

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

In re:

COBALT INTERNATIONAL ENERGY, INC., *et al.*,

Debtors,

)
) Chapter 11
)
) Case No. 17-36709 (MI)
)
) (Jointly Administered)
)

**SECURITIES PLAINTIFFS' LIMITED OBJECTION TO CONFIRMATION OF THE
FOURTH AMENDED JOINT CHAPTER 11 PLAN OF COBALT INTERNATIONAL
ENERGY, INC. AND ITS DEBTOR AFFILIATES**

The plaintiffs and court-appointed class representatives (the “Securities Plaintiffs”)¹ for the certified class of investors (the “Certified Class”) in the federal securities action entitled *In re Cobalt International Energy, Inc. Securities Litigation*, No. 4:14-cv-3428 (S.D. Tex.) (the “Securities Action”), pending in the United States District Court for the Southern District of Texas (the “District Court”), hereby submit this limited objection (the “Limited Objection”) to confirmation of the *Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates* (as may be further amended from time to time, the “Plan”) [ECF No. 561] proposed by Cobalt International Energy, Inc. (“Cobalt”) and the other debtors (together with Cobalt, the “Debtors”) in the above-captioned chapter 11 bankruptcy cases (the “Chapter 11 Cases”). As and for this Limited Objection, the Securities Plaintiffs respectfully state as follows:

¹ The Securities Plaintiffs are GAMCO Global Gold, Natural Resources & Income Trust, GAMCO Natural Resources, Gold & Income Trust, St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden and Universal Investment Gesellschaft m.b.H.



PRELIMINARY STATEMENT²

The Securities Plaintiffs’ most pressing concern with respect to the Plan, the ability to opt out of the third-party release contained in Article VIII.C (the “Third Party Release”) on a class-wide basis, has been resolved through the order approving the disclosure statement and solicitation procedures for the Plan (the “Solicitation Procedures Order”) [ECF No. 563]. The Securities Plaintiffs have opted out of the Third Party Release on behalf of themselves and the Certified Class and, by this Limited Objection, reaffirm such opt-out from the Third Party Release. However, two significant concerns remain that require resolution before the Plan can be confirmed. First, the Plan must provide for the Debtors and any post-confirmation fiduciary to preserve evidence potentially relevant to the Securities Action after the effective date of the Plan. Second, the claims of the Securities Plaintiffs and the Certified Class against Cobalt should be preserved to the extent of available insurance coverage, particularly where the Debtors are selling their assets and liquidating and thus are not entitled to a discharge. In addition, the order confirming the Plan should reaffirm that the Securities Plaintiffs’ opt out from the Third-Party Release on behalf of the Certified Class and its members and that – as stated in the Solicitation Procedures Order – as a result, the Securities Plaintiffs and the Certified Class are not Releasing Parties under the Plan.

² Capitalized terms used in this Preliminary Statement but not yet defined have the meanings given thereto below.

LIMITED OBJECTION³

A. The Plan must require the Debtors and the Plan Administrator to preserve potentially relevant evidence until the conclusion of the Securities Action.

1. Fact discovery in the Securities Action remains open due to the temporary stay of the Securities Action by virtue of the consent order entered by this Court. As the issuer of the securities that are the subject of the Securities Action, and given their intimate involvement in the facts and circumstances alleged therein, the Debtors have books, records, electronically stored information, and other evidence relevant to the Securities Action in their possession, custody, and/or control.

2. The Securities Action is subject to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4, which mandates that

any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(b)(3)(C)(i). This mandatory requirement is subject to “sanction for willful violation.” 15 U.S.C. § 78u-4(b)(3)(C)(ii).

3. Continuing preservation of Cobalt’s books, records, electronically stored information, and other items of evidence that are relevant to the Securities Action post-confirmation is absolutely crucial to avoid prejudice to the Securities Plaintiffs and the Certified Class. However, the Plan does not contain any requirement that the Debtors or the Plan

³ In the interest of brevity, the Securities Plaintiffs incorporate herein by reference the factual background set forth in their objection to approval of the disclosure statement and solicitation procedures for the Plan (the “Disclosure Statement Objection”) [ECF No. 452].

Administrator (as defined in the Plan) take any action to retain and preserve potentially relevant evidence through the completion of the Securities Action as to all defendants therein.

4. Inclusion of the following provision in the Plan would resolve the foregoing concern:

Until the entry of a final and non-appealable order of judgment or settlement with respect to all defendants now or hereafter named in the litigation captioned as *In re Cobalt International Energy, Inc. Securities Action*, No. 4:14-cv-3428 (S.D. Tex.) (the “Securities Action”), the Debtors, the Plan Administrator, and any transferee or custodian of the Debtors’ books, records, documents, files, electronic data (in whatever format, including native format), or any tangible object or other item of evidence relevant or potentially relevant to the Securities Action, wherever stored (collectively, the “Potentially Relevant Books and Records”), shall preserve and maintain the Potentially Relevant Books and Records and shall not destroy, abandon, transfer, or otherwise render unavailable such Potentially Relevant Books and Records.

B. The claims of the Securities Plaintiffs and the Certified Class against Cobalt should be preserved to the extent of available insurance coverage.

5. Holders of claims against the Debtors arising out of purchases of the Debtors’ securities are not entitled to any distribution under the Plan on account thereof. See Plan, Art. III.B.7 (claims subordinated pursuant to section 510(b) of the Bankruptcy Code are canceled without any distribution). However, certain of the Debtors’ existing insurance policies, which would potentially provide coverage for claims against Cobalt in the Securities Action, are left intact by the Plan and deemed assumed. See Plan, Art. IV.N. Particularly where the Debtors are not entitled to a discharge, see 11 U.S.C. § 1141(d)(3), there is no plausible legal or factual basis to absolve the carriers under such insurance policies of their contractual liability, but the Plan does not so provide. To avoid this significant and unjustified prejudice to the Securities Plaintiffs and the Certified Class, the Plan should be modified to provide that the Securities

Plaintiffs may continue to prosecute claims, including on behalf of the Certified Class, against Cobalt in the Securities Action, solely to the extent of the Debtors' available insurance coverage.

C. The confirmation order should reaffirm the Securities Plaintiffs' opt out from the Third-Party Release contained on the Plan on behalf of the Certified Class and its members.

6. The Solicitation Procedures Order expressly provides that the Securities Plaintiffs are authorized to opt out of the third-party release contained in Article VIII.C of the Plan (the "Third-Party Release") on behalf of themselves and all members of the Certified Class and that upon such opt out, no member of the Certified Class will constitute a "Releasing Party" or a "Released Party" under the Plan. Solicitation Procedures Order, ¶ 22.

7. The Securities Plaintiffs have filed a notice (the "Opt-Out Notice") [ECF No. 629] of their election to opt out of the Third-Party Release on behalf of themselves, the Certified Class, and the members thereof. They have also timely filed the relevant opt-out forms. Accordingly, the Securities Plaintiffs and the Certified Class are not "Releasing Parties" under, and as defined in, the Plan, and thus none of them are deemed to grant the Third-Party Release. Accordingly, the Securities Plaintiffs request that the order confirming the Plan expressly reaffirm that by operation of the Opt-Out Notice, the Opt Out forms, this Limited Objection and the relevant provisions of the Disclosure Statement, Plan and the Solicitation Procedures Order, the Securities Plaintiffs and the Certified Class and all members thereof are excluded from the definition of "Releasing Party" under the Plan and are not granting or deemed to grant the Third-Party Release.

OPT OUT FROM THIRD PARTY RELEASE

8. For the avoidance of doubt, the Securities Plaintiffs, on behalf of themselves and the Certified Class and the members thereof, pursuant to Articles III.M and IV.H of the Disclosure Statement, expressly opt out of the Third-Party Release and therefore, the Securities

Plaintiffs and the Certified Class and any member thereof are not “Releasing Parties” under, and as defined in, the Plan and are not granting or deemed to grant the Third-Party Release.

RESERVATION OF RIGHTS

9. The Securities Plaintiffs reserve all rights with respect to confirmation of the Plan or any other chapter 11 plan proposed in these Chapter 11 Cases, including but not limited to objecting to confirmation of the Plan or any other plan on any and all grounds, whether or not raised in this Limited Objection.

CONCLUSION

For all of the foregoing reasons, the Securities Plaintiffs respectfully submit that the Plan should not be confirmed unless modified as set forth herein.

Dated: March 27, 2018

/s/ Thomas R. Ajamie

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Counsel for the Securities Plaintiffs

CERTIFICATE OF SERVICE

I certify that on March 27, 2018, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Thomas R. Ajamie
Thomas R. Ajamie