

**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> , ¹)	Case No. 17-36709 (MI)
)	
Reorganized Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. 561, 784

MOTION OF PLAN ADMINISTRATOR FOR AN ORDER CLARIFYING THE PLAN

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”), hereby moves (the “Motion”) this Court for entry of an order clarifying the Plan by reconciling certain inconsistent provisions of the *Fourth Amended Joint Chapter 11 Plan of Cobalt*

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).



International Energy, Inc. and Its Debtor Affiliates [Dkt. 561] (as may be amended, supplemented, or otherwise modified from time to time, and including all exhibits and supplements thereto, 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”).² In support of this Motion, the Plan Administrator states as follows:

PRELIMINARY STATEMENT

1. For the benefit of the Debtors’ estates, the Plan vested all of the Debtors’ assets that were not previously sold with the Plan Administrator. These vested assets were to include potentially valuable tax attributes, which could only be preserved through the maintenance of one share of common equity. The Plan, however, purported to cancel all equity interests in the Debtors without reserving or replacing the share of common equity needed to effectively preserve the potentially valuable tax attributes. By this Motion, the Plan Administrator seeks to resolve this unintended inconsistency and preserve these assets.

BACKGROUND

2. The above-referenced Debtors commenced these Chapter 11 bankruptcy cases on December 14, 2017 (the “Petition Date”) by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Code”). These cases were jointly administered under the caption *In re Cobalt International Energy, Inc., et al.*, Case No. 17-36709 (the “Chapter 11 Cases”).

² 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.

3. On April 5, 2018, this Court entered the Confirmation Order confirming the Plan. On April 10, 2018, the Effective Date occurred under the Plan. Pursuant to the Plan and Confirmation Order, on the Effective Date, the Plan Administrator was appointed.

4. During the course of these Chapter 11 Cases and under the Plan and Confirmation Order, the Debtors entered into a series of asset purchase agreements, pursuant to which the Debtors sold certain assets free and clear of liens and encumbrances. However, the Debtors as entities were not sold, and were put under the management of the Plan Administrator. *See* Plan, § IV(D)(1).

5. On the Petition Date, the Debtors possessed potentially valuable tax attributes (the “Attributes”) relating to their operating performance in the years leading to the filing of these Chapter 11 Cases. These Attributes became part of the Debtors’ estates upon the filing of these Chapter 11 Cases. However, in order to continue to have access to the potential benefits of these Attributes, there needs to be at least one share of the Debtors’ common equity in existence.

6. Pursuant to Article IV(D)(2) of the Plan and Paragraph 141 of the Confirmation Order, all of the Plan Administrator Assets vested in the Plan Administrator free and clear of all liens, claims, encumbrances, and other interests on the Effective Date. The Plan Administrator Assets encompass all assets not sold pursuant to the Sale Transactions or otherwise expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, and include, *inter alia*, “all assets of the Estates” *See* Plan, § (I)(A)(93). The Attributes, having neither been previously sold nor otherwise expressly affected by the Plan, constitute Plan Administrator Assets that were to be vested in the Plan Administrator.

7. However, pursuant to Article III(B)(10) of the Plan and Paragraph 157 of the Confirmation Order, all equity interests in the Debtors were purported to be cancelled on the

Effective Date without having preserved one share of common equity. The Plan's inadvertent failure to provide for the preservation of the one share required for the Plan Administrator to access the Attributes is inconsistent with the Plan's required vesting of such Attributes with the Plan Administrator.

8. Under Article X(A) of the Plan and Paragraph 174 of the Confirmation Order, the Plan Administrator has the right to initiate proceedings in this Court seeking to reconcile any inconsistencies in the Plan and the Confirmation Order "as may be necessary to carry out the purposes and intent of the Plan."

JURISDICTION AND VENUE

9. 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. The basis for relief requested herein is section 105(a) of title 11 of the United States Code.

RELIEF REQUESTED

10. As assets of the Debtors on the Petition Date and therefore assets of the Estates, the Attributes vested in the Plan Administrator on the Effective Date. In order to maintain the Attributes, there needs to be at least one share of the Debtors' common equity preserved. The provision of the Plan that purports to cancel all equity interests without preserving the one share required to maintain the Attributes is inconsistent with the vesting of all assets of the Estates in the Plan Administrator as required by the Plan. To resolve this inconsistency and to carry out the purposes and intent of the Plan, the Plan Administrator seeks entry of an order clarifying that the Plan allows for one share of the common equity of Cobalt International Energy, Inc. to be

preserved, and to allow the delivery of such share to a trust controlled by the Plan Administrator for purposes of preserving the Attributes for the benefit of the Estates.

11. Article X(A) of the Plan and Paragraph 174 of the Confirmation Order each recognize the right of the Plan Administrator to initiate proceedings before this Court to “reconcile any inconsistencies” in the Plan or Confirmation Order.

12. Further, this Court retains post-confirmation jurisdiction to interpret, implement, and enforce its own orders, including the Confirmation Order, even after substantial consummation of the Plan. *See In re U.S. Brass Corp.*, 301 F.3d 296, 304 (5th Cir. 2002). In furtherance of this jurisdiction, the Confirmation Order and Plan provide that this Court shall retain jurisdiction to interpret and implement terms of the Confirmation Order and Plan. *See* Confirmation Order, ¶ 121, Plan § XI(17). Section 105(a) of the Bankruptcy Code also grants bankruptcy courts broad authority and discretion to take actions necessary to enforce the provisions of the Bankruptcy Code and this Court’s general equitable powers.

13. The reconciliation of the Plan inconsistency to preserve one share of common equity does not adversely affect any party in interest under the Plan. Rather, it merely effectuates the intent of the Plan to vest the Debtors’ assets with the Plan Administrator for the benefit of the creditors of the Estates. It is a valid exercise of this Court’s authority to resolve the inconsistent nature of the applicable Plan provisions to preserve a potentially valuable asset. As such, the Plan Administrator’s requested reconciliation is within this Court’s authority, and should be allowed in the interest of justice.³

³ The relief requested herein is not seeking to modify, alter, amend, or otherwise affect the rights granted under the Plan as would implicate Section 1127(b) of the Bankruptcy Code. *See In re Joint Eastern & Southern District Asbestos Litig.*, 982 F.2d 721, 747 (2d Cir. 1992). Courts have defined “modification” to mean to “alter the legal relationships among the debtor and its creditors and other parties in interest” or “affect” the legal relationships among them. This is distinguished from clarifications or resolutions of ambiguities that do not alter legal rights of the parties. *See Doral Ctr., Inc. v. Ionosphere Clubs, Inc. (In re Ionosphere Clubs, Inc.)*, 38 C.B.C.2d 679, 208 B.R.

14. As noted above, the Plan Administrator seeks delivery of the preserved share to a trust to which the Plan Administrator will be trustee. The Plan vested the Plan Administrator with the authority to “issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan.” *See* Plan, § (IV)(K). Consistent with this provision, the Plan Administrator respectfully requests that any Order approving the relief requested herein recognizes the Plan Administrator’s authority to enter into and implement an appropriate trust agreement in furtherance of the relief requested in this Motion.

NOTICE

15. 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) the Internal Revenue Service; and (c) any party that has requested post-Effective Date notice pursuant to Bankruptcy Rule 2002. 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 the Court deems just and equitable.

812, 816 (S.D.N.Y. 1997); *Cohen v. Tic Fin. Sys. (In re Ampac Corp.)*, 279 B.R. 145, 152–53 (Bankr. D. Del. 2002).

Respectfully submitted this 7th day of December 2018.

GREENBERG TRAURIG, LLP

/s/ Shari L. Heyen

Shari L. Heyen (SBN 09564750)

1000 Louisiana Street, Suite 1700

Houston, Texas 77002

Telephone: (713) 374-3500

Facsimile: (713) 374-3505

Email: heyens@gtlaw.com

*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 December 7, 2018.

/s/ David R. Eastlake

David R. Eastlake

**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> , ¹)	Case No. 17-36709 (MI)
)	
Reorganized Debtors.)	(Jointly Administered)
)	

**ORDER GRANTING MOTION OF PLAN ADMINISTRATOR
TO CLARIFY THE PLAN**

[Refers to Docket No. ____]

Upon the *Motion of Plan Administrator for an Order Clarifying the Plan* (the “Motion”);² and upon consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157; and this Court having jurisdiction pursuant to 28 U.S.C. § 1334; 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.

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

2. Notwithstanding the language in Section III(B)(10) of the Plan and Paragraph 157 of the Confirmation Order, the Plan, as confirmed, preserves one share of common equity of Cobalt Energy International, Inc.

3. The Plan Administrator is authorized to transfer the one preserved share of common equity of Cobalt International Energy, Inc. to a trust of which the Plan Administrator will be the trustee.

4. The Plan Administrator is authorized to take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of this Order, including but not limiting entering into such documentation as necessary to establish a trust to hold the one share of common equity.

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

6. Except as expressly set forth in this Order, the Plan and Confirmation Order remain in full and force and effect as originally entered.

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

8. The Plan Administrator and Cobalt International Energy, Inc. are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

9. 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

THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE