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

In re:	)	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., *et al.*[1]	)	Case No. 17-36709 (MI)
	)	(Jointly Administered)
Reorganized Debtors.	)	

PLAN ADMINISTRATOR'S RESPONSE TO WHITTON PETROLEUM SERVICES LIMITED'S LIMITED OBJECTION TO ADDITIONAL DEFINITIVE DOCUMENTS TO IMPLEMENT SETTLEMENT AGREEMENT WITH SONANGOL
[Relates to Docket No. 995]

Nader Tavakoli, solely in his capacity as the Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., *et al.* (the "Plan Administrator"), files this response to the *Limited Objection to Additional Definitive Documents to Implement Settlement Agreement with Sonangol* [Dkt. 995] (the "Whitton Objection")[2] filed by Whitton Petroleum Services Limited ("Whitton"), and states as follows:

INTRODUCTION

1. This Court is all too familiar with the long and disastrous history of Cobalt's[3] involvement in Angola, which culminated in the Settlement Agreement (defined herein) and the Additional Definitive Documents (defined herein) which are purportedly the subject of the

[1] The Reorganized Debtors in the Chapter 11 Cases, along with the last four digits of each Reorganized 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).

[2] Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Whitton Objection.

[3] In this Response, "Cobalt" means Cobalt International Energy, Inc. together with its debtor and non-debtor subsidiaries.

Whitton Objection. The Settlement Agreement followed the failed 2015 Purchase and Sale Agreement (the "PSA")[4] between Cobalt and Sonangol[5], Angola's national oil company. Sonangol's failure to obtain approval of the PSA on the terms thereof from the Angolan government resulted in the automatic termination of the PSA on August 22, 2016, and was the most significant contributor to Cobalt's liquidity crisis, and subsequent Chapter 11 filings and liquidation. Although the terms of the PSA required that, in the event of non-closure of the deal, Cobalt be put back to its original position prior to the PSA, including the extension of all exploration, development and production deadlines, Sonangol refused to comply with such terms. Because of Sonangol's failure to extend these critical deadlines, Cobalt was unable to sell the Angola Blocks during its 2016 re-marketing process. Cobalt subsequently commenced arbitration proceedings against Sonangol to recover the billions of dollars it had invested in Angola. In reality though, Sonangol had effectively wiped out Cobalt's hard fought and paid-for petroleum exploration, development, and production rights in Angola.

2. Facing a challenging arbitration dispute, Cobalt was left with little choice but to settle its dispute with Sonangol. The terms of the settlement were memorialized in that certain Agreement, dated December 19, 2017, between Cobalt International Energy Angola Ltd, CIE Angola Block 9 Ltd., CIE Angola Block 20 Ltd, and CIE Angola Block 21 Ltd, on the one hand, and each Sonangol entity, on the other hand (the "Settlement Agreement").

3. Under the circumstances, the heavily negotiated Settlement Agreement represented a significant benefit to the Debtors' (defined herein) estates, including a $500 million settlement

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[4] Pursuant to the PSA, Sonangol agreed to purchase Cobalt's interest in Block 20/11 and Block 21/09 (collectively, the "Angola Blocks") for $1.75 billion.

[5] In this Response, "Sonangol" means parent company Sociedade Nacional de Combustíveis de Angola—Empresa Pública as well as Sonangol Pesquisa e Produção, S.A.

payment and an end to years of uncertain arbitration, and helped pave the way for the Debtors' exit from chapter 11. This Court approved the Settlement Agreement pursuant to its Order dated January 25, 2018 [Dkt. 300] (the "Settlement Approval Order"). The Settlement Approval Order provided that any additional definitive documents "necessary to implement paragraph 7 of the Settlement Agreement[]" (collectively, the "Additional Definitive Documents) would be filed with this Court. Settlement Approval Order ¶ 7.

4. Since the Effective Date (defined herein), the Plan Administrator and his team have devoted substantial time and resources to ensure the smooth and orderly implementation of the Settlement Agreement and to secure receipt of the settlement proceeds. This includes, among other things, devoting numerous hours and certain personnel to (i) assisting Sonangol with its understanding of the Angola Blocks and the technical and geophysical data associated therewith, (ii) preparing for and supporting Sonangol in its current marketing process of the Angola Blocks, (iii) hosting Sonangol and prospective purchasers in Cobalt's offices over several weeks; and (iv) drafting and executing the Additional Definitive Documents necessary to implement the Settlement Agreement.

5. Completion of the Additional Definitive Documents and receipt of the $500 million settlement payment from Sonangol has been a critical step in the successful wind down of Cobalt and administration of the Plan. It constitutes, by far, the single largest recovery that will be received and distributed under the confirmed Plan, and successfully completes a settlement, including receipt of the full $500 million payment, many involved in these cases were skeptical would occur.

6. Consistent with the Settlement Approval Order, the Plan Administrator filed the requisite notice with this Court [Dkt. 988] (the "Notice"), attaching the Additional Definitive Documents necessary to implement the Settlement Agreement and complete the transfer of the Angola Blocks to Sonangol. This procedural step allowed interested parties to confirm that the

Additional Definitive Documents do not exceed the Debtors' (and now Reorganized Debtors) obligations under the Settlement Agreement, the only basis under the Settlement Approval Order by which parties were given a right to object. Importantly, pursuant to the Additional Definitive Documents, Sonangol has expressly assumed all obligations and liabilities for all actions and operations related to the Angola Blocks, thus relieving Cobalt and its stakeholders of potential uncertainties with respect to such matters. *See* Settlement Implementation Agreement (attached to the Notice as Exhibit A) § 5.

7. As this Court is aware, Whitton has asserted a $225 million claim against the Debtors' estates in connection with that certain overriding royalty agreement between Cobalt International Energy, L.P. ("Cobalt LP") and Whitton (the "ORA"), pursuant to which Cobalt LP agreed to pay Whitton, under certain circumstances, a 2.5% overriding royalty payment from crude oil production in certain Angola blocks. The Whitton claim is the subject of an alternative dispute resolution proceeding related to the calculation of "Cash Value" under the ORA, of which this Court is also familiar. That proceeding would fix the amount of Whitton's claim as a Class 5 general unsecured creditor, and this Court would then be presented with the parties' disputes over the amount of Whitton's recovery, if any, on that claim.

8. The Plan Administrator believes that Whitton's Cash Value for its overriding royalty interest is zero, given, among other things, the terms of the ORA, Sonangol's failure to consummate the PSA and the resulting expiration of Cobalt's exploration, development and production deadlines, and the absence of any bids during Cobalt's re-marketing of the Angola Blocks in 2016 after the failed sale to Sonangol. Even if Whitton were to establish a positive Cash Value, pursuant to the terms of the confirmed Plan, Whitton's Cash Value would then effectively be subordinated to the $6 billion of intercompany claims and the diminution in value claims of the

second lien creditors, and would then be subject to dilution by the likely far larger deficiency claim of the second lien creditors.

9. Confronted with these facts, and the very likely outcome of little or no payoff under the ORA, Whitton has adopted a very aggressive and litigious posture against the Reorganized Debtors on multiple fronts. Whitton does not seem to accept that Cobalt's substantial investments and contractual rights in Angola were essentially wiped out, and that therefore, Whitton's derivative 2.5% overriding royalty interest under the ORA, was likewise wiped out.

10. Despite the Plan Administrator's view that Whitton's Cash Value is worth zero, any hope of recovery for Whitton was entirely dependent on the Plan Administrator's finalization of the Additional Definitive Documents and receipt of the $500 million settlement payment pursuant to the express terms of the Settlement Approval Order. This result was achieved through much hard work, and the consummation of the Additional Definitive Documents, is something all well-intentioned creditors and potential creditors should welcome and not jeopardize.

11. Lacking any real basis to support its objection to the Additional Definitive Documents, Whitton purports to claim that under the Additional Definitive Documents, the Plan Administrator would no longer have access to certain Cash Value Information (defined herein). However, Article 5 of the Transfer of Operations Agreement (attached to the Notice as Exhibit H) expressly provides that the Cobalt entities are entitled to keep all Electronic Property (as defined in the Transfer of Operations Agreement):

> **5.2 Access to Electronic Property by Departing Operator.** CIE Block 20 and CIE Block 21 shall be entitled to retain such copies of Electronic Property as they consider necessary (acting reasonably) to retain, in order to prepare financial statements, carry out audits, reply to the audits and for any other reasonable purpose connected with their former Operatorship of Blocks 20/11 and 21/09 and which occur after the Effective Date and which relate to the period prior to the Effective Date.

Whitton conveniently ignores the express terms of the Additional Definitive Documents, which provide that Cobalt is entitled to keep ***all*** Electronic Property.

12. The Whitton Objection is entirely divorced from the narrow grounds preserved by this Court for objections to the Additional Definitive Documents. As set forth in the Court's Settlement Approval Order, the only allowed basis for an objection is that the Additional Definitive Documents must "exceed the obligations required by the Settlement Agreement." The Whitton Objection fails to identify any manner in which the Additional Definitive Documents do so.

Whitton's attempt to improperly use this process to force an unduly broad and onerous discovery demand on the Plan Administrator is patently clear. Specifically, Whitton demands that the Plan Administrator provide within three (3) days a log or inventory of all documents the Plan Administrator has available that are related to the calculation of "Cash Value" under the ORA. Even if this were a reasonable request by Whitton in the context of this proceeding, which it is not, the Plan Administrator does not have such a log or inventory. To date, the Plan Administrator has unilaterally provided Whitton an expansive volume of information (approximately 18.5 gigabytes of data representing more than 1,600 documents) and will, of course, provide Whitton with additional discovery as this Court and/or the appropriate arbitrators order in the appropriate procedural context.

13. The Whitton Objection is nothing more than an unreasonable and abusive attempt to use the noticing process with respect to the Additional Definitive Documents to exert leverage for discovery purposes in respect to its Cash Value determination and further engage the Reorganized Debtors in unnecessary and costly litigation proceedings. Simply put the Whitton Objection irresponsibly create risk and uncertainty around the carefully crafted Additional Definitive Documents mutually agreed to by Sonangol and Cobalt.

RELEVANT BACKGROUND

14. On December 14, 2017, Cobalt International Energy, Inc. and its debtor affiliates (collectively, the "Debtors," and after the Effective Date, the "Reorganized Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

15. During the chapter 11 cases, Cobalt and Sonangol reached a global Settlement, which Settlement was approved by the Court on January 25, 2018 [Dkt. 300] (the "Settlement Approval Order"). One of the key terms of the Settlement was a $500 million payment by Sonangol, payable in two installments: $150 million paid by February 23, 2018, and the balance of $350 million paid by July 1, 2018.

16. Pursuant to paragraph 7 of the Settlement Approval Order, "[t]o the extent that any additional definitive documents are necessary to implement paragraph 7 of the Settlement Agreement, the Debtors will promptly file any such documents with the Court." Settlement Approval Order ¶ 7. Paragraph 7 of the Settlement Approval Order further provides:

> If such [definitive] documents are objected to within 7 days of the date on which they are filed and the objection is sustained, the objecting party may seek an administrative claim against the Estate to the extent the definitive documents executed or approved by the Debtors exceed the obligations required by the Settlement Agreement.

Id. No other basis for objection is set forth in the Settlement Approval Order, and no other remedy is provided.

17. On April 5, 2018, this Court confirmed the Debtors' plan of reorganization [Dkt. 784] (the "Plan"). On April 10, 2018, the effective date of the Plan occurred (the "Effective Date").

18. On July 18, 2018, the Additional Definitive Documents contemplated by paragraph 7 of the Settlement Agreement were fully executed. Accordingly, on July 18, 2018, the Plan Administrator filed the Notice, thus triggering the seven-day objection period.

19. Whitton was the only party that objected to the Additional Definitive Documents attached to the Notice. No other creditor or party in interest objected.

ARGUMENT

20. Whitton objects to the Additional Definitive Documents with the entirely unsupported premise that the Plan Administrator is purportedly failing to preserve (or withhold) documents related to the calculation of Cash Value. Rather than adhering to the terms of the separate, independent Cash Value determination and discovery process already in place, Whitton attempts to usurp the Notice and objection process provided for under the Settlement Approval Order by making an unrelated and baseless demand that the Plan Administrator provide within three (3) days a log or inventory of all documents that the Plan Administrator has available that are related to the calculation of the Cash Value and a log or inventory of all documents that the Plan Administrator is aware of but does not have the ability to access that are related to the calculation of the Cash Value. *See* Whitton Obj. ¶ 9.

21. To be clear, the Plan Administrator believes it has complied with its obligations under the ORA and the Settlement Approval Order. To date, the Plan Administrator and its professionals have made multiple unilateral rounds of expansive production (consisting of nearly 18.5 gigabytes of data representing more than 1,600 documents). These productions have included, among other things, spreadsheets containing the technical and financial inputs for modeling the Cash Value for the Angola Blocks, as well as the contracts on which the Cash Value calculation depends. In addition, the Plan Administrator and its professionals met with principals of Whitton in Houston in June 2018 and attended a two-day meeting in London in July 2018 in an attempt to explain its views on Cash Value and attempt to reconcile the parties' differing views.

Moreover, despite repeated requests by the Plan Administrator of Whitton for documents to support its $225 million Cash Value claim, Whitton has failed to produce but a single document.[6]

22. Notably, the Whitton Objection acknowledges that the Additional Definitive Documents expressly permit the settling Cobalt entities "to retain such copies of Electronic Property as they consider necessary (acting reasonably) to retain, in order to prepare financial statements, carry out audits, reply to audits and for any other reasonable purposes connected with the former Operatorship of Blocks 20/11 and 21/09 . . . ." Transfer of Operations Agreement § 5.2.

23. In addition, paragraph 8 of the Settlement Approval Order already preserved Cobalt's access to documents related to the calculation of the Cash Value—without burdening the Plan Administrator (or Cobalt) with responding to Whitton's unrelated document inventory request. Specifically, paragraph 8 provides, in relevant part:

> Nothing in this [Settlement Approval] Order limits, extinguishes, determines, or otherwise modifies Cobalt's rights to access and use any and all data and information, including but not limited to seismic data, reservoir data, and other intellectual property transferred to Sonangol or in Sonangol's possession, necessary to calculate the Cash Value under the Whitton ORA (the "Cash Value Information").

Settlement Approval Order ¶ 8.

24. The Additional Definitive Documents and the Settlement Approval Order expressly preserve Cobalt's right to access and use any and all data and information transferred to Sonangol

[6] The Plan Administrator hereby reserves all rights to pursue, at the appropriate time and in the appropriate forum, discovery from Whitton and its affiliates related to Whitton's asserted claim and pursuant to the ORA, including without limitation, discovery with respect to Whitton's compliance with its representations and warranties under the ORA.

necessary to calculate the Cash Value under the ORA. The concern expressed in the Whitton Objection is of no consequence, and the Whitton Objection is therefore disingenuous.

25. In summary, the Whitton Objection should be overruled in its entirety. The purpose of the Whitton Objection has nothing to do with the appropriateness of the Additional Definitive Documents pursuant to the Settlement Approval Order and is nothing more than an unjustified and overreaching attempt to impose broad discovery requests on the Plan Administrator.

26. The Plan Administrator respectfully requests that in addition to overruling the Whitton Objection in its entirety, the Court enter an order requiring Whitton to pay for the Plan Administrator's fees and costs in connection with this response to the Whitton Objection, including without limitation, preparation for and attendance at any hearings thereon.

FOR THESE REASONS, the Plan Administrator respectfully requests this Court enter an order (i) overruling the Whitton Objection in its entirety, (ii) requiring Whitton to pay for the Plan Administrator's fees and costs in connection with this response to the Whitton Objection, including without limitation, preparation for and attendance at any hearings thereon, and (iii) granting such other and further relief as is just and equitable.

Dated: August 31, 2018.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 31, 2018, I caused a copy of the foregoing *Plan Administrator's Response to Whitton Petroleum Services Limited's Limited Objection to Additional Definitive Documents to Implement Settlement Agreement with Sonangol* to be served on all parties eligible to receive service through the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas by electronic mail.

/s/ David R. Eastlake
David R. Eastlake