

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

In re:

COBALT INTERNATIONAL ENERGY,
INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 17-36709–MI

(Jointly Administered)

**WELLS FARGO BANK, NATIONAL ASSOCIATION’S JOINDER TO
BAKER HUGHES’ MOTION FOR STATUS CONFERENCE AND ENTRY OF ORDER
REGARDING DISTRIBUTIONS PURSUANT TO PLAN SETTLEMENT REGARDING
CLASS 5 SUBSIDIARY GENERAL UNSECURED TRADE CLAIMS**

[Relates to Doc. No. 950]

Wells Fargo Bank, National Association, in its capacity as indenture trustee (the “Trustee”) and as a creditor in the above styled and captioned case (the “Case”), files this Joinder (the “Joinder”) to Baker Hughes’ *Motion for Status Conference and Entry of Order Regarding Distributions Pursuant to Plan Settlement Regarding Class 5 Subsidiary General Unsecured Trade Claims* (the “Motion”) [Doc. No. 950]. In support of the Joinder, the Trustee respectfully states the following:

I. WELLS FARGO’S JOINDER

1. The Trustee generally adopts the statement made by Baker Hughes in its Motion, and, except for the general description of the Committee Settlement,² incorporates them into this Joinder as if fully set forth herein.

¹ 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.

² Capitalized but undefined terms herein shall have the same meaning ascribed to them in Baker Hughes’ Motion [Doc. No. 950].



173670918070500000000001

2. As for the Committee Settlement, the Trustee clarifies Baker Hughes' general description of the settlement terms. *See* MOTION, at ¶ 2. The Committee Settlement—which was the result of extensive negotiations between the Committee, the Trustee, the Debtors, and the Second Lien Ad Hoc Group (as defined in the Plan)—provides the following terms:

- a. On Effective Date, Debtors will establish and Plan Administrator will maintain a fund of \$23 million for the benefit of Class 5 Subsidiary General Unsecured Claims that are Allowed;
- b. The Unsecured Notes Indenture Trustee shall receive an Allowed claim for substantial contribution in an amount of reasonable and documented fees and expenses not to exceed \$600,000;
- c. In full and final resolution of Committee's standing motion or any future motion for standing to pursue claims asserted in derivative lawsuits, former director and officer defendants shall pay \$5 million in a one-time lump-sum payment to holders of **Allowed Unsecured Notes Claims**;
- d. The Committee's motion for standing, objection to Confirmation, objection to exclusivity, designation motion, and any other adverse pleadings shall be deemed withdrawn;
- e. Committee shall select a Member to serve on the Plan Administrator with Chairman and Lead Member Nader Tavakoli; and
- f. The Committee-appointed Member to be compensated at fee of \$20,000 per month, capped at 12 months.

See Term Sheet of Committee Settlement, attached hereto as **Exhibit A** (emphasis added). A key component of the Committee Settlement was the requirement that the Debtors' former officers and directors, who are parties to the Derivative Actions (as defined in the Plan), pay the amount of \$5,000,000.00 ("**Settlement Amount**") to the Trustee for the benefit of the Allowed Unsecured Notes Claims (as defined in the Plan).

3. The terms of the Committee Settlement, as described above, were read into the Court's record at the hearing (the "**Plan Confirmation Hearing**") on the Debtors' *Fourth Amended Joint Chapter 11 Plan (with Technical Modifications) of Cobalt International Energy,*

Inc. and its Debtor Affiliates (as amended and supplemented, the “Plan”) [Doc. No. 768].³ Accordingly, such terms constitute a valid and binding contract under Texas law. *See Houston v. Holder (In re Omni Video, Inc.)*, 60 F.3d 230, 232 (5th Cir. 1995) (holding that when the terms of a settlement agreement are read into a bankruptcy court’s record, such terms become a valid and enforceable contract under Texas law).

4. The Debtors subsequently filed an amendment to the Plan (the “Amendment”), which departed from the terms of the agreement that was presented to the Court. More specifically, the Amendment provides that the Settlement Amount is to be paid for the benefit of all “Allowed Cobalt General Unsecured Claims” (as defined in the Plan)—not the “Allowed Unsecured Notes Claims.” This simple change may prejudice holders of Unsecured Notes Claims because their bargained-for recovery is at risk of being diluted.

5. Additionally, the Committee Settlement, as incorporated through the confirmed Plan, contemplated that the distributions to Class 5 creditors would occur “[o]n the Effective Date, or as soon thereafter as is reasonably practicable.” *See PLAN*, at Art. III.B.5. As of the filing of this Joinder, the Trustee has not received the Settlement Amount for distribution to Allowed Unsecured Notes Claim in accordance with the Committee Settlement.

II. CONCLUSION

For these reasons, the Trustee joins Baker Hughes’ request that the Court hold a status conference regarding distribution of the Subsidiary GUC Settlement Reserve Funds, as well as the enforcement of the Committee Settlement, and enter an appropriate order regarding same.

³ *See* Apr. 3, 2018 Confirmation Hearing Tr. 138:18 25 – 139:1-21 (emphasis added). (Debtors’ counsel stating: “In addition, Your Honor, in resolution of the Committee’s objections to the releases under the Plan, the former director and officer Defendants named as Defendants in the derivative law suits will pay an amount of \$5 million in a one-time lump sum payment to holders of allowed unsecured notes’ claims at Cobalt International Energy, Incorporated.”) (emphasis added).

Dated: July 5, 2018

Respectfully Submitted,

REED SMITH LLP

By: /s/ Lloyd A. Lim
Lloyd A. Lim – SBT # 24056871
Rachel I. Thompson – SBT # 24093258
811 Main Street, Suite 1700
Houston, TX 77002
Telephone: (713) 469-3671
Facsimile: (713) 469-3899
Email: LLim@reedsmith.com
Email: RIThompson@reedsmith.com

Eric A. Schaffer (Admitted *Pro Hac Vice*)
Reed Smith Centre
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
Telephone: (412) 288-3131
Facsimile: (412) 288-3063
Email: eschaffer@reedsmith.com

**COUNSEL TO WELLS FARGO BANK,
NATIONAL ASSOCIATION,
AS INDENTURE TRUSTEE**

CERTIFICATE OF SERVICE

This is to certify that on July 5, 2018, a true and correct copy of the foregoing document was served by electronic transmission to all registered ECF users appearing in the case.

/s/ Rachel I. Thompson
Rachel I. Thompson

FRE 408
CONFIDENTIAL SETTLEMENT COMMUNICATIONS

Class 5 Subsidiary General Unsecured Claims Settlement Fund

- On Effective Date, Debtors will establish and Plan Administrator will maintain a fund of \$23 million for the benefit of Class 5 Subsidiary General Unsecured Claims that are Allowed.

Payment of Unsecured Notes Indenture Trustee Fees

- The Unsecured Notes Indenture Trustee shall receive an Allowed claim for substantial contribution in an amount of reasonable and documented fees and expenses not to exceed \$600,000.

Committee Standing and Derivative Claim Settlement

- In full and final resolution of Committee's standing motion or any future motion for standing to pursue claims asserted in derivative lawsuits, former director and officer defendants shall pay \$5 million in a one-time lump-sum payment to holders of Allowed Unsecured Notes Claims.

Withdrawal of Committee Pleadings

- The Committee's motion for standing, objection to Confirmation, objection to exclusivity, designation motion, and any other adverse pleadings shall be deemed withdrawn.

Plan Administrator

- Committee shall select a Member to serve on the Plan Administrator with Chairman and Lead Member Nader Tavakoli.
- The Committee-appointed Member to be compensated at fee of \$20,000 per month, capped at 12 months.