

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § Chapter 11
§
COBALT INTERNATIONAL ENERGY, § CASE NO. 17-36709 (MI)
INC., et al.¹ §
§
Debtors. § (Jointly Administered)

**WHITTON PETROLEUM SERVICES LIMITED’S OBJECTION AND REPLY TO
PLAN ADMINISTRATOR’S RESPONSE TO WHITTON PETROLEUM SERVICES
LIMITED’S LIMITED OBJECTION TO ADDITIONAL DEFINITIVE DOCUMENTS
TO IMPLEMENT SETTLEMENT AGREEMENT WITH SONANGOL**

[Relates to Doc. Nos. 988, 995, 1031]

Whitton Petroleum Services Limited (“Whitton”) files this Objection and Reply to Plan Administrator’s Response to Whitton Petroleum Services Limited’s Limited Objection to Additional Definitive Documents to Implement Settlement Agreement with Sonangol [Docket No. 1031].

INTRODUCTION AND FACTUAL BACKGROUND

1. On July 23, 2018, after repeated requests from Whitton, the Plan Administrator made his first production of documents related to the calculation of the Cash Value (termed “Cash Value Information” in Docket No. 300). Despite the complexity of the Cash Value calculation, the Plan Administrator produced only 454 pages of documents and refused to provide Whitton with additional information to understand what Cash Value Information the Plan Administrator had at his disposal.² In essence, the Plan Administrator had selected the materials he deemed

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, LP (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. References herein to the “Debtors” refer, as applicable, to the Debtors and their non-debtor subsidiaries and affiliates.

² Exhibit A, Letter from G. Balassa to D. Charest, July 23, 2018.



relevant as Cash Value Information without permitting Whitton to have any visibility into the process or, indeed, the scope of available materials.

2. On July 25, 2018, the last date it could, Whitton filed its Limited Objection to Additional Definitive Documents to Implement Settlement Agreement with Sonangol (“Limited Objection”). [Docket No. 995.] Whitton objected to the Definitive Documents because they fail to provide the Plan Administrator (and, in turn, Whitton) access to all of the “data and information, including but not limited to seismic data, reservoir data, and other intellectual property . . . necessary to calculate the Cash Value” as required under the Whitton ORA. Further, Whitton objected to the extent that the Plan Administrator was failing to preserve (or withholding) documents related to the calculation of the Cash Value. It was not contemplated under the Whitton ORA that the Plan Administrator would be the only party to select a subset of materials (without input from Whitton) and assert its selection stood as the information necessary to calculate the Cash Value under the Whitton ORA. In addition, the Plan Administrator’s refusal to disclose the extent of existing information left Whitton in the dark as to the scope of available information (and whether the Plan Administrator was even in possession of any additional information).

3. After Whitton filed the Limited Objection, counsel for the Plan Administrator and counsel for Whitton engaged in several telephonic conversations and email exchanges regarding documents necessary to calculate the Cash Value over the next month.

4. On August 14, 2018, after more cajoling by Whitton, the Plan Administrator produced another 351 pages of documents related to the calculation of the Cash Value.³ As before, the Plan Administrator cherry picked a small number of documents from the wealth of available

³ Exhibit B, Letter from G. Balassa to J. Higgins, August 14, 2018.

materials and denied Whitton access to the full scope of relevant and necessary information to which it is entitled.

5. On August 16, 2018, the Court held a status conference regarding the adversary proceeding between Whitton and the Plan Administrator. At the conference, the parties discussed the Plan Administrator's refusal to provide Whitton unfiltered access to the materials that should make up the Cash Value Information. Whitton noted its intention to enforce its rights under the Whitton ORA to access all available Cash Value Information, not just a subset of documents unilaterally selected by the Plan Administrator.

6. On August 24, 2018, on the heels of the status conference, counsel for the Plan Administrator gave counsel for Whitton, for the first time, access to Debtors' electronic data room ("VDR") and related FTP site that, according to the Debtor, were made available to prospective purchasers of Cobalt's Angola assets in 2016.⁴ The VDR and FTP site contain over 1,500 documents, including engineering, geotechnical, operational, and physical reports, presentations, logs, and interpretations, partner documentation, and other data.⁵

7. After reviewing the above documents, Whitton decided it would withdraw its Limited Objection and such decision was relayed to the Plan Administrator via a telephone conference on or about September 4, 2018.⁶

8. On August 31, 2018, more than five weeks after the Limited Objection was filed, the Plan Administrator filed his Response to Whitton Petroleum Services Limited's Limited Objection to Additional Definitive Documents to Implement Settlement Agreement with Sonangol

⁴ Exhibit C, Email from S. Pepper to D. Charest, August 24, 2018.

⁵ To be clear, Whitton believes some materials directly relevant to the Cash Value remain missing, including the pre-petition Cash Value models generated by Cobalt. Nonetheless, Whitton will take up that issue at the appropriate time (with the appropriate tribunal).

⁶ Exhibit D, Email from H. Hatfield to S. Heyen, Sept. 7, 2018.

(the “Response”). [Docket No. 1031]. Therein, the Plan Administrator requests that the Court award it fees for the effort associated with responding to Whitton’s Limited Objection despite having never conferred with Whitton about the status of the Limited Objection.

RESPONSE AND OBJECTION TO FEE REQUEST

9. Whitton filed the Limited Objection on July 25, 2018 to ensure proper preservation of the Cash Value information by the Plan Administrator and that it would be provided to Whitton. The Limited Objection was filed after the Plan Administrator failed to offer such assurances and, instead, frustrated Whitton’s efforts to even learn about the materials. The Limited Objection, however, was filed before the Plan Administrator provided access to the Debtors’ VDR and related FTP site (and before Whitton was able to review such information).

10. More than five weeks after Whitton filed the Limited Objection, the Plan Administrator filed its Response on August 31, 2018. This dispute could have been resolved prior to the filing of the Response to the Limited Objection—all the Plan Administrator had to do was engage Whitton meaningfully with respect to status of the information related to the Cash Value.

11. Despite being informed that Whitton would withdraw its Limited Objection because of the subsequent provision of Cash Value Information (subject to the noted deficiencies), the Plan Administrator has stood on his request for fees and costs in connection with the Plan Administrator’s Response to the Limited Objection. It bears noting that Whitton had been dealing with one set of lawyers for the Plan Administrator (the Kirkland team) with respect to the data access. And, when the Plan Administrator sought sanctions, that request came through a different set of lawyers (the Greenberg team). The first time Whitton ever spoke to the lawyers from the Greenberg team, none of them were aware of the difficulties that Whitton had faced in obtaining the information from the Kirkland team. Whitton provided correspondence and explained the timeline above in an attempt to clear the air and have the Plan Administrator withdraw the

sanctions claim. Those discussions extended through several emails and telephone conversations from Tuesday, September 4, through Thursday, September 13. And, even after a week of conferring on the issue, the latest position is that the Plan Administrator had still not reached a decision and, therefore (and unfathomably), the Plan Administrator's sanctions request remains.

12. The Plan Administrator's request should be denied. At the time that Whitton filed the Limited Objection, Whitton had legitimate concerns regarding access to and preservation of all of the "data and information, including but not limited to seismic data, reservoir data, and other intellectual property . . . necessary to calculate the Cash Value under the Whitton ORA." Prior to the Limited Objection, the Plan Administrator took the position that the process was a one-way street, as provided by counsel for Plan Administrator, "[T]he materials we produced today [July 23, 2018] and any supplemental materials that Cobalt may produce later this week constitute Cash Value Information—i.e., materials that are "necessary to calculate the Cash Value under the Whitton ORA. No separate index of such materials exists."⁷ The Plan Administrator has since backed down from that position (likely as a direct result of the discussion in the August 16 conference). Now that Whitton has access to most (but not all) relevant information, Whitton withdraws its objection. Nevertheless, the Plan Administrator intends to stand on his baseless claim for fees and costs which has now resulted in additional fees and costs to Whitton to respond to the meritless request.

13. To the extent the Court intends to do anything other than completely deny the Plan Administrator's groundless request, Whitton requests that the Court order a full briefing schedule on the issue. The Plan Administrator's request for fees and costs appears for the first time in the

⁷ Exhibit E, Email from G. Balassa to D. Charest, July 23, 2018.

Plan Administrator's Response to the Limited Objection, circumventing the standard motion briefing cycle.

CONCLUSION

WHEREFORE for the reasons set forth herein, Whitton respectfully requests that the Court (1) deny the Plan Administrator's request for fees and costs in connection with the Plan Administrator's Response to Whitton Petroleum Services Limited's Limited Objection to Additional Definitive Documents to Implement Settlement Agreement with Sonangol or, (2) in the alternative, order a full briefing schedule on the issue and then award fees and costs to the prevailing party. Whitton requests any other and further relief as is just and equitable.

DATED: September 13, 2018

Respectfully submitted,

PORTER HEDGES LLP

/s/ Daniel H. Charest

John F. Higgins
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Heather K. Hatfield
State Bar No. 24050730
Samuel A. Spiers
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**ATTORNEYS FOR WHITTON
PETROLEUM SERVICES LIMITED**

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing document was served by electronic transmission to all registered ECF users appearing in the case on September 13, 2018.

/s/ Heather K. Hatfield

Heather K. Hatfield

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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July 23, 2018

Via Email

Daniel H. Charest
Burns Charest LLP
900 Jackson Street, Suite 500
Dallas, TX 75202

Re: *In re Cobalt International Energy, Inc. v. Whitton Petroleum Services Limited*
(Bankruptcy Case No. 17-36709; Civil Action No. 4:18-cv-01239)

Dear Daniel:

Attached are files constituting Cash Value Information under the bankruptcy court's January 25, 2018 order approving the Sonangol settlement. We understand that Whitton already possesses many of these materials, other than the Excel files. We are nevertheless providing this set in an abundance of caution, given the materials' significance to the Cash Value determination. Cobalt is continuing to assess whether additional information constitutes Cash Value Information, and reserves the right to supplement this production. If Whitton wishes to access other materials that it believes constitute Cash Value Information, please let me know.

In addition, Cobalt reiterates its request that Whitton provide any documents or other information that it may rely upon to determine Cash Value, including but not limited to the "record, whether correspondence or models" that, according to your June 20, 2018 letter to Shari Heyen and Brad Weiland, "support a significant amount for the Cash Value." Please let me know when we will receive those materials, or whether Whitton is unwilling to provide them.

Sincerely,



Gabor Balassa

Enclosures (via Large File Transfer)

EXHIBIT A

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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August 14, 2018

Via Email

John F. Higgins
Porter Hedges LLP
1000 Main Street, 36th Floor
Houston, Texas 77002

Daniel H. Charest
Burns Charest LLP
900 Jackson Street, Suite 500
Dallas, Texas 75202

Re: *In re Cobalt International Energy, Inc. v. Whitton Petroleum Services Limited* (Bankruptcy Case No. 17-36709; Civil Action No. 4:18-cv-01239)

Counsel:

Cobalt supplemented today its previous production of documents related to Cash Value under the Whitton Overriding Royalty Agreement dated February 13, 2009. The bates range for today's production is COBALT_WHIT_0000000455 - COBALT_WHIT_0000000805. The production contains documents designated as "Confidential" and "Highly Confidential," pursuant to the protective order entered by the bankruptcy court. (*See* Dkt. 584, Protective Order.)

We have asked previously that Whitton produce the materials on which it intends to rely for the Cash Value process and have, to date, received no such materials from you. (*See, e.g.,* 7/9/18 G. Balassa Letter to D. Charest; 7/23/18 G. Balassa Letter to D. Charest.) At the parties' July 30, 2018 meet and confer, your team represented that Whitton would produce those materials. They have failed to do so, or even to specify a date certain for doing so. Please confirm when we will receive Whitton's production. Otherwise, we intend to raise the issue with the court on Thursday.

EXHIBIT B

KIRKLAND & ELLIS LLP

John F. Higgins
Daniel H. Charest
August 14, 2018
Page 2

Sincerely,

/s/ Gabor Balassa, P.C.

Gabor Balassa, P.C.

From: Pepper, Stacy <stacy.pepper@kirkland.com>
Sent: Friday, August 24, 2018 3:42 PM
To: Daniel Charest; Higgins, John F.; Mallory Biblo; Hatfield, Heather K.; Andrew Bynum; Loewenstein, Lisa K.
Cc: Balassa, Gabor; Weiland, Brad; Aycocock, Jamie Alan
Subject: VDR and FTP Site Access

Counsel,

Cobalt, as a courtesy, is making available to Whitton its electronic data room (“VDR”) and related FTP site that were made available to prospective purchasers of Cobalt’s Angola assets in 2016. The VDR and FTP site contain over 1500 documents, which include engineering, geotechnical, operational, and physical reports, presentations, logs, and interpretations; partner documentation; and other data. As we’ve made clear previously, these documents are not required for the expert process contemplated by Section 15.5 of the ORA, and they are beyond the scope of what the Plan Administrator intends to rely on.

The documents in the VDR and on the FTP site are designated and to be treated as Highly Confidential Material under the Protective Order in this matter (Case No. 17-36709, Dkt. 584).

The FTP Site is: <https://files.secureserver.net/OfGRXR95kSnj2P>

Password:

Having received no further response to our request for email addresses, we will provide VDR access to Daniel Charest this evening.

Best,

Stacy

Stacy Pepper

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EXHIBIT C

From: Hatfield, Heather K.
Sent: Friday, September 07, 2018 8:06 PM
To: heyens@gtlaw.com
Cc: Higgins, John F.; Daniel Charest; Mallory Biblo; Loewenstein, Lisa K.
Subject: Cobalt

Shari,

I am following up on our call on Tuesday afternoon. Please advise regarding the outstanding issues below.

1. Is there any update regarding the Plan Administrator's position about the 2L's diminution report? Please provide any back-up that supports the report provided to the Plan Administrator by the 2Ls by Monday 9/10.
2. Please advise regarding the ETA of the math that supports the Motion to Transfer Funds. As we discussed, our deadline to respond is Wednesday, 9/12. We need to evaluate whether we will be objecting prior to that date. If the information will not be provided today, please confirm that the Plan Administrator will grant Whitton an extension to respond to the Motion.
3. Please advise regarding the Plan Administrator's position regarding the Limited Objection to Definitive Documents.

Thanks,



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EXHIBIT D

From: Daniel Charest <dcharest@burnscharest.com>
Sent: Monday, July 23, 2018 10:15 PM
To: Balassa, Gabor
Cc: Higgins, John F.; Mallory Biblo; Andrew Bynum; Hatfield, Heather K.; Aycock, Jamie Alan; Pepper, Stacy; Whitton-TT
Subject: Re: Cobalt/Whitton

I hear you. But I don't think anyone conceived that Cobalt/debtor would be the one to select the information at its discretion. Please provide a log or inventory of what the PA has available to assess cash value.

If you are asserting that the PA has provided all such information available to it, please say so. I may be wrong, but I am not hearing that.

Thanks.

Daniel H. Charest
469.904.4555 direct
214.681.8444 mobile

On Jul 23, 2018, at 22:01, Balassa, Gabor <gbalassa@kirkland.com> wrote:

Daniel, the materials we produced today and any supplemental materials that Cobalt may produce later this week constitute Cash Value Information – i.e., materials that are “necessary to calculate the Cash Value under the Whitton ORA.” No separate index of such materials exists. If Whitton believes that some other types of materials are necessary to calculate Cash Value, please let us know.

Regards,

-- Gabor.

Gabor Balassa, P.C.

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gabor.balassa@kirkland.com

From: Daniel Charest <dcharest@burnscharest.com>
Sent: Monday, July 23, 2018 1:32 PM
To: Balassa, Gabor <gbalassa@kirkland.com>
Cc: *jhiggins@porterhedges.com <jhiggins@porterhedges.com>; Mallory Biblo <mbiblo@burnscharest.com>; Andrew Bynum <abynum@burnscharest.com>; Heather Hatfield <hhatfield@porterhedges.com>; Aycock, Jamie Alan <jamie.aycock@kirkland.com>; Pepper, Stacy <stacy.pepper@kirkland.com>; Whitton-TT <Whitton-TT@burnscharest.com>
Subject: Re: Cobalt/Whitton

Thanks for getting back to me, Gabor. Before we can respond to the point **below**, I think we'd need an inventory or some other way to know what

materials are available. Can the PA provide that, even now, for us to review?
Thanks.

Daniel H. Charest

469.904.4555 direct
214.681.8444 mobile

From: "Balassa, Gabor" <gbalassa@kirkland.com>
Date: Monday, July 23, 2018 at 13:28
To: Daniel Charest <dcharest@burnscharest.com>
Cc: John Higgins <JHiggins@porterhedges.com>, Mallory Biblo <mbiblo@burnscharest.com>, Andrew Bynum <abynum@burnscharest.com>, Heather Hatfield <hhatfield@porterhedges.com>, "Aycock, Jamie Alan" <jamie.aycock@kirkland.com>, "Pepper, Stacy" <stacy.pepper@kirkland.com>, Whitton-TT <Whitton-TT@burnscharest.com>
Subject: RE: Cobalt/Whitton

Daniel, we understand that the transfer will not divest the Plan Administrator of access to Cash Value Information. Also, we expect to make a production to you of certain Cash Value Information later today or tomorrow morning, and possibly an additional production of such materials later this week. If, after you have reviewed those materials, there is other Cash Value Information you would like to see, let me know.

Regards,

-- Gabor.

Gabor Balassa, P.C.

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gabor.balassa@kirkland.com

From: Daniel Charest <dcharest@burnscharest.com>
Sent: Sunday, July 22, 2018 3:29 PM
To: Balassa, Gabor <gbalassa@kirkland.com>
Cc: *jhiggins@porterhedges.com <jhiggins@porterhedges.com>; Mallory Biblo <mbiblo@burnscharest.com>; Andrew Bynum <abynum@burnscharest.com>; Heather Hatfield <hhatfield@porterhedges.com>; Aycock, Jamie Alan <jamie.aycock@kirkland.com>; Pepper, Stacy <stacy.pepper@kirkland.com>; Whitton-TT <Whitton-TT@burnscharest.com>
Subject: Re: Cobalt/Whitton

Gabor,

To follow up on the issue of data for Cash Value Information (in part a subject of the letter from your email below), the only portion of the definitive documents I noted was Article 5.2 of the Transfer of Operations Agreement. In that provision, the two CIE block-level

entities are "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 audits and for any other reasonable purposes connected with the 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." (P. 63 of the definitive document PDF filed with the Court.)

Please confirm whether the Plan Administrator views this provision (or any other provision(s) in the definitive documents) as sufficient to provide the Plan Administrator access to "data and information, including but not limited to seismic data, reservoir data, and other intellectual property . . . necessary to calculate the Cash Value under the Whitton ORA" (doc. 300, ¶ 8, at 4). And, further, please confirm that, per this or other provision(s), Whitton may access the data as required in the Court's order approving the settlement (see doc. 300, ¶ 8, at 4).

I am asking to evaluate whether Whitton must file an objection to the definitive documents, so please let me know right away to avoid any unnecessary filing. We hope to avoid objections, if possible.

Also, please let me know when Whitton will be granted access to the Cash Value Information.

If you have any questions, please feel free to contact me. All the best.

Daniel H. Charest

469.904.4555 direct
214.681.8444 mobile

From: "Balassa, Gabor" <gbalassa@kirkland.com>
Date: Monday, July 9, 2018 at 12:02
To: Daniel Charest <dcharest@burnscharest.com>
Cc: John Higgins <JHiggins@porterhedges.com>, Mallory Biblo <mbiblo@burnscharest.com>, Andrew Bynum <abynum@burnscharest.com>, Heather Hatfield <hhatfield@porterhedges.com>, "Aycock, Jamie Alan" <jamie.aycock@kirkland.com>, "Pepper, Stacy" <stacy.pepper@kirkland.com>
Subject: Cobalt/Whitton

Daniel, please see the attached letter.

-- Gabor.

Gabor Balassa, P.C.

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: § **Chapter 11**
§
COBALT INTERNATIONAL ENERGY, INC., et al.¹ § **CASE NO. 17-36709 (MI)**
§
Debtors. § **(Jointly Administered)**

**ORDER DENYING PLAN ADMINISTRATOR’S RESPONSE TO
WHITTON PETROLEUM SERVICES LIMITED’S LIMITED OBJECTION
TO ADDITIONAL DEFINITIVE DOCUMENTS TO IMPLEMENT
SETTLEMENT AGREEMENT WITH SONANGOL**

[Relates to Doc. Nos. 988, 995, 1031]

Upon the Plan Administrator’s Response to Whitton Petroleum Services Limited’s Limited Objection to Additional Definitive Documents to Implement Settlement Agreement with Sonangol [Docket No. 1031], (the “Response”), it is HEREBY ORDERED THAT the Plan Administrator’s request for fees and costs in connection with the Response is DENIED IN ITS ENTIRETY.

Signed: _____, 2018

THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

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, LP (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. References herein to the “Debtors” refer, as applicable, to the Debtors and their non-debtor subsidiaries and affiliates.