

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

In re:)
) Chapter 11
)
COBALT INTERNATIONAL ENERGY, INC., et) Case No. 17-36709 (MI)
al.1)
) (Jointly Administered)
Reorganized Debtors.)
)
)
NADER TAVAKOLI, ACTING SOLELY IN HIS)
CAPACITY AS PLAN ADMINISTRATOR OF)
COBALT INTERNATIONAL ENERGY, INC., ET)
AL.,)
)
Plaintiff,)
)
)
vs.)
) Adv. Pro. No. 22-_____
)
UNITED STATES TRUSTEE PROGRAM,)
RAMONA D. ELLIOT, IN HER CAPACITY AS)
ACTING DIRECTOR OF THE UNITED STATES)
TRUSTEE PROGRAM, AND KEVIN M.)
EPSTEIN, AS THE UNITED STATES TRUSTEE)
FOR REGION 7,)
)
Defendants.)
)
)
)

COMPLAINT FOR DECLARATORY JUDGMENT AND RECOVERY
OF AMOUNTS OWED PURSUANT TO 11 U.S.C. § 542

Nader Tavakoli, acting solely in his capacity as the Plan Administrator of Cobalt International Energy, Inc., et al. (the "Plan Administrator" or "Plaintiff"), files this complaint ("Complaint") against the United States Trustee Program ("Trustee Program"); Ramona D. Elliot,

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).



the acting director of the Trustee Program (“Director”); and Kevin M. Epstein, the United States Trustee for Region 7 (“UST”) (collectively, the “Defendants”) and states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction² over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This adversary proceeding is a “core” proceeding to be heard and determined by the Court pursuant to 28 U.S.C. § 157(b) and the Court may enter final orders for matters contained herein.
4. The relief requested in this Complaint is based on 11 U.S.C. §§ 105, 106, 541, 542, and 558; Bankruptcy Rule 7001; 28 U.S.C. § 2201.
5. Pursuant to Local Bankruptcy Rule 7008-1, Plaintiff consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

NATURE OF THE ACTION

6. The Plan Administrator brings this action against Defendants to recover amounts the Debtors and the Plan Administrator were unconstitutionally required to pay to the Trustee Program.

PARTIES

7. Plaintiff was appointed as the Plan Administrator following confirmation of the Plan.

² The Court retained jurisdiction over this matter pursuant to 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* [Docket No. 784] (the “Confirmation Order”) and the Plan attached thereto (the “Plan”). Confirmation Order, ¶ M; Plan, Art. XI. Capitalized terms used but not defined herein have the meaning given them in the Confirmation Order, including, where applicable, by reference to the definitions in the Plan.

8. Plaintiff is empowered by the Plan to commence and litigate Causes of Action.

9. The Trustee Program is the component of the United States Department of Justice responsible for overseeing the administration of bankruptcy cases and private trustees under 28 U.S.C. § 586 and 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”). As part of those administrative duties, the Program collects fees pursuant to 28 U.S.C. § 1930, which fees are deposited into the United States Trustee System Fund (the “UST Fund”).

10. The Director is the acting director of the Program.

11. The UST is the United States Trustee for Region 7.

FACTUAL BACKGROUND

A. General Background

12. The Constitution provides that “Congress shall have power . . . [t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States[.]” U.S. Const. art. I, § 8, cl. 4.

13. In every judicial district except the six districts located in the states of North Carolina and Alabama, the Trustee Program administers bankruptcy cases. In the North Carolina and Alabama districts, judicially appointed bankruptcy administrators administer bankruptcy cases (the “Administrator Program”).

14. The Trustee Program is self-funded through user fees paid into the UST Fund. 28 U.S.C. § 589a. Chapter 11 debtors are required to pay quarterly fees during the pendency of their cases.

15. The Administrator Program, however, is funded through the Judiciary’s general budget.

16. Prior to 2021, the Administrator Program was permitted, but not required, to charge Chapter 11 debtors the same fees as the Trustee Program.

17. In 2017, Congress enacted a temporary increase in the fees for certain large Chapter 11 cases administered by the Trustee Program. *See* Pub. L. 115–72, Div. B, 131 Stat. 1229 (“2017 Act”). The fee increase took effect in the first quarter of 2018.

18. Although the Administrator Program was permitted to raise fees to match those of the Trustee Program in 2018, it did not do so until Congress changed the law in 2021 to require the fees in the Trustee Program and Administrator Program districts to be equal. *See* Pub. L. 116–325, 134 Stat. 5088.

19. While the Administrator Program increased fees after the third quarter of 2018 to match those set forth in the 2017 Act, the Administrator Program only raised fees for those chapter 11 debtors that filed for bankruptcy after the third quarter of 2018.

20. Therefore, for an approximately three-year period, many Chapter 11 debtors in Trustee Program districts were required to pay fees that exceeded the fees that were charged to and paid by similarly situated Chapter 11 debtors in Administrator Program districts (the excess fees are hereinafter referred to as “Unconstitutional Overpayments”).

21. On June 6, 2022, the United States Supreme Court held that the 2017 Act violated the Constitution’s bankruptcy uniformity requirement. *Siegel v. Fitzgerald*, 142 S. Ct. 1770, 1782–83 (2022).

22. On August 15, 2022, the United States Court of Appeals for the Tenth Circuit, relying on *Siegel*, remanded a case to the bankruptcy court and ordered the amount of the Unconstitutional Overpayments to be calculated and the Unconstitutional Overpayments to be

refunded to the Chapter 11 debtors. *In re John Q. Hammons Fall 2006, LLC*, No. 20-3203, 2022 WL 3354682, at *1 (10th Cir. Aug. 15, 2022).

23. Similarly, on November 10, 2022, the United States Court of Appeals for the Second Circuit relied on *Siegel* and ordered that the Unconstitutional Overpayments be refunded to the Chapter 11 debtors. *In re Clinton Nurseries, Inc.*, 53 F.4th 15, 18, 29 (2d Cir. 2022).

B. Case-Specific Background

24. On December 14, 2017 (the “Petition Date”), Cobalt International Energy, Inc. and certain of its affiliates (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

25. On April 5, 2018, the Court confirmed the Plan.

26. The effective date of the Plan occurred on April 10, 2018 (the “Effective Date”), and the Plan Administrator was appointed as of that date.

27. Article II(D) of the Plan provides:

From and after the Effective Date, the Debtors and the Plan Administrator shall be jointly liable for and shall pay the fees assessed against the Estates under 28 U.S.C. § 1930 until the Chapter 11 Cases are converted, dismissed or closed, whichever occurs first. In addition, the Debtors and/or the Plan Administrator shall file any pre-confirmation monthly operating reports not filed as of the Confirmation Hearing, in conformity with the U.S. Trustee guidelines. The U.S. Trustee shall not be required to file a request for payment of its quarterly fees, which shall be deemed an Administrative Claim against the Debtors and their Estates.

28. As required by 28 U.S.C. § 1930 and the Plan, the Debtors and the Plan Administrator paid the required quarterly fees to the UST (“Payments”) from the first quarter of 2018 through first quarter of 2021. As set forth in the charts annexed hereto as Exhibit A, which are incorporated herein by reference, the Payments included Unconstitutional Overpayments.

29. The Plan Administrator has requested Defendants refund the Unconstitutional Overpayments that the Debtors and he were required to pay in violation of the Constitution and paid.

30. Defendants declined to provide the requested refund and indicated that they are still evaluating how to handle the Unconstitutional Overpayments.

COUNT I
Declaratory Judgment Pursuant to 28 U.S.C. § 2201

31. The allegations of paragraphs 1 through 30 are realleged and incorporated by reference as if fully set forth herein.

32. This is an actual controversy between the Plan Administrator, on one hand, and the Trustee Program, the Director and UST, on the other, because the Debtors and the Plan Administrator (i) were required to make approximately \$1,486,388 in Unconstitutional Overpayments; (ii) paid those Unconstitutional Overpayments; and (iii) requested a refund of those Unconstitutional Overpayments, and the Director and UST have not agreed to refund and have not refunded the Unconstitutional Overpayments.

33. Accordingly, the Plan Administrator seeks a declaration that the approximately \$1,486,388 in Unconstitutional Overpayments, which the Debtors and he were required to pay and paid, are property of the Debtors' estates under § 541 of the Bankruptcy Code.

COUNT II
Turnover and Accounting of Property of the
Estate Pursuant to 11 U.S.C. § 542

34. The allegations of paragraphs 1 through 33 are realleged and incorporated by reference as if fully set forth herein.

35. The Defendants are holding approximately \$1,486,388 Unconstitutional Overpayments that are property of the Debtors' estates under § 541 of the Bankruptcy Code.

36. The Defendants are aware of the Supreme Court's opinion in *Siegel* and therefore, knew or should have known that the Unconstitutional Overpayments were property belonging to the Debtors' estates, and the Defendants have failed to turn over such amounts as required by Section 542 of the Bankruptcy Code despite the Plan Administrator's demand that they do so.

37. The Plan Administrator is entitled to recover the full amount of the Unconstitutional Overpayments pursuant to Section 542(b) of the Bankruptcy Code.

38. The Plan Administrator is entitled to an accounting of fees paid, overpaid, and/or due for the period of January 1, 2018 through March 31, 2021.

PRAYER FOR RELIEF

WHEREFORE, the Plan Administrator prays this Court enter judgment in his favor and against Defendants for the following relief:

A. Enter a declaratory judgment that the approximately \$1,486,388 in Unconstitutional Overpayments are property of the Debtors' Estates;

B. Enter a judgment against Defendants requiring the Director and/or the UST to direct the UST Fund immediately to cause to be paid to the Plan Administrator the amount of not less than the approximately \$1,486,388 in Unconstitutional Overpayments;

C. Award the Plan Administrator costs and expenses incurred in connection with this adversary proceeding; and

D. Granting such other and further relief as the Court deems just and proper.

Dated: December 27, 2022

GREENBERG TRAURIG, LLP

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capacity as the Plan Administrator of
Cobalt International Energy, Inc., et al.***

EXHIBIT A

Cobalt International Energy, L.P. Account #414-17-36711

A	B	C	D	E	F
Period	Total Disbursements During Quarter	Payment Required in Trustee Program Districts	Payment Required in Administrator Program Districts	Column C Amount Paid? Y/N	Amount of Unconstitutional Overpayments
Q1 '18	\$35,454,571	\$250,000	\$30,000	Y	\$220,000
Q2 '18	\$900,082,062	\$250,000	\$30,000	Y	\$220,000
Q3 '18	\$432,924,522	\$250,000	\$30,000	Y	\$220,000
Q4 '18	\$113,707,667	\$250,000	\$30,000	Y	\$220,000
Q1 '19	\$18,117,361	\$181,174	\$20,000	Y	\$161,174
Q2 '19	\$6,980,488	\$69,805	\$13,000	Y	\$56,805
Q3 '19	\$2,004,209	\$20,042	\$9,750	Y	\$10,292
Q4 '19	\$37,070,875	\$250,000	\$30,000	Y	\$220,000
Q1 '20	\$1,226,178	\$12,262	\$6,500	Y	\$5,762
Q2 '20	\$6,573,844	\$65,738	\$13,000	Y	\$52,738
Q3 '20	\$1,101,452	\$11,015	\$6,500	Y	\$4,515
Q4 '20	\$6,911,001	\$69,160	\$13,000	Y	\$56,160
Total Unconstitutional Overpayments:					<u>\$1,447,446</u>

Cobalt GOM #1 LLC Account #414-17-36713

A	B	C	D	E	F
Period	Total Disbursements During Quarter	Payment Required in Trustee Program Districts	Payment Required in Administrator Program Districts	Amount from Column C Paid? Y/N	Amount of Unconstitutional Overpayments
Q1 '18	\$4,221,755	\$42,218	\$10,400	Y	\$31,818
Q2 '18	\$1,362,444	\$13,624	\$6,500	Y	\$7,124
Total Unconstitutional Overpayments:					<u>\$38,942</u>