

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

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| In re:  | : | Chapter 11             |
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| COBALT INTERNATIONAL ENERGY, INC., <i>et al.</i> , <sup>1</sup> | : | Case No. 17-36709 (MI) |
|   | : |                        |
| Debtors.  | : | (Jointly Administered) |
|   | : |                        |
|   | X |                        |

**APPLICATION OF THE AD HOC COMMITTEE OF UNSECURED NOTEHOLDERS  
PURSUANT TO SECTIONS 503(b)(3) AND 503(b)(4) OF THE BANKRUPTCY CODE  
FOR ALLOWANCE OF FEES AND EXPENSES INCURRED IN MAKING A  
SUBSTANTIAL CONTRIBUTION AS AN ADMINISTRATIVE EXPENSE**

**THIS APPLICATION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE APPLICATION, YOU SHOULD IMMEDIATELY CONTACT THE REQUESTING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE REQUESTING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE REQUESTING 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 APPLICATION 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 APPLICATION 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 APPLICATION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Debtors' service address is: 920 Memorial City Way, Suite 100, Houston, Texas 77024.



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TO THE HONORABLE MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

The Ad Hoc Committee of Unsecured Noteholders (the “Ad Hoc Committee”)<sup>2</sup> hereby submits this application (the “Application”) under sections 503(b)(3)(B) and 503(b)(4) of title 11 of the United States Code (the “Bankruptcy Code”) seeking allowance of an administrative expense for reimbursement of professional fees and expenses incurred in the above-captioned chapter 11 cases of Cobalt International Energy, Inc., *et al.* (the “Debtors”).<sup>3</sup> In support of its Application, the Ad Hoc Committee respectfully represents as follows:

### **PRELIMINARY STATEMENT**

1. The Ad Hoc Committee has unquestionably made a substantial contribution to the Chapter 11 Cases. While the Ad Hoc Committee is disappointed with the ultimate outcome, it is doubtful that the remainder of the Debtors’ creditors would have fared nearly as well as they did without the Ad Hoc Committee’s efforts. Indeed, until the end, the Ad Hoc Committee was actively exploring, and in advanced discussions with operators regarding, potential alternative transactions that would have resulted in all creditors other than holders of Cobalt General Unsecured Claims being paid in full. The Ad Hoc Committee simply ran out of time.

2. The Ad Hoc Committee at all times participated in the Chapter 11 Cases with the belief that the Unsecured Notes Claims represented the fulcrum class in the Debtors’ capital structure. As the Court itself recognized at the Confirmation Hearing, the Ad Hoc Committee’s belief was a reasonable one. The Debtors shared that belief and urged the Ad Hoc Committee to form in the months prior to the Petition Date. In doing so, the Debtors also agreed to pay the

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<sup>2</sup> The members of the Ad Hoc Committee were the beneficial holders of, or were investment managers or advisors to funds or accounts that were the beneficial holders of, the 2.625% Convertible Senior Notes due 2019 and the 3.125% Convertible Senior Notes due 2024 issued by Cobalt International Energy, Inc.

<sup>3</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Order (I) Confirming the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and its Debtor Affiliates and (II) Approving the Sale Transaction* (the “Confirmation Order”) [Docket No. 784].

fees and expenses of the Ad Hoc Committee's professionals through the Petition Date. The Debtors ceased paying such fees and expenses after the Petition Date, but only because there was no longer a mechanism to continue paying them.<sup>4</sup> The Debtors nevertheless continued to seek and encourage the Ad Hoc Committee's participation in the Chapter 11 Cases. In this regard, the Debtors' request, and the actions taken by the Ad Hoc Committee, were designed to maximize recoveries with the expectation that all other creditors would be paid in full. Through no fault of the Ad Hoc Committee, however, holders of Cobalt General Unsecured Claims received a negligible recovery despite all other creditors receiving substantial recoveries.

3. Throughout these Chapter 11 Cases, the Ad Hoc Committee worked constructively with the Debtors with respect to the Bidding Procedures and the timeline for the Chapter 11 Cases, as well as with respect to the formulation of the Plan. In perhaps the most contentious moment of the Chapter 11 Cases (other than the Confirmation Hearing) the Ad Hoc Committee negotiated the Sales Incentive Plan, which provided stability to the Debtors when the continued existence of such stability was far from certain.

4. The Ad Hoc Committee also served an important role in the Chapter 11 Cases, advancing certain key issues relevant to holders of Cobalt General Unsecured Claims. The Ad Hoc Committee coordinated closely with the Creditors' Committee to ensure that the interests of holders of Cobalt General Unsecured Claims were adequately advanced and that efforts in doing so were divided and not duplicated. This could be seen most clearly at the Confirmation Hearing where the Creditors' Committee was able to negotiate a favorable resolution for trade creditors unburdened by the need to make arguments relating to the overall fairness of the Sale Transactions, precisely because the Ad Hoc Committee was making those arguments. Absent

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<sup>4</sup> The fees and expenses of the professionals for the First Lien Ad Hoc Group and Second Lien Ad Hoc Group were paid on a current basis through the Cash Collateral Order.

the Ad Hoc Committee's efforts, the Creditors' Committee might not have been able to reach its settlement.

5. Moreover, if the Ad Hoc Committee had not taken up the laboring oar with respect to the overall fairness of the Sale Transactions, the Creditors' Committee most likely would have taken it up and incurred additional fees and expenses in doing so that would necessarily be reimbursed by the Estates.

6. Finally, the Ad Hoc Committee was cognizant of the potential costs of the Chapter 11 Cases for creditors. It did not engage in a scorched earth litigation strategy or seek to exercise hold-up value in the slightest bit. To the contrary, during the Confirmation Hearing various parties urged the Court to waive the 14-day stay of the Confirmation Order otherwise applicable under the Bankruptcy Rules largely on the basis that, absent such waiver, the Estates would incur millions of dollars of additional costs. Although the Court largely denied such requests, the Ad Hoc Committee acted quickly to inform the Debtors and the Court—even before the Confirmation Order was actually entered—that the stay need not be prolonged on its behalf.

7. The outcome of the Chapter 11 Cases was a bitter disappointment for the members of Ad Hoc Committee. The Ad Hoc Committee incurred approximately \$3.9 million of costs relating to the fees and expenses of its professionals. The Ad Hoc Committee requests that its efforts to work with the Debtors and the Creditors Committee to maximize the value of the Estates not go unrecognized, and that the Court determine that the Ad Hoc Committee made a substantial contribution to these cases, and the costs incurred by its members be reimbursed. Specifically, it would add insult to injury for the members of the Ad Hoc Committee to have to bear these costs themselves when the costs of every other major creditor constituency, all of whom received favorable recoveries, were covered by the Estates.

### **BACKGROUND**

8. The Ad Hoc Committee was formed in October 2017. Shortly thereafter, it retained Milbank, Tweed, Hadley & McCloy LLP (“Milbank”), as counsel, and Cole Schotz P.C. (“Cole Schotz”), as co-counsel, in connection with a potential restructuring of the Debtors. In connection therewith, Centerview Partners LLC (“Centerview” and, with Milbank and Cole Schotz, the “AHC Professionals”) was engaged as financial advisor and investment banker.

9. The formation of the Ad Hoc Committee was encouraged by the Debtors, as it provided them with the ability to, among other things, coordinate with holders of approximately half of the Unsecured Notes Claims. When the Ad Hoc Committee was formed, the Unsecured Notes Claims were believed to be the fulcrum class in the Debtors’ capital structure. Accordingly, the Debtors agreed to pay the AHC Professionals’ fees and expenses in connection with a potential restructuring on a current basis.<sup>5</sup> On December 14, 2017 (the “Petition Date”), the Debtors commenced the Chapter 11 Cases and ceased paying the AHC Professionals’ fees and expenses, as there was no longer a mechanism to do so.

10. On December 21, 2017, the Office of the United States Trustee appointed an official committee of unsecured creditors in the Chapter 11 Cases (the “Creditors’ Committee”), which was comprised of two of the Debtors’ trade creditors and the Unsecured Notes Indenture Trustee. *See Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 117].

11. On April 5, 2018, the Court entered the Confirmation Order, which confirmed the *Fourth Amended Joint Chapter 11 Plan (with Technical Modifications) of Cobalt International Energy, Inc. and Its Debtor Affiliates*, attached thereto as Exhibit A (the “Plan”).

12. On April 10, 2018, the Effective Date under the Plan occurred. *See Notice of*

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<sup>5</sup> Milbank’s fees were based on the time devoted to the Ad Hoc Committee engagement at their respective standard hourly rates. Centerview’s fees were a set \$150,000 fee payable each month. Cole Schotz did not incur any fees and expenses prior to the Petition Date.

*Entry of Order Confirming the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates and Approving the Sale Transaction and (II) Occurrence of Effective Date* [Docket No. 804]. Accordingly, the Administrative Claims Bar Date for the Administrative Claims asserted herein is May 10, 2018. *See* Confirmation Order ¶ 119 (providing that requests for payment of Administrative Claims must be file no later than the Administrative Claims Bar Date); Plan at Article I.A.11 (providing that the Administrative Claims Bar Date (other than for Fee Claims) is the first Business Day that is 30 days following the Effective Date).

### **JURISDICTION AND VENUE**

13. This Court has jurisdiction over this Application pursuant to 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). Venue of this proceeding and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **RELIEF REQUESTED**

14. The Ad Hoc Committee requests entry of the Proposed Order, attached hereto as Exhibit A, (a) allowing Administrative Claims for Milbank, Cole Schotz and Centerview in the amounts of \$2,995,696.79, \$436,787.69 and \$450,000.00, respectively, and (b) authorizing and directing the Debtors to satisfy such Claims in accordance with Article II.A of the Plan by paying each AHC Professional's Administrative Claim in full in cash within seven (7) days of entry of such Proposed Order.<sup>6</sup>

### **BASIS FOR RELIEF REQUESTED**

15. Pursuant to section 503(b) of the Bankruptcy Code, the Administrative Claims that are the subject of this Application must be allowed as amounts incurred in connection with

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<sup>6</sup> Redacted copies of fee and expense detail for the fees and expenses of Milbank and Cole Schotz for which Administrative Claims are asserted herein are being provided to counsel for the Plan Administrator.

the Ad Hoc Committee's a substantial contribution to the Chapter 11 Cases.

**I. Section 503(b) of the Bankruptcy Code Requires Payment of Fees and Expenses Incurred in Making a “Substantial Contribution” in a Chapter 11 Case**

16. Section 503(b) of the Bankruptcy Code provides for the allowance of administrative expenses. Specifically, sections 503(b)(3)(D) and (4) operate in tandem to require the payment of reasonable fees and necessary expenses incurred in making a “substantial contribution” in a chapter 11 case.<sup>7</sup> 11 U.S.C. § 503. These provisions “promote meaningful creditor participation in the reorganization process.” *In re Consol. Bancshares, Inc.*, 785 F.2d 1249, 1253 (5th Cir. 1986) (quoting *In re Gen. Oil Distribs.*, 51 B.R. 794, 805 (Bankr.E.D.N.Y.1985)).

17. Although the Bankruptcy Code does not define what constitutes a “substantial contribution,” the United States Court of Appeals for the Fifth Circuit has held that the term means a contribution that is “considerable in amount, value or worth” and that “services which make a substantial contribution are those which foster and enhance, rather than retard or interrupt the process of reorganization.” *In re DP Partners L.P.*, 106 F.3d 667, 672-73 (5th Cir. 1997), *cert. denied*, 522 U.S. 815 (1997). To satisfy this test, an applicant must establish that “[its] services have some causal relationship to the contribution.” *In re Fortune Natural*

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<sup>7</sup> Section 503(b)(3)(D) provides that “there shall be allowed administrative expenses, including . . . the actual, necessary expenses, other than compensation and reimbursement specified in [section 503(b)(4)], incurred by . . . a creditor . . . in making a substantial contribution in a [chapter 11 case] . . .” 11 U.S.C. § 503(b)(3)(D).

Section 503(b)(4) provides, in turn, as follows:

[T]here shall be allowed administrative expenses, including . . . reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under [section 503(b)(3)(D)], based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a [bankruptcy] case . . . , and reimbursement for actual, necessary expenses incurred by such attorney or accountant.

11 U.S.C. § 503(b)(4).

*Res. Corp.*, 366 B.R. 549, 554 (Bankruptcy E.D. La. 2007); *see also DP Partners*, 106 F.3d at 673.

18. Courts in the Fifth Circuit have considered various factors in determining whether an applicant made a substantial contribution, including, but not limited to, whether (a) the applicant's efforts conferred a demonstrable benefit to the debtor's estate, (b) the benefit conferred by the applicant exceeds the cost that the applicant seeks to assess against the estate, (c) the applicant's efforts were duplicative of efforts undertaken by statutory fiduciaries, and (d) the applicant had a negative effect on the case, such as by making questionable objections to pleadings filed by the debtor or by engaging in some other improper conduct that caused the debtor to incur costs or that delayed resolution of the case. *See, e.g., In re R.L. Adkins Corp.*, 505 B.R. 770, 780-81 (Bankr. N.D. Tex. 2014); *In re Energy Partners, Ltd.*, 422 B.R. 68, 80 (Bankr. S.D. Tex. 2009); *In re Mirant Corp.*, 354 B.R. 113, 132-35 (Bankr. N.D. Tex. 2006).

## **II. The Ad Hoc Committee, Through the AHC Professionals, Has Made a Substantial Contribution to the Debtors' Chapter 11 Cases**

### **A. The Ad Hoc Committee's Efforts Conferred a Demonstrable Benefit to the Estates that Exceeded the Amounts Requested by this Application**

19. From the outset of the Chapter 11 Cases, the Ad Hoc Committee's efforts were aimed at maximizing the value of the Debtors' estates. Its contributions in this regard fall primarily within two categories: (a) actions taken to stabilize the Debtors and (b) issues raised in connection with the Plan process and Confirmation Hearing that would otherwise have been raised by the Creditors' Committee.

#### *i. Actions Taken to Stabilize the Debtors and Otherwise Support the Debtors in Maximizing the Value of the Estates*

20. The Ad Hoc Committee sought to be constructive both before the Court and also behind the scenes with various fiduciaries. This effort was evident in multiple ways.



21. First, the Debtors sought to implement a Sales Incentive Plan to align the incentives of the Debtors' senior management team with those of the Estates and, by extension, creditors. The Ad Hoc Committee also believed that an incentive program with appropriately set targets would be beneficial. The Ad Hoc Committee did not, however, initially support the Sales Incentive Plan as first proposed by the Debtors. *See Statement Of The Ad Hoc Committee Of Unsecured Noteholders In Support Of The Debtors' (A) Motion For Entry Of An Order Authorizing And Approving The Debtors' Sales Incentive Plan And (B) Motion For Entry Of An Order Authorizing The Debtors To Honor Certain Severance Programs* [Docket No. 290] (the "AHC Statement in Support") ¶ 3. Rather, the Ad Hoc Committee engaged with the Debtors regarding its concerns and proposed a modified version of the Sales Incentive Plan that was ultimately adopted by the Debtors with minor modifications. *See Debtors' Combined Reply In Support Of Debtors' Motion For Entry Of An Order Authorizing The Debtors To Honor Certain Severance Programs And Debtors' Motion For Entry Of An Order Authorizing And Approving The Debtors' Sales Incentive Plan* [Docket No. 286] ¶¶ 5, Ex. A. The Ad Hoc Committee informed the Court of its support for the Sales Incentive Plan, as modified, *see* AHC Statement in Support ¶¶ 3-4, and the Sales Incentive Plan was ultimately approved, thereby (a) focusing management's attention on maximizing value of the Estates and (b) providing stability for the Debtors at a critical time in the Chapter 11 Cases.

22. Second, the Debtors sought to implement Bidding Procedures and an expedited timeline for the marketing of their assets and confirmation of a chapter 11 plan. Although the Ad Hoc Committee was concerned that a sale of substantially all of the Debtors' assets at any price should not become a *fait accompli* as a result of establishing bidding procedures and an expedited timeline, it sought to be constructive and ultimately supported the Debtors' request.

*See The Ad Hoc Committee Of Unsecured Noteholders' (A) Statement In Support Of The Debtors' Motion For Entry Of An Order (I) Approving Bidding Procedures For The Sale Of The Debtors' Assets, (II) Scheduling An Auction, (III) Approving The Form And Manner Of Notice Thereof, (IV) Scheduling Hearings And Objection Deadlines With Respect To The Debtors' Disclosure Statement And Plan Confirmation, And (V) Granting Related Relief And (B) Joinder To The Debtors' Omnibus Reply In Support Of Debtors' Motion For Entry Of An Order (I) Approving Bidding Procedures For The Sale Of The Debtors' Assets, (II) Scheduling An Auction, (III) Approving The Form And Manner Of Notice Thereof, (IV) Scheduling Hearings And Objections With Respect To The Debtors' Disclosure Statement And Plan Confirmation, And (V) Granting Related Relief [Docket No. 287] (the "Statement in Support of Bidding Procedures").*

23. Moreover, the Ad Hoc Committee endeavored to support the Debtors' efforts to maximize the value of the Estates where appropriate, including by supporting (a) the Debtors' request for approval of a settlement between certain non-Debtors and Sonangol and (b) the Debtors' request to deem certain preferential rights unenforceable. *See Statement Of The Ad Hoc Committee Of Unsecured Noteholders In Support Of Debtors' Motion For Entry Of An Order (I) Authorizing Performance Under Settlement Agreement, (II) Approving Settlement Agreement, And (III) Granting Related Relief [Docket No. 281]; Statement In Support Of The Ad Hoc Committee Of Unsecured Noteholders To The Debtors' Motion For Entry Of An Order Deeming Unenforceable Certain Preferential Rights [Docket No. 373].*

*ii. Issues Raised In Connection with the Plan Process and Confirmation Hearing that Would Otherwise Have Been Raised by the Creditors' Committee*

24. The Ad Hoc Committee recognized early on in the Chapter 11 Cases that maximizing the value of the Estates would require, among other things, mitigating the impact of

the “make-whole” amounts otherwise due under the First Lien Indenture and the Second Lien Indenture through (a) disallowance of the claims asserted on account of those make-whole amounts or (b) reinstatement of the First Lien Notes and Second Lien Notes in accordance with section 1124(2) of the Bankruptcy Code. Thus, the Ad Hoc Committee’s efforts included the following:

- (a) Limited Objection to Cash Collateral Order. The Ad Hoc Committee objected to the proposed final cash collateral order on the basis that, among other things, it should be modified to make clear that nothing in such order (including the stipulations contained therein) would (a) preclude any party in interest from proposing, pursuing, soliciting or obtaining confirmation of a chapter 11 plan that reinstates the First Lien Notes or the Second Lien Notes or (b) determine whether and to what extent holders of First Lien Notes and Second Lien Notes were entitled to a claim for the make-whole amounts under any such plan. *See Limited Objection Of Ad Hoc Committee Of Unsecured Noteholders To Debtors’ Emergency Motion For Entry Of Interim And Final Orders (I) Authorizing Postpetition Use Of Cash Collateral, (II) Granting Adequate Protection To The Prepetition Secured Parties, (III) Modifying The Automatic Stay, (IV) Scheduling A Final Hearing, And (V) Granting Related Relief* [Docket No. 268]. The final cash collateral order was ultimately revised accordingly.
- (b) Limited Objection to Disclosure Statement. The Ad Hoc Committee objected to the proposed disclosure statement on the basis that, among other things, the disclosure statement had been modified to make clear that the Debtors intended to minimize the amount of any potential “make-whole,” the plan itself remained ambiguous on that point. *See Limited Objection Of Ad Hoc Committee Of Unsecured Noteholders To Debtors’ Motion For Entry Of An Order (I) Approving The Adequacy Of The Disclosure Statement, (II) Approving The Solicitation And Notice Procedures With Respect To Confirmation Of The Debtors’ Proposed Joint Chapter 11 Plan, (III) Approving The Forms Of Ballots And Notices In Connection Therewith, (IV) Scheduling Certain Dates With Respect Thereto, And (V) Granting Related Relief* [Docket No. 442]. The Debtors announced at the hearing on the disclosure statement that, as a settlement of these issues, they had agreed with the First Lien Noteholders to a reduction of the First Lien Noteholders’ claims of \$3.5 million.<sup>8</sup>

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<sup>8</sup> “The First Lien Ad Hoc Group has objected to the notion that the plan would propose to reinstate and then redeem their debt. The resolution that we have reached with them that will be incorporated into the plan and proposed to be approved in connection with confirmation would be a reduction of the claim amount of the first lien notes, the all-in claim amount including the make-whole premium by three and a half million dollars.” Disclosure Statement Hr’g Tr. 12:2 – 12:9.

25. The Ad Hoc Committee's contributions could most clearly be seen, however, in connection with the Confirmation Hearing. The Ad Hoc Committee objected to the proposed Sale Transactions on the basis that they did not maximize the value of the Estates. *See Objection Of Ad Hoc Committee Of Unsecured Noteholders To The Debtors' Fourth Amended Joint Chapter 11 Plan* [Docket No. 679]. This was an important but binary issue that could not easily be settled in the context of other issues potentially relevant to unsecured creditors. The Creditors' Committee, however, unburdened by the need to make arguments relating to the overall fairness of the Sale Transactions—precisely because the Ad Hoc Committee was making those arguments—was able to negotiate resolution of those issues. Absent the Ad Hoc Committee's efforts, the Creditors' Committee might not have been able to reach its settlement. Moreover, absent the Ad Hoc Committee raising issues relating to the Sale Transactions, the Creditors' Committee likely would have done so itself.

**B. The Ad Hoc Committee's Efforts Were Not Duplicative of Efforts Undertaken by the Debtors or the Creditors' Committee**

26. Courts generally consider whether the efforts of those seeking compensation or reimbursement under section 503(b) were duplicative of made by statutory fiduciaries. *See, e.g., Mirant Corp.*, 354 B.R. at 134. Where the efforts of an applicant are not significantly duplicative of work done by a statutory representative, this factor weighs in favor of granting the application. *Id.* For example, in *Mirant*, the court held a 27-day valuation hearing in which both an official equity committee and one of the debtors' shareholders participated. *Id.* The *Mirant* court held that, although the shareholder's interests were represented at the valuation hearing by the equity committee (a statutory fiduciary) and although the shareholder's contribution was made during only a small portion of that hearing, it was not appropriate to limit shareholder compensation only to the time during which the shareholder was active. *Id.* The court reasoned

that the shareholder's contributions could not have been made without attending the entire hearing. *Id.*

27. The Ad Hoc Committee's efforts in these cases were not duplicative of efforts undertaken by either the Debtors or the Creditors' Committee. First, to the extent that the Ad Hoc Committee had concerns related to relief sought in these Chapter 11 Cases, it would discuss them with the Debtors' professionals and seek to resolve them amicably to obviate the need for unnecessary objections, related discovery and evidentiary hearings. Second, the Ad Hoc Committee coordinated with the Creditors' Committee in these Chapter 11 Cases to avoid duplication of efforts. The Ad Hoc Committee also had concerns regarding the potential practical difficulties faced by the Creditors' Committee in addressing both issues relevant to trade creditors and also issues relevant to Unsecured Noteholders simultaneously.

**C. The Ad Hoc Committee Did Not Have a Negative Effect on These Cases**

28. Courts have found that a movant has had a negative effect on a case where it has made questionable objections to pleadings filed by the debtor or where it has engaged in some other improper conduct that has caused the debtor to incur costs or has delayed resolution of the case. *See, e.g., Mirant Corp.*, 354 B.R. at 135 (denying application under section 503(b) to the extent that such conduct offset the value of the movant's contribution to the cases).

29. The Ad Hoc Committee has not engaged in this type of conduct. The Ad Hoc Committee filed only three objections to relief requested by the Debtors, only one of which—its objection to confirmation of the Plan—resulted in any significant litigation.<sup>9</sup> Every other issue was resolved consensually through good faith negotiations. As noted above, the Ad Hoc Committee objected to confirmation on the basis that the results of the Auction did not represent

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<sup>9</sup> The Ad Hoc Committee's two other objections (referenced above) were limited objections to (a) the Debtors' cash collateral motion and (b) the Disclosure Statement. Neither objection involved substantial litigation.

fair value for the Debtors' assets and, as a result, the Plan failed to maximize the value of the Estates. Although the Court ultimately confirmed the Plan, there was nothing untoward about the Ad Hoc Committee's conduct and nothing frivolous about its objection. In fact, in its ruling, the Court indicated that it agreed with the Ad Hoc Committee's definition of "good faith" in the context of these chapter 11 cases. *See Confirmation Hr'g Tr.* 13:12-14:1. The Court also found that the Debtors and their key stakeholders, including the Ad Hoc Committee, had reasonably believed that the value of the Debtors' assets was greater than suggested by the results of the Auction. *Id.* 14:7-24.

30. The Ad Hoc Committee also did not engage in any improper conduct that delayed resolution of these cases. To the contrary, the Ad Hoc Committee supported the Debtors' decision to market their assets on an expedited timeline. *See Statement in Support of Bidding Procedures* ¶ 1. Moreover, on the same day the Court confirmed the Plan, the Ad Hoc Committee indicated to the Debtors that it did not intend to appeal and voluntarily waived its right to seek a stay of the Effective Date so that the Debtors could emerge from chapter 11 as quickly as possible. *See Ad Hoc Committee of Unsecured Noteholders' Statement Regarding Stay Order* [Docket No. 787] at 2.

### **REASONABLENESS OF FEES**

31. In *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974) and *In re First Colonial Corp. of Am.*, 544 F.2d 1291 (5th Cir. 1977), *cert. denied*, 431 U.S. 904 (1977), the United States Court of Appeals for the Fifth Circuit set forth factors to consider in determining the reasonableness of professional compensation. Courts have applied these factors to requests for compensation under section 503(b) of the Bankruptcy Code. *See, e.g., In re Energy Partners, Ltd.*, 422 B.R. 68, 89-91 (Bankr. S.D. Tex. 2009) (applying 12-factor test from *Johnson*).

32. Consideration of these factors should result in a determination that the fees for which reimbursement is sought by this Application are reasonable:

- (a) Time and Labor Required. During these Chapter 11 Cases, Ad Hoc Committee counsel expended thousands of hours providing services to the Ad Hoc Committee. All professionals involved in the rendering of services have made a deliberate effort to avoid any unnecessary duplication of work and time expended. Counsel to the Ad Hoc Committee attended hearings telephonically when possible, and when attendance in person at a hearing was necessary (such as for the confirmation hearings), the minimum necessary number of attorneys traveled to such hearing. In certain instances, conferences or collaboration were necessary among attorneys or between paraprofessionals and attorneys. Where more routine tasks were involved, the talents of paraprofessionals and less experienced attorneys were utilized whenever possible to reduce the overall amount of fees without sacrificing the quality of the service being rendered.
- (b) Novelty and Difficulty of Questions Presented. The services rendered herein have dealt with significant sums and extensive documents, often requiring expedited preparation and review, in addition to counsel's attendance at numerous conferences, meetings, settlement discussions, and hearings.
- (c) Skill Required to Perform the Legal Services Properly. The importance of these cases was such that attorneys with the highest skills were utilized. Ad Hoc Committee attorneys with varying levels of experience and seniority were used effectively and efficiently to service the Ad Hoc Committee.
- (d) Preclusion of Other Employment by the Attorneys Involved. Representation of the Ad Hoc Committee involved substantial commitments of time by Ad Hoc Committee counsel. As with any matter, time spent on such representation was time that could not be spent either engaging in or pursuing other assignments.
- (e) Customary Fees. The fees sought herein are based on Ad Hoc Committee counsel's standard hourly rates for services of this kind. They are not unusual given the complexity of the Chapter 11 Cases and the time expended.
- (f) Fees Fixed or Contingent. The fees of Ad Hoc Committee counsel are not contingent, although the issue of whether those fees will ultimately be paid from the Debtors' Estates as an Administrative Claim is of course dependent on whether and to what extent the Court grants this Application.
- (g) Time Limitations Imposed by Client or Other Circumstances. The Chapter 11 Cases proceeded on an expedited timeline and the Ad Hoc Committee was necessarily subject to deadlines correlated with such expedited timeline.

- (h) Amounts Involved and Results Achieved. As discussed above, the Ad Hoc Committee, through Ad Hoc Committee counsel, conferred a substantial benefit on the Debtors' Estates that exceeds the amount sought by this Application. Moreover, such amount is less than or on par with amounts incurred by other professionals in these Chapter 11 Cases.
- (i) Experience, Reputation and Ability of the Attorneys. The professionals from the Ad Hoc Committee counsel that were involved in these Chapter 11 Cases are well known and highly regarded in the practice of creditors' rights, insolvency, business restructuring and bankruptcy law, related litigation.
- (j) "Undesirability" of the Case. The circumstances of the Chapter 11 Cases make them no more or less desirable than other large chapter 11 cases.
- (k) Nature and Length of Relationship with Client. The Ad Hoc Committee was formed in October 2017 at the Debtors' urging and, shortly thereafter, it retained Milbank, as counsel, in connection with a potential restructuring of the Debtors. Centerview<sup>10</sup> was engaged as financial advisor and investment banker at approximately the same time. The Ad Hoc Committee retained Cole Schotz, as co-counsel, in December 2017. Upon confirmation of the Plan, AHC Professionals concluded their work.
- (l) Awards in Similar Cases. Various courts have granted "substantial contribution" applications made by ad hoc committees of unsecured noteholders.

### **CONCLUSION**

33. For the foregoing reasons, the Ad Hoc Committee respectfully requests that the Court enter the Proposed Order and grant such other relief as is just and proper.

Dated: May 10, 2018

COLE SCHOTZ P.C.

By: /s/ Michael D. Warner  
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<sup>10</sup> Although members of the Ad Hoc Committee are obligated to reimburse the fees and expenses of Milbank and Cole Schotz were the Court to determine not to grant the Application, members are not similarly obligated to reimburse the fees and expenses of Centerview.



- and -

MILBANK, TWEED, HADLEY & M<sup>c</sup>CLOY LLP

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**EXHIBIT A**

**Proposed Order**

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

|  |   |                        |
|--|---|------------------------|
|  | x |                        |
|  | : |                        |
| In re:                                       | : | Chapter 11             |
|  | : |                        |
| COBALT INTERNATIONAL ENERGY, INC., <i>et</i> | : | Case No. 17-36709 (MI) |
| <i>al.</i> , <sup>11</sup>                   | : |                        |
|  | : | (Jointly Administered) |
| Debtors.                                     | : |                        |
|  | : |                        |
|  | x |                        |

**ORDER GRANTING THE APPLICATION OF THE AD HOC COMMITTEE OF  
UNSECURED NOTEHOLDERS PURSUANT TO SECTIONS 503(b)(3) AND 503(b)(4)  
OF THE BANKRUPTCY CODE FOR ALLOWANCE OF FEES AND EXPENSES  
INCURRED IN MAKING A SUBSTANTIAL CONTRIBUTION  
AS AN ADMINISTRATIVE EXPENSE**

Upon consideration of the Ad Hoc Committee's Application Pursuant to 11 U.S.C. §§ 503(b)(3)(D) and 503(b)(4) for Allowance of Fees and Expenses in Making a Substantial Contribution as an Administrative Expense (the "Application"); and it appearing that this Court has jurisdiction to consider this matter; and due and proper notice of the Application having been given to all appropriate parties; and it appearing that, because of the nature of the relief requested, no other or further notice need be given; and based upon the pleadings and the record, the Court is of the opinion that the relief sought is proper and should be granted.<sup>12</sup>

It is therefore:

ORDERED that the Application is GRANTED in its entirety; and it is further

ORDERED that the Administrative Claims of Milbank, Cole Schotz and Centerview

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<sup>11</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Debtors' service address is: 920 Memorial City Way, Suite 100, Houston, Texas 77024.

<sup>12</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

are Allowed in the amounts of \$2,995,696.79, \$436,787.69 and \$450,000.00, respectively; and it is further

ORDERED that the Debtors are authorized and directed to satisfy such Administrative Claims in accordance with Article II.A of the Plan by paying each of the AHC Professionals in full in cash within seven (7) days of entry of this Order; and it is further

ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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UNITED STATES BANKRUPTCY JUDGE  
MARVIN ISGUR