

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

In re:	)	
	)	Chapter 11
	)	
COBALT INTERNATIONAL ENERGY, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 17-36709 (MI)
	)	
Reorganized Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket Nos. 300, 784</b>

**MOTION OF PLAN ADMINISTRATOR FOR AUTHORITY TO  
DIRECT FUNDS IN FURTHERANCE OF SETTLEMENT ORDER AND PLAN AND  
NOTICE OF DISTRIBUTION**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTIES TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTIES CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTIES. 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 ATTORNEYS.**

Nader Tavakoli, solely in his capacity as Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., *et al.* (the “Plan Administrator”),

<sup>1</sup> The Reorganized Debtors in the 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).



moves (the “Motion”) this Court for entry of an order authorizing the Plan Administrator to transfer the Sonangol Settlement Proceeds (as defined in Paragraph 1 below) to the Plan Administrator Account (as defined in Paragraph 19 below) in order to make such funds available for distribution pursuant to and subject to the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates [Dkt. 784] (the “Plan”) confirmed by 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 [Dkt. 784] (the “Confirmation Order”).<sup>2</sup> In addition, while not required under the Plan, the Plan Administrator is providing notice of the distribution of certain other funds unrelated to the Sonangol Settlement Proceeds. In support of this Motion, the Plan Administrator states as follows:

### **PRELIMINARY STATEMENT**

1. During the Chapter 11 cases but prior to confirmation of the Plan, Debtor Cobalt International Energy, Inc. (“Cobalt”) resolved a three-year dispute with Sociedade Nacional de Combustíveis de Angola—Empresa Pública and Sonangol Pesquisa e Produção, S.A. (collectively, “Sonangol”), concerning a failed sale of a non-Debtor subsidiary’s Angolan assets to Sonangol. The settlement provided for Sonangol to make a settlement payment of \$500 million in two installments (together with interest that has accrued on the settlement proceeds, the “Sonangol Settlement Proceeds”), each of which has occurred. This Court previously approved the settlement and the proceeds are currently being held in a segregated account subject to further Order of the Court. By this Motion, the Plan Administrator seeks authority to transfer the Sonangol Settlement Proceeds to the Plan Administrator Account consistent with the confirmed Plan.

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<sup>2</sup> Unless otherwise indicated, all capitalized terms in this Motion shall have the same meaning as ascribed to them in the Plan or the Confirmation Order, as applicable.

2. The Plan Administrator further seeks approval to distribute \$365 million of the Sonangol Settlement Proceeds to the Second Lien Noteholders on account of their secured claims and their deficiency claims (the “Interim Distribution”).

3. The Plan Administrator also provides herein a notice of his intention to distribute \$35 million representing proceeds from collateral to the Second Lien Noteholders.

4. The Plan Administrator and his professionals believe that, following the proposed distributions, the estates will retain substantially more assets than needed to complete the remaining administration of the estates and for payment of any asserted or potential claims against the Debtors and their affiliates.

### **JURISDICTION AND VENUE**

5. The Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2), and this Court has exclusive jurisdiction over the Confirmation Order. *See* Confirmation Order ¶ 121. Venue is also proper in this Court under 28 U.S.C. §§ 1408 and 1409.

6. This Court retains post-confirmation jurisdiction to interpret, implement, and enforce its own orders, including the Confirmation Order and Settlement Order (as defined in Paragraph 12 below). *See* Settlement Order ¶ 13; Confirmation Order ¶ 121; Plan § XI(17).

### **BACKGROUND**

#### **A. The Whitton ORA and the Sonangol Settlement**

7. Certain of the Debtors’ non-debtor subsidiaries conducted oil exploration and development activity in Angola. In connection with certain of these assets, Debtor Cobalt International Energy, L.P. (“Cobalt LP”) entered into an Overriding Royalty Agreement Relating

to Blocks Located Offshore Angola, dated February 13, 2009 (the “Whitton ORA”) with Whitton Petroleum Services Limited (“Whitton”).

8. In August 2015, Cobalt’s non-Debtor subsidiary that held assets in Angola entered into an agreement to sell those assets to Sonangol for \$1.75 billion. Sonangol paid an initial deposit of \$250 million but its failure to obtain the Angolan government approvals required to close the deal resulted in the automatic termination of the purchase and sale agreement in August 2016. The parties thereafter engaged in arbitration surrounding the failure to close.

9. The Debtors commenced these Chapter 11 cases on December 14, 2017.

10. During the Chapter 11 cases, Cobalt and Sonangol reached a global settlement. *See generally* Debtors’ Motion for Entry of an Order (I) Authorizing Performance under Settlement Agreement, (II) Approving Settlement Agreement, and (III) Granting Related Relief [Dkt. 127].

11. One of the key terms of the Sonangol Settlement was the Sonangol Settlement Proceeds, payable in two installments: \$150 million paid by February 23, 2018 and the balance of \$350 million paid by July 1, 2018.

12. On January 25, 2018, the Bankruptcy Court entered an Order approving the Sonangol Settlement [Dkt. 300] (the “Settlement Order”).

13. At the time of the Sonangol Settlement, the Debtors had not confirmed their Plan, and Cobalt LP had not yet determined whether to assume or reject the Whitton ORA. Accordingly, the Settlement Order provided for the Sonangol Settlement Proceeds to be deposited into a segregated depository account (the “Segregated Account”) pending a further

order of the Court. *See* Settlement Order ¶ 9 (“No distributions or transfers shall be made from the segregated depository account absent further order of [the] Court.”).

14. On June 29, 2018, the Plan Administrator filed a notice informing the Court that all of the Sonangol Settlement Proceeds were received and deposited into the Segregated Account [Dkt. 954].

15. On July 18, 2018, the Plan Administrator filed the definitive documents pursuant to the settlement agreement with Sonangol [Dkt. 988].

16. Pursuant to the settlement definitive documentation, Sonangol assumed all liabilities relating to Cobalt’s Angolan assets, regardless of when such obligations arose. *See* Settlement Implementation Agreement [Dkt. 988-1] ¶ 5.

**B. Confirmation of the Plan and Rejection of the Whitton ORA**

17. On April 5, 2018, this Court entered the Confirmation Order confirming the Plan. On April 10, 2018, the Effective Date occurred under the Plan.

18. Pursuant to the Plan and Confirmation Order, the Plan Administrator was appointed on the Effective Date. The Plan vested all of the Debtors’ assets that were not previously sold with the Plan Administrator, including Net Cash. *See* Plan §§ I.A. 85, 96.

19. The Plan Administrator maintains an account to administer funds, including Net Cash (the “Plan Administrator Account”).

20. Pursuant to Section V.A. of the Plan, Cobalt LP rejected the Whitton ORA. Whitton filed a \$225 million general unsecured claim for alleged rejection damages (the “Whitton Claim”). *See* Proof of Claim Nos. 440 and 104. The Plan Administrator disputes Whitton’s \$225 million claim, the value of which the Plan Administrator believes to be zero.

The parties' rights with respect to the amount of the Whitton Claim, if any, are reserved and preserved and are not impacted by the relief requested in this Motion.

**C. Distribution of Net Cash under the Plan**

21. The Sonangol Settlement Proceeds received by Cobalt LP constitute "Net Cash" under the Plan. "Net Cash" means:

The Debtors' Cash or Cash equivalents on hand (including any Cash, securities, other Sale Transaction Proceeds, any Cash proceeds of the collateral of the First Lien Noteholders and Second Lien Noteholders, or any *Cash proceeds from the Sonangol Settlement ultimately received by the Debtors*) less any Cash or Cash equivalents to be paid or reserved pursuant to and in accordance with the Plan on account of the Wind Down Budget or otherwise, but excluding Cash recoveries (if any) on account of unencumbered assets (if any) not subject to adequate protection claims (if any) under the Cash Collateral Order.

*See* Plan § I.A.85 (emphasis added).

22. Under the Plan, Net Cash is used first to satisfy the First Lien Notes Claims, Allowed Administrative Claims, and Allowed Fee Claims, and to fund the Subsidiary GUC Settlement Reserve. *See* Plan §§ I.A.85, I.A.126, I.A.135, I.A.136, III.B.3. The First Lien Notes Claims, Allowed Administrative Claims, and Allowed Fee Claims have been fully satisfied or otherwise reserved for, and the Subsidiary GUC Settlement Reserve has been fully funded.

23. The next stakeholders authorized to receive Net Cash under the Plan are the Second Lien Notes Secured Claims (Class 4) as to Net Cash subject to their liens. *See* Plan §§ I.A.85, I.A.126, III.B.4.

**i. Second Lien Notes Secured Claims.**

24. The Sonangol Settlement Proceeds are attributable to Cobalt LP's relationship with non-debtor subsidiary Cobalt International Energy Overseas Ltd. ("Cobalt International")

and its subsidiaries that conducted oil exploration and development activity in Angola (collectively, the “Non-Debtor Subsidiaries”).<sup>3</sup>

25. The Second Lien Noteholders have a second-lien pledge of 65% of Cobalt LP’s ownership interests in Cobalt International, and 100% second-lien pledge on intercompany claims. *See* Disclosure Statement at p. 30, §§ VI.D.1, VI.D.2. As a result, at least 65% of the Sonangol Settlement Proceeds received by Cobalt LP are subject to the Second Lien Noteholders’ liens and thus constitute Net Cash available for distribution to holders of Second Lien Notes Secured Claims.

26. The Second Lien Noteholders maintain that they are entitled to more than 65% of the Sonangol Settlement Proceeds received by Cobalt LP prior to any other creditor receiving a distribution from such proceeds, including with respect to an administrative expense under the Cash Collateral Order for the diminution in value of their collateral (the “Diminution in Value Claim”) and/or on account of intercompany claims against the Non-Debtor Subsidiaries against which the Second Lien Noteholders have a security interest.

27. These issues have not yet been resolved. The Plan Administrator will credit the portion of the Interim Distribution related to the deficiency claim (described below) against the Second Lien Noteholders’ Diminution in Value Claim (if any) and/or any recovery the Second Lien Noteholders may receive from the Sonangol Settlement Proceeds on account of their security interest in intercompany claims. Further, the Plan Administrator will reserve sufficient funds such that the Interim Distribution to the Second Lien Noteholders will not prejudice any stakeholder’s rights with respect to the Sonangol Settlement Proceeds.

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<sup>3</sup> *See* Declaration of David D. Powell, Chief Financial Officer of Cobalt International Energy, Inc., in Support of Chapter 11 Petitions and First Day Motions [Dkt. 16] ¶ 24; *see also* Disclosure Statement for the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates [Dkt. 562] (the “Disclosure Statement”) at p. 30 n.14.

**ii. Subsidiary General Unsecured Claims Recovery**

28. After the First Lien Notes Claims, Allowed Administrative Claims, and Allowed Fee Claims have been fully satisfied (or otherwise reserved for), and the Subsidiary GUC Settlement Reserve has been fully funded, any Net Cash that is *unencumbered* is made available for distribution to Class 5 creditors, as set forth in the Plan. *See* Plan §§ I.A.85, I.A.134, III.B.5.

29. Specifically, the unencumbered Net Cash is considered part of the “Subsidiary General Unsecured Claims Recovery,” from which Whitton, holders of the Second Lien Notes Deficiency Claims, and holders of intercompany claims against Cobalt LP share Pro Rata. *See* Plan §§ I.A.134 III.B.5, III.B.8.<sup>4</sup>

30. As noted above, Whitton has asserted a \$225 million claim against Cobalt LP, the value of which the Plan Administrator believes to be zero.

31. The Plan Administrator is aware that there are billions of dollars of intercompany claims against Cobalt LP, including Cobalt’s approximately \$6 billion claim against Cobalt LP (the “Cobalt Intercompany Claim”).<sup>5</sup> Whitton has challenged the validity of the Cobalt Intercompany Claim. *See Whitton Petroleum Services Ltd. v. Tavakoli, Plan Administrator, et al.*, Adv. No. 18-03172. The parties’ rights with respect to intercompany claims, including the Cobalt Intercompany Claim, are not impacted by the relief requested in this Motion. Furthermore, the Plan Administrator will reserve sufficient proceeds to satisfy a Pro Rata

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<sup>4</sup> “Subsidiary General Unsecured Claims Recovery” means (a) any Net Cash (including proceeds of any Sale Transaction) in excess of amounts necessary to satisfy all Allowed Administrative Claims, Allowed Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Other Secured Claims, Allowed First Lien Notes Claims, and Allowed Second Lien Notes Secured Claims, in each case in full, in Cash, as provided herein, if any, plus (b) Cash recoveries (if any) on account of unencumbered assets (if any), after funding the Subsidiary GUC Settlement Reserve, at the applicable Debtor other than Cobalt not subject to adequate protection claims under the Cash Collateral Order.

Plan § I.A.134.

<sup>5</sup> The Second Lien Noteholders have a lien on all intercompany claims, including the Cobalt Intercompany Claim.



distribution to Whitton as if the intercompany claims were not allowed and the highly disputed Whitton Claim was allowed in the amount asserted.

**RELIEF REQUESTED**

32. The Plan Administrator proposes to transfer the Sonangol Settlement Proceeds from the Segregated Account to the Plan Administrator Account, and then make the \$365 million Interim Distribution to the Second Lien Noteholders, pursuant to the distribution mechanism set forth in the Plan.

33. The Plan Administrator recognizes that the Plan already provides him with the authority to initiate interim distributions without further order of this Court. However, given the requirements of the Settlement Order and considering the various disputes that have surrounded the Sonangol Settlement, the Plan Administrator seeks authority for the Plan Administrator's proposed course of action.

34. The Interim Distribution is the minimum amount that Second Lien Noteholders are entitled to receive from the Sonangol Settlement Proceeds on account of their secured and deficiency claims. As noted above, the Second Lien Noteholders are entitled to, at least, (i) 65% of the Sonangol Settlement Proceeds on account of their secured claims, and (ii) their Pro Rata share of the remaining 35% of the Sonangol Settlement Proceeds (as a Class 5 creditor). The Interim Distribution represents, in the most conservative light, the Second Lien Noteholders' share of the encumbered portion of the Sonangol Settlement Proceeds and their Pro Rata share of the remaining unencumbered portion of Sonangol Settlement Proceeds.

35. Making the Interim Distribution to the Second Lien Noteholders will not prejudice other stakeholders, because the Plan Administrator is (i) retaining funds well in excess of what is required for the remaining costs of administration and for payment of any asserted or

potential claims against the Debtors and their affiliates; (ii) able to reallocate or otherwise credit the Interim Distribution to the extent intercompany claims (against which the Second Lien Noteholders have a security interest) and/or the Second Lien Noteholders' yet-to-be-asserted Diminution in Value Claim are allowed; and (iii) accounting for the maximum amount that other Class 5 creditors could recover from the unencumbered Sonangol Settlement Proceeds.

36. Nothing herein seeks to affect any party's rights with respect to (i) the Diminution in Value Claim, (ii) the validity of any intercompany claim, including the Cobalt Intercompany Claim, (iii) the validity of any claims asserted against Non-Debtor Subsidiaries and/or (iv) any remaining Sonangol Settlement Proceeds after the Interim Distribution is made to the Second Lien Noteholders.

37. Accordingly, the Sonangol Settlement Proceeds should be transferred from the Segregated Account and delivered to the Plan Administrator to be distributed as Net Cash pursuant to and consistent with the Plan as described herein.

#### **NOTICE OF DISTRIBUTION**

38. The Plan Administrator also has funds on deposit in the Plan Administrator Account relating to proceeds of the Second Lien Noteholders' collateral, which constitutes Net Cash under the Plan. *See* Plan § I.A.85. As set forth above, the stakeholders entitled to distribution of Net Cash are the Second Lien Notes Secured Claims to the extent of Net Cash subject to their liens. *See* Plan §§ I.A.85, I.A.126, III.B.4. These proceeds are subject to such liens and are thus available for distribution to holders of Second Lien Notes Secured Claims.

39. While the Plan Administrator does not require Court authority to distribute these funds, *see* Plan §§ IV.D, VII.B, the Plan Administrator is notifying the Court and interested

parties that he will be distributing \$35 million of these funds to the Second Lien Noteholders pursuant to the distribution mechanism set forth in the Plan.

**NOTICE**

40. The Plan Administrator will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) Whitton; (c) the Second Lien Indenture Trustee; and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002 and pursuant to the confirmed Plan. The Plan Administrator submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, for the reasons stated herein, the Plan Administrator requests this Court enter the proposed order submitted contemporaneously herewith and grant such other and further relief as it deems appropriate.

Respectfully submitted this 22nd day of August, 2018.

**GREENBERG TRAURIG, LLP**

/s/ Shari L. Heyen

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*Counsel for Nader Tavakoli, solely in his capacity as Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., et al.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion has been served upon the parties eligible to receive notice through the Court's ECF facilities by electronic mail on August 22, 2018.

/s/ David R. Eastlake

David R. Eastlake

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

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In re:

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

Reorganized Debtors.

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)  
) Chapter 11  
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) Case No. 17-36709 (MI)  
)  
) (Jointly Administered)  
)  
) **Re: Docket Nos. 300, 784**

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**ORDER GRANTING MOTION OF PLAN ADMINISTRATOR FOR AUTHORITY TO  
DIRECT FUNDS IN FURTHERANCE OF THE SETTLEMENT ORDER AND PLAN**

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[Refers to Docket No. \_\_\_\_]

Upon the *Motion of Plan Administrator for Authority to Direct Funds in Furtherance of the Settlement Order and Plan and Notice of Distribution* (the “Motion”);<sup>1</sup> and upon consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and the Court having determined that there exists just cause for the relief granted herein; and upon the record of the hearing before the Court, and any responses to the Motion having been withdrawn, resolved, or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED** that:

1. The Motion is GRANTED.
2. The Plan Administrator is authorized to transfer the Sonangol Settlement Proceeds in the Segregated Account to the Plan Administrator Account.

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<sup>1</sup> Unless otherwise indicated, all capitalized terms in this Order shall have the same meaning as ascribed to them in the Motion.

3. The Plan Administrator is authorized to distribute \$400,000,000 to Second Lien Noteholders, pursuant to the distribution mechanism set forth in the Plan, representing funds from the Sonangol Settlement Proceeds and proceeds from the Second Lien Noteholders' collateral.

4. All parties' rights are reserved with respect to: (i) the Diminution in Value Claim, (ii) the validity of any intercompany claim, including the Cobalt Intercompany Claim, (iii) the validity of any claims asserted against Non-Debtor Subsidiaries, and/or (iv) any remaining Sonangol Settlement Proceeds.

5. This Order shall not alter, amend, modify, or otherwise affect the rights and obligations of any party in interest under the Plan.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation, implementation, and enforcement of this Order.

Dated: \_\_\_\_\_, 2018  
Houston, Texas

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THE HONORABLE MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE