

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

[Relates to Doc. No. 1022]

Whitton Petroleum Services Limited ("Whitton") files this Limited Objection ("Limited Objection") to the Motion of Plan Administrator for Authority to Direct Funds in Furtherance of Settlement Order and Plan and Notice of Distribution and respectfully state as follows:

BACKGROUND

1. On December 14, 2017, (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court").

2. On December 21, 2017, Debtors filed the Debtors' Motion for Entry of an Order (I) Authorizing Performance Under Settlement Agreement, (II) Approving Settlement Agreement, and (III) Granting Related Relief [Docket No. 127] seeking authority to cause certain of the

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.



Debtors' wholly-owned non-Debtor subsidiaries to perform under a settlement agreement with Sonangol (the "Settlement Agreement").²

3. On January 23, 2018, the Debtors filed the Joint Chapter 11 Plan of Cobalt International Energy, Inc. and its Debtor Affiliates [Docket No. 272] which was subsequently amended on February 21, 2018 and March 8, 2018 (as amended, the "Plan") [Docket Nos. 462, 553 and 561]. Also on January 23, 2018, the Debtors filed the Disclosure Statement for the Joint Chapter 11 Plan of Cobalt International Energy, Inc. and its Debtor Affiliates [Docket No. 274] which was subsequently amended on February 21, 2018 and March 8, 2018 (as amended and approved, the "Disclosure Statement") [Docket Nos. 464, 549 and 562]. On April 5, 2018, this Court entered 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] confirming the Plan.

4. On January 25, 2018, the Bankruptcy Court entered an order approving the motion [Docket No. 300] (the "Settlement Approval Order"), which provides that "[t]he Debtors shall cause the \$500 million settlement payment or any portion thereof actually received from Sonangol to be deposited into a segregated depository account located in the United States established and maintained by the Angolan Subsidiaries. . . . No distributions or transfers shall be made from the segregated depository account absent further order of this Court." [Docket No. 300, ¶ 9, at 4.]

5. 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 [Docket No. 954].

² "Sonangol" means parent company Sociedade Nacional de Combustíveis de Angola—Empresa Pública as well as Sonangol Pesquisa e Produção, S.A.

6. On August 22, 2018, the Plan Administrator filed this Motion of Plan Administrator for Authority to Direct Funds in Furtherance of Settlement Order and Plan and Notice of Distribution (the “Motion”) [Docket No. 1022].

OBJECTIONS

7. According to the Motion, the Plan Administrator seeks authority to “transfer the Sonangol Settlement Proceeds³ 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.” The Plan Administrator has the burden of proof with respect to the accounting related to the Interim Distribution as well as the \$35 million distribution. The Plan Administrator should set forth the evidence and the math that supports the \$400,000,000 distribution for the record.⁴

8. Whitton also objects to Paragraph 3 in the Proposed Order to the characterization of the full \$400,000,000 distribution as “representing funds from the Sonangol Settlement Proceeds and proceeds from the Second Lien Noteholders’ collateral.” There should be no findings in the order as to the nature of the proceeds or the validity of any lien or security interest.

9. Further, assuming that the Plan Administrator carries its burden with regard to the Interim Distribution, there should be at least \$135 million left from the Sonangol Proceeds. Whitton objects to the Plan Administrator transferring the unencumbered funds from the Sonangol Settlement Proceeds into the Plan Administrator Account. The unencumbered funds should

³ All capitalized terms are given the same meaning they are given in the Motion unless otherwise expressly stated.

⁴ Thus far, the financials provided to and reviewed by Whitton have been preliminary, unaudited, and limited in scope (some explicitly state, “The financial information is preliminary, unaudited, limited in scope and, as discussed below, not prepared in accordance with accounting principles generally accepted in the United States of America. The [Monthly Operating Report] should not be relied upon by any persons for information relating to current or future financial conditions, events, or performance of any of the Debtors or their affiliates.”).

remain in the “segregated depository account located in the United States,” as ordered by the Court [Docket No. 300, ¶ 9, at 4.] Thus, there is no risk of commingling of funds.

10. In addition, Whitton objects to any further distributions of the unencumbered funds from the Sonangol Settlement Proceeds without notice and the opportunity to be heard by the Court. Such relief was previously ordered by the Court—“No distributions or transfers shall be made from the segregated depository account absent further order of this Court.” [Docket No. 300, ¶ 9, at 4.]⁵

RESERVATION OF RIGHTS

11. Whitton reserves the right to further amend, modify, or supplement this Limited Objection at any time, and also reserves all its rights, if any, as a creditor in these bankruptcy cases.

PRAYER

WHEREFORE for the reasons set forth herein, Whitton respectfully requests that (1) the Motion be denied if the Plan Administrator cannot set forth the evidence and math to support the proposed distribution, (2) in the event that the Court is inclined to grant the Motion, that the proposed order [Docket No. 1022-1] be modified to remove all proposed findings regarding the nature of the proceeds or the validity of any lien or security interest, (3) that at least \$135 million of the Sonangol Proceeds remain in the segregated account, (4) that no further distributions of the unencumbered funds from the Sonangol Settlement Proceeds be disbursed by the Plan Administrator without notice and the opportunity to be heard by the Court and grant such further relief to which the Whitton may be entitled.

⁵ Whitton notes that the Plan Administrator agreed to provide notice and opportunity if Whitton did not file an objection to the Motion.

Dated: September 14, 2018

Respectfully submitted,

PORTER HEDGES LLP

/s/ Daniel H. Charest

John F. Higgins
State Bar No. 09597500
Heather K. Hatfield
State Bar No. 24050730
Samuel A. Spiers
State Bar No. 24106457
Porter Hedges LLP
1000 Main Street, 36th Floor
Houston, Texas 77002-2764
Telephone: (713) 226-6000
Facsimile: (713) 226-6255
jhiggins@porterhedges.com
hhatfield@porterhedges.com
sspiers@porterhedges.com

And

BURNS CHAREST LLP

Daniel H. Charest
State Bar No. 24057803
Mallory Biblo
State Bar No. 24087165
900 Jackson Street, Suite 500
Dallas, TX 75202
Telephone: (469) 904-4555
Fax: (469) 444-5002
dcharest@burnscharest.com
mbiblo@burnscharest.com

**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 14, 2018.

/s/ Heather K. Hatfield

Heather K. Hatfield