of applicable post-petition royalty and production reporting from CER as it pertains to the Wells.

FACTUAL AND PROCEDURAL BACKGROUND

6. On October 26, 2015 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

7. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

8. On October 27, 2015, this Court entered an Order for joint administration of these Bankruptcy Cases (Docket No. 22).

9. Prior to the Petition Date, on or about November 28, 2007, CNB, as Trustee for the Trust, as Lessor, and Edward M. Tilbury ("Tilbury"), as Lessee, executed that certain Oil, Gas and Mineral Lease (the "Tilbury Lease"). A true and correct copy of the Tilbury Lease is attached hereto as **Exhibit A** and incorporated herein for all purposes.

10. On or about February 22, 2008, pursuant to the First Tilbury Lease Assignment, Tilbury assigned his interest in the Tilbury Lease to Edward M. Tilbury, as Trustee of the 1990 E.M. Tilbury Family Trust, dated August 30, 1990 (the "Tilbury Trust"). A true and correct copy of the First Tilbury Lease Assignment is attached hereto as **Exhibit B** and incorporated herein for all purposes.

11. On or about February 22, 2011, Tilbury, as Trustee of the Tilbury Trust, assigned the Tilbury Trust's interest in the Tilbury Lease to Maverick Petroleum, Inc. ("Maverick"), with a subsequent assignment to CER (the "Second Tilbury Lease Assignment"). A true and correct copy of the Second Tilbury Lease Assignment is attached hereto as **Exhibit C** and incorporated herein for all purposes.

12. On or about March 28, 2013, CNB, as Trustee for the Trust, and CER executed that certain Amendment to Oil, Gas and Mineral Lease (the "Tilbury Lease Amendment"). A

true and correct copy of the Tilbury Lease Amendment is attached hereto as **Exhibit D** and incorporated herein for all purposes. The Tilbury Lease Amendment extended the Primary Term (as defined in the Tilbury Lease) of the Tilbury Lease through November 28, 2015. Pursuant to the Tilbury Lease, CNB, on behalf of the Trust, is entitled to receive monthly royalty payments based on the production from the Wells under the Tilbury Lease, failing which, CER must provide a monthly Delay Rental (as defined in the Tilbury Lease) (the "Tilbury Delay Rental") payment in order to maintain the Lease. *See* Tilbury Lease, ¶ 2. CNB has not received any royalty payments since May 2015 and has not received any Tilbury Delay Rental payments. On information and belief, CER continues to operate the Wells subject to the Tilbury Lease.

13. CNB depends on CER to provide monthly production and royalty payment reports. Based on reports provided by Debtors' counsel, the Wells under the Tilbury Lease did not produce oil or gas during October 2015 but produced minimal amounts during November 2015. CNB, however, has not received any reports related to post-November 2015 operations.

14. Also, on or about November 8, 2010, CNB, as Trustee for the Trust, as Lessor, and Maverick, as Lessee, executed that certain Oil, Gas and Mineral Lease (the "Maverick Lease," and together with the Tilbury Lease, collectively, the "Leases"). A true and correct copy of the Maverick Lease is attached hereto as **Exhibit E** and incorporated herein for all purposes. On or about August 1, 2011, Maverick assigned its interest in the Maverick Lease to CER pursuant to the Maverick Lease Assignment. A true and correct copy of the Maverick Lease Assignment is attached hereto as **Exhibit F** and incorporated herein for all purposes.

15. The Primary Term (as defined in the Maverick Lease) of the Maverick Lease was three (3) years, or through November 8, 2013. The Primary Term of the Maverick Lease, however, could be extended by the payment of a monthly Delay Rental (as defined in the

Maverick Lease) (the "Maverick Delay Rental," and together with the Tilbury Delay Rental, collectively, the "Delay Rental"). Prior to its assignment to CER, however, Maverick pre-paid the Maverick Delay Rental through the expiration of the Primary Term. CNB, however, has not received any royalties pertaining to the Maverick Lease or Maverick Delay Rental payments since the initial pre-payment by Maverick. CNB has also received no reporting regarding production or operation of the Wells under the Maverick Lease.

16. On December 2, 2015, this Court entered its Order (Docket No. 180) approving the Debtors' Bid Procedures pertaining to its Sale Motion (Docket No. 90), whereby the Debtors intend to sell certain assets of these estates (the "Sale").

17. On December 21, 2015, the Debtors filed their Second Amended Joint Plan of Liquidation pursuant to Chapter 11 of the Bankruptcy Code (Docket No. 263) (the "Plan") and Second Amended Disclosure Statement for the Debtors' Second Amended Joint Plan of Liquidation pursuant to Chapter 11 of the Bankruptcy Code (Docket No. 265) (the "Disclosure Statement").

18. On December 22, 2015, this Court entered its Order approving the Disclosure Statement (Docket No. 271).

19. Also, on December 22, 2015, this Court entered its Order Setting Administrative and Priority Claims Bar Date (Docket No. 272) (the "Administrative Claim Order"), which set January 13, 2016 as the Administrative Claim Bar Date. Pursuant to the Administrative Claim Order, all parties with claims pertaining to obligations that will not be assumed in connection with the Sale are required to seek allowance of any Administrative Claims prior to the Administrative Claim Bar Date.

20. Also, on December 22, 2015, the Debtors filed Exhibit C to the Disclosure Statement (Docket No. 266) reflecting leases and wells the Debtors intend to exclude from the Sale, as set forth on Schedules 2.2(d) and (m) of the APA, respectively. The Leases and their corresponding wells (the "Wells") are listed on Schedules 2.2(d) and (m) of the APA, respectively.

21. On January 4, 2016, the Debtors filed their Notice of Additional Information regarding certain Oil and Gas Properties in California (Docket No. 298) (the "California Notice"). Pursuant to the Notice, the Debtors included the Wells as those for which it would not provide funds to satisfy P&A Liabilities, while leaving the satisfaction of such liabilities to predecessors in interest and co-owners, such as CNB. *See* California Notice; Disclosure Statement, §§ 3.02, 3.05(n).

GROUND FOR RELIEF

22. This Court should allow an Administrative Claim pursuant to § 503(b) of the Bankruptcy Code in favor of CNB as it pertains to royalties and/or Delay Rental payments due under the Leases for which CER is the operator. Additionally, this Court should grant CNB an Administrative Claim for its attorneys' fees and costs incurred in preserving its rights under the Leases. This Court should also allow an Administrative Claim in favor of CNB in the amount of the P&A Liabilities pertaining to the Wells for which CNB will be jointly and severally liable upon the Debtors' proposed abandonment of the same.

23. Section 503(b)(1)(A) of the Bankruptcy Code provides that Administrative Claims are allowed for "the actual, necessary costs and expenses of preserving the estate" 11 U.S.C. § 503(b)(1)(A). 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). Additionally, § 503(b)(3)(D) provides that Administrative Claims are allowed for "the actual, necessary expense, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by—(D) a creditor . . . in making a substantial contribution in a case under chapter 9 or 11 of this title. 11 U.S.C. § 503(b)(3)(D). Allowable Administrative Claims also include "reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph (3) of this subsection" 11 U.S.C. § 503(b)(4).

24. Further, "although the amount to be allowed as an administrative expense must be measured in dollars and cents . . . the question whether the estate has been benefitted cannot be so narrowly confined. [The estate could receive] other less readily calculable benefits, such as the ability to continue to conduct business as usual." *In re Am. Plumbing & Mech., Inc.*, 327 B.R. 273, 282 (Bankr. W.D. Tex. 2005) (quoting *In re TransAmerican Natural Gas Corp.*, 978 F.2d 1409, 1420 (5th Cir. 1992)) (alteration in original). "Because § 503(b) is one of those 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters' . . . [an applicant's] failure to allege allowable § 503(b)(3) expenses does not prevent them from recovering attorneys' fees and expenses under § 503(b)(4), assuming of course that they can show they made a substantial contribution." *Id.* at 278 (quoting *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235 (1989)) (citing cases) (internal citation omitted).

25. CNB's permitting the Debtors to use the property on which the Wells reside so as to maintain the Wells and generate oil and gas production provided a direct benefit to these estates insofar as CER was able to continue the ordinary course of its business, and insofar as

CER maintained the right to and did operate the Wells after the Petition Date and/or production was generated after the Petition Date. The royalties and/or Delay Rental payment due under the Leases covering Wells which CER maintained and/or operated on a post-petition basis represent the actual and necessary costs of preserving these estates given that the Debtors, and certainly CER, benefitted from the maintenance and potential or actual operation of the Wells, and the proceeds of any production therefrom. Indeed, CER's continued maintenance of and operations at the Wells would not have been possible absent the Leases afforded by CNB.

26. As such, while it is clear that CNB's royalty and Delay Rental payments under the Leases constitute Administrative Claims under § 503(b)(1)(A) of the Bankruptcy Code to the extent of such outstanding payments, CNB has also provided substantial contribution to these estates, pursuant to § 503(b)(3)(D) of the Bankruptcy Code, by permitting the maintenance of the Leases and the continued operation of the Debtors' businesses in the ordinary course, which contribution is not so easily measured in "dollars and cents."⁴ Thus, CNB's substantial contribution also entitles it to an Administrative Claim for its attorneys' fees and costs incurred in connection therewith pursuant to § 503(b)(4) of the Bankruptcy Code. *Id.* However, because CER has not provided reporting for post-November 2015 production generated and royalties due under the Leases, CNB is unsure of the full amount of its applicable Administrative Claim. Therefore, the Debtors should be required to provide such reporting pertaining to production from the Wells and royalties due under the Leases from and after November 2015, and, in addition to CNB's attorneys' fees and costs in an as yet to be determined amount, this Court should grant CNB an Administrative Claim for royalty and/or Delay Rental payments related to

⁴ While not clear at this time, CNB may provide additional substantial contribution to the extent that it must expend funds to satisfy any P&A Liabilities related to the Wells. Additionally, the Debtors' continued maintenance and/or operation of the Wells in connection with CNB's Leases has permitted the offer by Protho Energy Services, LLC to purchase CER's interest in the Wells and Leases, and to potentially relieve the estates of significant liabilities thereunder. *See* Notice of Receipt of Offer to Purchase (Docket No. 327) (the "Protho Offer").

CER's post-petition maintenance and/or operation of and/or production from the Wells during this time.

27. Additionally, this Court should grant CNB an Administrative Claim, pursuant to § 503(b)(1)(A) and/or (b)(3)(D) to the extent of any amounts it must incur to satisfy any P&A Liabilities in connection with the Wells. As set forth on Exhibit C of 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 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.

28. 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). 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 November 2015 and are no longer producing or being

operated, then they may be approximately two (2) 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.

29. 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 soon be borne by CNB as co-owner given the current uncertainty surrounding the Prothro Offer. *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 Debtors' 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-November 2015 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).

30. Therefore, to the extent that CNB is required to satisfy any P&A Liabilities, this Court should grant CNB an Administrative Claim, pursuant to § 503(b)(1)(A) and/or (b)(3)(D), 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 Cumberland Farms, Inc. v Fla. Dep't of Envtl. Prot.*, 116 F.3d 16, 20 (1st Cir. 1997) ("The payment of a fine for failing, during bankruptcy, to meet the requirements of [applicable] environmental protection laws is a cost

'ordinarily incident to operation of a business' in light of today's extensive environmental regulations."); *GHR Energy Corp.*, 940 F.2d at 966.

31. Until CER provides the full post-petition production and royalty reporting pertaining to the Leases, this Court should conditionally allow CNB's Administrative Claims pursuant to § 503(b) of the Bankruptcy Code in the amount of any royalty and/or Delay Rental payments due and owing pursuant to the Leases for post-petition production and/or operation, plus CNB's attorneys' fees and costs incurred in connection with the preservation of its rights under the Leases, in addition to any amounts CNB must expend to satisfy P&A Liabilities pertaining to the Wells, after which time, this Court should determine on a final basis the amount of CNB's allowed Administrative Claims.

RESERVATION OF RIGHTS

32. CNB reserves all rights applicable under the Leases, the Bankruptcy Code, and other applicable law with respect to the allowance and determination of the amount of any and all claims against CER and/or the Debtors. CER also reserves the right to amend or supplement the information set forth in this Motion at any time prior to any hearing on the Motion.

PRAYER

CNB respectfully requests that this Court: (i) grant the relief requested in this Motion; (ii) enter an Order conditionally allowing CNB's Administrative Claims against CER under § 503(b) of the Bankruptcy Code, as set forth in paragraphs 4, 5, 22, and 31 herein; (iii) require CER and/or the Debtors to produce and file with this Court verified statements and reports pertaining to post-petition operation of and/or production from the Wells and royalties and/or Delay Rental payments due in connection with the Leases; or, alternatively, (iv) extend, as necessary, the Administrative Claim Bar Date as it pertains to CNB, for a period of thirty (30) days after the

Debtors have provided and filed with this Court verified statements and reports pertaining to post-petition operation of and/or production from the Wells and royalties and/or Delay Rental payments due in connection with the Leases; and, (v) grant CNB such other and further relief to which it may be justly entitled, both at law and in equity.

DATED: January 13, 2016

Respectfully submitted,

WINSTEAD PC

1100 JPMorgan Chase Tower
600 Travis Street
Houston, Texas 77002
(713) 650-8400 (Telephone)
(713) 650-2400 (Facsimile)

By: /s/ Sean B. Davis
Sean B. Davis
Texas Bar No. 24069583
S.D. Tex. No. 1048341

**ATTORNEYS FOR CITY NATIONAL
BANK**

CERTIFICATE OF SERVICE

Pursuant to BLR 9013-1(f), I hereby certify that on January 14, 2016, notice of this document will be mailed via first class mail, postage prepaid, to the parties listed on the attached service list. Additionally, notice will be electronically mailed on January 13, 2016 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