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

In re:	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., *et al.*,	Case No. 17-36709 (MI)
Debtors,	(Jointly Administered)
COBALT INTERNATIONAL ENERGY, INC., *et al.*,	Adv. Pro. No. 17-03457 (MI)
Plaintiffs,	
v.	
GAMCO GLOBAL GOLD, NATURAL RESOURCES & INCOME TRUST, GAMCO NATURAL RESOURCES, GOLD & INCOME TRUST, ST. LUCIE COUNTY FIRE DISTRICT FIREFIGHTERS' PENSION TRUST FUND, FIRE AND POLICE RETIREE HEALTH CARE FUND, SAN ANTONIO, SJUNDE AP-FONDEN, and UNIVERSAL INVESTMENT GESELLSCHAFT M.B.H.,	
Defendants.	

SECURITIES PLAINTIFFS' OPPOSITION TO THE DEBTORS' MOTION TO STAY OR ENJOIN PROSECUTION OF THE PENDING SECURITIES ACTION AGAINST NON-DEBTOR DEFENDANTS

The plaintiffs and court-appointed class representatives (the "Securities Plaintiffs")[1] for the now certified class of investors (the "Class") in the federal securities action entitled *In re Cobalt International Energy, Inc. Securities Litigation*, No. 4:14-cv-3428 (S.D. Tex.) (the "Securities Action" or "SA"),[2] pending in the United States District Court, Southern District of Texas (the "District Court"), hereby oppose the motion (the "Motion") filed by Cobalt International Energy, Inc. ("Cobalt" or the "Company") and the other debtors (collectively, the "Debtors") in the above-captioned chapter 11 bankruptcy cases (the "Chapter 11 Cases") to stay or enjoin the Securities Action against all of the non-Debtor defendants (as described more fully below, the "Non-Debtor Defendants"). In opposition to the Motion, the Securities Plaintiffs rely upon the declaration of Andrew J. Entwistle (the "Entwistle Decl.") and exhibits, filed contemporaneously herewith, and respectfully state as follows:

INTRODUCTION

1. As a matter of law, the automatic stay does not extend to parties other than a debtor. Bankruptcy courts only extend the automatic stay for the benefit of (or, alternatively, enjoin the prosecution of non-bankruptcy litigation against) non-debtor litigants under extraordinary circumstances that are not present here. The Debtors bear the burden of proof, through clear and convincing evidence, to demonstrate grounds to extend the automatic stay. However, here the Debtors have not submitted a scintilla of evidence, much less carried their heavy evidentiary burden necessary to obtain the extraordinary relief they seek. That alone warrants denial of the Motion. Moreover, for the reasons set forth below, there are no extraordinary circumstances justifying the relief requested in the Motion. All three of the

[1] The Securities Plaintiffs are GAMCO Global Gold, Natural Resources & Income Trust, GAMCO Natural Resources, Gold & Income Trust, St. Lucie County Fire District Firefighters' Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden and Universal Investment Gesellschaft m.b.H.

[2] Citations to "(SA ECF No. ___)" refer to docket entries in the Securities Action.

Debtors' supposed bases for extending the automatic stay are unsupported by the record and wrong as a matter of law.

2. The Securities Action is a broad-reaching class action against fifty-seven defendants in five basic categories: Cobalt (as discussed below, the Securities Plaintiffs have filed a notice requesting dismissal of Cobalt from the Securities Action without prejudice), its former senior officers, its (primarily former) directors, its securities underwriters, and its private-equity founders (collectively, the "Defendants"). Through various types of unlawful conduct centering on Cobalt's common stock and notes, these Defendants caused billions of dollars in damages to the Class of Cobalt investors. Crucially, the claims against the Non-Debtor Defendants are based upon their own independent conduct with respect to this massive investor loss.

3. Not surprisingly, the Securities Action has been robustly litigated, and, over the past three years, it has progressed significantly to be less than a year from trial. The Defendants' motions to dismiss were briefed in 2015 and denied in 2016; the Securities Plaintiffs moved for class certification in 2016 and the Class was certified in 2017 based on submissions exceeding a thousand pages; fact discovery was undertaken for twenty-two months such that its close was *four days* away when Cobalt sought bankruptcy protection in December 2017; and motions for summary judgment are scheduled for May 2018.

4. Cobalt and its associated Debtors now move this Court to extend the automatic stay in their Chapter 11 Cases for the benefit of the other fifty-six solvent Non-Debtor Defendants or to enjoin the Securities Action. Either alternative form of relief sought in the Motion would stop the Securities Action dead in its tracks for an indeterminate period, threatening the substantial progress the parties have made over three years of litigation. And the

Motion is based not on the actual need to avoid demonstrable, immediate harm to the Debtors' estate, but rather, on mere conjecture or conclusory arguments that *some* potential harm *may* be avoided by halting the Securities Action (a result that would almost exclusively benefit the Non-Debtor Defendants, not the Debtors).

5. "Section 362 is rarely, however, a valid basis on which to stay actions against non-debtors." *Arnold v. Garlock, Inc.*, 278 F.3d 426, 436 (5th Cir. 2001). And injunctions such as the one sought by the Debtors are an "extraordinary and drastic remedy." *In re FiberTower Network Servs. Corp.*, 482 B.R. 169, 181 (Bankr. N.D. Tex. 2012). There is no basis here to depart from these principles and precedents.

6. *First*, the Debtors contend that the entire Securities Action should be stayed because Cobalt *might* need to indemnify the Non-Debtor Defendants. This purported concern is speculative at best but, more likely, nonexistent. To begin with, as the Debtors acknowledge in the Motion, none of their agreements provide any indemnification for the insider trading claim against Cobalt's private-equity founders. (Motion, ¶ 7 n. 11). Moreover, any indemnification claims by the Non-Debtor Defendants – to the extent they are entitled to indemnification at all for violations of the federal securities laws – are nothing more than contingent prepetition unsecured claims, subject to mandatory subordination pursuant to section 510(b) of the Bankruptcy Code and likely subject to disallowance pursuant to section 502(e)(1)(B). Thus, the Non-Debtor Defendants' indemnification claims, even if valid, will receive no distribution unless and until all general unsecured claims (including approximately $1.4 billion of senior unsecured notes) are paid in full with interest. Cobalt's own filings and the trading price of its unsecured funded debt demonstrate that there will be no distributions below the priority level of general unsecured claims. Consequently, the Debtors' estate faces no actual financial exposure to the

Securities Action based on the Securities Action itself or through the Non-Debtor Defendants' supposed indemnification claims. Even if such exposure did exist, it would be far from immediate and would have no impact whatsoever on the ongoing administration of the Debtors' estate.

7. *Second*, the Debtors' assertion that the entire Securities Action should be stayed because it purportedly "would distract key personnel integral to these bankruptcy proceedings" is likewise unsupported and speculative. *None* of Cobalt's former senior management named as Non-Debtor Defendants are still employed at Cobalt or participating in the Chapter 11 Cases, document discovery in the Securities Action is complete, depositions are virtually complete, and there is nothing to suggest the few Non-Debtor Defendants who remain directors at Cobalt have any role in administering or selling assets of the estate or the so-called restructuring, which consists predominantly of a liquidation of assets. The Debtors have submitted nothing more than pure conjecture that the fact depositions of two current officers would distract those officers from their role in the Chapter 11 Cases – hardly a sufficient basis to stay the Securities Action with respect to dozens of other Non-Debtor Defendants. Put simply, continued litigation by experienced counsel for the Securities Plaintiffs and Non-Debtor Defendants on a factual record that is all but complete simply does not implicate any of Debtors' key employees. Moreover, the Securities Plaintiffs would need relief from this Court to conduct any further discovery of the Debtors, which are now protected by the automatic stay.

8. *Third*, the Debtors' contention that Cobalt may be prejudiced in defending claims against it after the stay is lifted if the Securities Action proceeds against the Non-Debtor Defendants is moot or, at best, untrue. On December 22, 2017, the Securities Plaintiffs filed a notice of voluntary dismissal of Cobalt from the Securities Action. Even if Cobalt is not

dismissed, procedural and economic realities will likely prevent the Company from *ever* facing the claims alleged against it in the Securities Action since those claims, like the Non-Debtor Defendants' alleged indemnification claims, are subject to mandatory subordination pursuant to section 510(b) of the Bankruptcy Code and appear to be well out of the money. Finally, the suggestion that adverse rulings by the District Court will have a preclusive effect on Cobalt as a non-participant, non-party protected by the automatic stay is unsupported by applicable law. Unsurprisingly, the Motion is devoid of any legal support for that proposition.

9. In contrast to the absence of any adverse impact on the Debtors' estate, the Class will suffer genuine prejudice from a stay or injunction preventing prosecution of the Securities Action. The Class has been waiting for more than three years for redress for the Defendants' unlawful conduct and the resulting damages, and during every day of the indeterminate period of any stay or injunction witnesses' recollections and the overall record is negatively impacted. The Class suffered billions of dollars in damages from Cobalt's and the Non-Debtor Defendants' unlawful conduct, and its entitlement to timely compensation for these wrongs strongly outweighs the Debtors' conclusory allegations that *some* speculative harm *might* injure the estate if the Securities Action is not halted. Most certainly, the fifty-six Non-Debtor Defendants, many of which are not affiliated with the Debtors and none of which are debtors in bankruptcy, are not entitled to the benefit of any such relief.

10. Notably, Cobalt and the Non-Debtor Defendants twice sought to stay the Securities Action pending their interlocutory appeal of class certification, claiming, as here, supposed financial hardship to Cobalt from its alleged indemnity obligations. In the District Court, the Honorable Nancy Atlas found no harm to Cobalt that outweighed the prejudice to the Class, and the United States Court of Appeals for the Fifth Circuit likewise denied a subsequent

stay motion. Given that Cobalt's alleged indemnity obligations can now only give rise, at best, to subordinated prepetition claims that are not likely to receive any distribution at all, Judge Atlas's finding rings even truer.

FACTUAL BACKGROUD

I. The Late-Stage Securities Action

11. The Securities Action was commenced on November 30, 2014 – over three years ago – when the Securities Plaintiffs filed their initial class action complaint. Following an extensive investigation, and later discovery, the Securities Plaintiffs filed two consolidated amended class action complaints that allege, variously, violations of the Securities Act of 1933 and the Securities Exchange Act of 1934. In addition to Cobalt, the Securities Action Plaintiffs brought the Securities Action against the fifty-six solvent Non-Debtor Defendants, including:

(i) Cobalt's private-equity founders the Goldman Sachs Group, Inc., Riverstone Holdings, LLC, the Carlyle Group LP, First Reserve Corporation, and KERN Partners Ltd., who controlled Cobalt's board and who discovery revealed sold billions of dollars in Company stock while in possession of material non-public information in violation of Section 20A of the Exchange Act;

(ii) three former members of Cobalt's former management (none of whom are currently affiliated with the Company or involved in the bankruptcy proceedings), who caused Cobalt to make material misstatements and omissions in securities filings, investor presentations and offering materials;

(iii) Cobalt directors, most of whom are no longer on the board, who controlled the Company and signed materially misstated offering materials; and

(iv) the Wall Street banks that underwrote billions of dollars of class-period offerings of Cobalt securities, including common stock and senior unsecured notes, based on materially misstated offering materials.

12. Securities Plaintiffs' legal and factual theories in the case have been successful at every stage of the litigation. On January 19, 2016, Judge Atlas denied virtually entirely the

Defendants' motions to dismiss the original complaint. (SA ECF No. 108). With leave of the District Court, on March 15, 2017, the Securities Plaintiffs filed a second amended class action complaint adding a claim under Section 20A of the Exchange Act for insider trading against the private-equity founders based on billions of dollars in common stock sales they made while in possession of material non-public information. (SA ECF No. 200).

13. On June 15, 2017, Judge Atlas denied the private-equity founders' motion to dismiss the Section 20A insider trading claim (SA ECF No. 243), ruling that the Securities Plaintiffs "alleged with adequate particularity that the [private-equity sponsors] acted with the requisite scienter when they sold Cobalt stock while in possession of material, undisclosed information regarding" certain aspects of Cobalt's operations in Angola.[3] The same day, Judge Atlas granted class certification on a voluminous record that included over 1,600 pages of expert reports and documentary evidence. (SA ECF No. 244 at 5-18).

14. On August 23, 2017, Judge Atlas denied the Defendants' motion to reconsider the class certification order. (SA ECF No. 273). In other words, the Securities Plaintiffs have won every major motion.

15. Moreover, the Securities Plaintiffs have twice defeated the Defendants' prior attempts to stay the Securities Action. On July 13, 2017, the Securities Defendants filed a motion before the District Court to stay the proceedings pending their petition to the Fifth Circuit for permission to file an interlocutory appeal claiming, as here, irreparable harm to Cobalt because purportedly "Cobalt's auditors have concluded that there is substantial doubt about Cobalt's ability to continue as a going concern" and since "Cobalt's insurance carriers are

[3] *See* Entwistle Decl. Exhibit A at 9.

disputing coverage . . . Cobalt is bearing this financial burden on its own." (SA ECF No. 252 at 5).

16. Judge Atlas denied the motion (SA ECF No. 273 at 11-12), finding that any potential harm to Cobalt did not outweigh the prejudice to the Securities Plaintiffs and Class:

> Defendants have failed to demonstrate irreparable injury if the stay is not granted. Defendants have shown that Cobalt is suffering financial difficulties, but no such showing has been made for any of the other Defendants. Defendants argue that they will be required to participate in discovery, but the prospect of having to engage in discovery is not irreparable harm for purposes of a stay pending appeal.
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> * * *
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> Plaintiffs, on the other hand, will be prejudiced by a stay of discovery. The case was originally filed in November 2014. Further delay will jeopardize Plaintiffs' ability to obtain discovery from individuals whose memories may be fading as time passes.

(*See* Entwistle Decl. Ex. B at 11-12 (internal citations omitted)).

17. On August 24, 2017, the Defendants filed a motion before the Fifth Circuit for a stay of the Securities Action, again claiming irreparable harm would result from continued litigation of the Securities Action. (*See St. Lucie County Fire District Firefighters' Pension Trust Fund, et al. v. Bryant, et al.*, Case No. 17-20503 (5th Cir. 2017) ECF No. 514131225 at 15). Like the District Court, the Fifth Circuit denied – summarily – the Defendants' motion to stay the proceedings. (*See id.*, ECF No. 514157899).

II. Discovery In The Securities Action Is Virtually Complete

18. Fact discovery in the Securities Action was set to end on December 18, 2017, just four days before Cobalt filed these Chapter 11 Cases and this Motion. Accordingly, such discovery is virtually complete, with all documents produced and only a few depositions

remaining. Of the few witnesses remaining to be deposed before the filing of Cobalt's petition,[4] only three are currently affiliated with Cobalt in any way: Non-Debtor Defendant Jeff van Steenbergen (an outside director), and non-parties Jeffrey Starzec (General Counsel) and Richard Smith (Senior Vice President, Strategy and Business Development).

III. The Securities Plaintiffs Have Filed A Voluntary Dismissal Of Cobalt

19. On December 22, 2017, by virtue of Cobalt's Chapter 11 filing and the impact of the automatic stay with respect to Cobalt, the Securities Plaintiffs filed a Notice of Request of Voluntary Dismissal of Cobalt (the "Notice of Dismissal") and proposed order (SA ECF No. 306)[5] under the District Court's established authority to dismiss Cobalt as a defendant pursuant to Federal Rule of Civil Procedure 41.[6] The Securities Plaintiffs' request to dismiss Cobalt is pending.

IV. Cobalt's Debt Dramatically Exceeds Its Assets

20. In its first-day filings, Debtors listed secured and senior unsecured funded debt of approximately $2.84 billion, including:

INSTRUMENT	PRINCIPAL OUTSTANDING (APPROXIMATE)
10.75% First-Lien Secured Notes Due 2021	$500,000,000
7.75% Second-Lien Secured Notes Due 2023	$934,700,000
2.625% Senior Unsecured Convertible Notes Due 2019	$619,200,000
3.125% Senior Unsecured Convertible Notes Due 2024	$786,900,000
Total Funded Indebtedness	**$2,840,000,000**

[4] There were a handful of depositions that – due to scheduling issues – were scheduled to be taken in December and January, after the December 18, 2017 close of fact discovery.

[5] *See* Entwistle Decl. Ex. C.

[6] *See Arnold v. Garlock Inc.*, 288 F.3d 234, 237 (5th Cir. 2002) ("The district courts in the instant cases were similarly entitled to dismiss the debtor on the plaintiffs' motions as a matter consistent with the terms of § 362(a) and the effective management of their dockets."); *Villarreal v. City of Laredo*, No. 5:03-cv-11, 2007 WL 2900572, at *5 (S.D. Tex. Sept. 28, 2007), *aff'd sub nom.*, *Villarreal v. M.G. Builders*, 354 F'Appx 177 (5th Cir. 2009) ("The prohibition under Section 362 against further proceedings is not absolute, and . . . this general rule is not a bar to voluntary dismissal of the remaining claims against [defendant in bankruptcy].").

(Bankr. Case No. 17-36709 (MI), ECF No. 16 ¶¶ 27-31). The alleged indemnification claims of the Defendants, as well as the claims of the Securities Plaintiffs and the Class against Cobalt, are statutorily subordinated to all $2.84 billion of funded debt as well as any additional unsecured debt.

21. On December 19, 2017, Cobalt announced the settlement of its dispute with the Angolan national oil company over the previous $1.75 billion agreement to sell its remaining development interests in Angola in exchange for cash payments totaling $500 million, subject to the approval of this Court. (*See* Entwistle Decl. Ex. D). Under the agreement, Cobalt will apparently transfer its Angolan assets to the national oil company but will no longer have any assets in Angola or claims against Angola for the aborted sale.

22. As of the date hereof, Cobalt's second-lien notes are trading at approximately 65% to 68% of par,[7] its senior unsecured 3.125% notes due 2014 are trading at 23.785% of par, and its senior unsecured 2.625% notes due 2019 are trading at 24% of par, clearly reflecting a market expectation that unsecured creditors will not be paid in full. (*See* Entwistle Decl. Ex. E).

ARGUMENT

23. The automatic stay does not apply to actions against a non-debtor. *See*, *e.g.*, *In re TXNB Internal Case*, 483 F.3d 292, 301 (5th Cir. 2007). Instead, "[b]y its terms the automatic stay applies only to the debtor, not to co-debtors under Chapter 7 or Chapter 11 of the Bankruptcy Code nor to co-tortfeasors." *GATX Aircraft Corp. v. M/V Courtney Leigh*, 768 F.2d 711, 716 (5th Cir. 1985). For this reason, "Section 362 is rarely . . . a valid basis on which to stay actions against non-debtors." *Arnold v. Garlock, Inc.*, 278 F.3d 426, 436 (5th Cir. 2001). Indeed, the automatic stay can only be extended to non-debtor co-defendants upon a showing of

[7] The Debtors' second-lien notes were issued in a single registered tranche and several tranches of private placements, each with different characteristics and subject to varied registration exemptions. Two privately placed tranches are trading higher than the bulk of the Debtors' second-lien notes but still under par.

"unusual circumstances." *See Reliant Energy Servs. Inc. v. Enron Canada Corp.*, 349 F.3d 816, 825 (5th Cir. 2003).

24. A debtor seeking an extension of the automatic stay for the benefit of non-debtors bears the burden of demonstrating that such rare and unusual circumstances are present. *See*, *e.g.*, *Nat'l Oilwell Varco, L.P. v. Mud King Prods., Inc.*, No. 4:12–3120, 2013 WL 1948766, at *3 (S.D. Tex. May 9, 2013) ("The burden to show that the stay is applicable to a non-debtor is on the party invoking the stay."). And "something more than the mere facts that one of the parties to the lawsuit has filed a Chapter 11 bankruptcy must be shown in order that proceedings be stayed against non-bankrupt parties." *In re Divine Ripe, L.L.C.*, 538 B.R. 300, 314 (S.D. Tex. 2015).

25. Likewise, the Debtors' alternative request for an injunction under Section 105 is extraordinary relief for which Debtors carry a heavy burden of persuasion. *See*, *e.g.*, *In re FiberTower Network Servs. Corp.*, 482 B.R. 169, 182 (Bankr. N.D. Tex. 2012) ("injunction is an extraordinary and drastic remedy, not to be granted routinely, but only when the movant, by a clear showing, carries a burden of persuasion.").

26. As discussed below, Debtors have failed to provide justification for departing from the well-settled precedent in favor of continuing prepetition litigation against non-debtors.

I. The Debtors Have Established No Basis to Extend the Automatic Stay to the Non-Debtor Defendants

27. The Debtors' request to extend the automatic stay is based solely on the dubious contention that "[t]he Securities Action against the Non-Debtor Defendants will adversely impact property of the Debtors' estate by depleting or diluting assets." (Motion, ¶ 18). This conclusory claim and the arguments made to support it are wrong as a matter of fact and law, speculative at best, and unsupported by the record.

A. The Debtors' Alleged Indemnification Obligations Will Not Impact The Estate

28. Debtors contend that "an identity of interest" exists between Cobalt and the Non-Debtor Defendants because the "indemnified Non-Debtor Defendants will have claims against the Debtors' estate for their defense costs and damages relating to the Securities Action." (Motion, ¶¶ 20-21). This contention fails for several reasons, each of which leads to the same conclusion: any alleged indemnification claims against the Debtors on account of the Securities Action will have no economic impact on the Debtors or their estate.[8]

29. *First*, each and every claim alleged against the Non-Debtor Defendants in the Securities Action arises from the Non-Debtor Defendants' own independent violations of the Securities Act or the Exchange Act. It is well established that indemnification for violations of the federal securities laws is contrary to public policy and invalid. *See, e.g.*, *In re Cont'l Airlines*, 203 F.3d 203, 216-17 (3d Cir. 2000) (noting that "[F]ederal courts disfavor indemnity for federal securities law violations, calling into question the enforceability of these obligations" and collecting cases); *Laventhol, Krekstein, Horwath & Horwath v. Horwitch*, 637 F.2d 672, 676 (9th Cir. 1980); *Tucker v. Arthur Andersen & Co.*, 646 F.2d 721, 724 (2d Cir. 1981); *Stowell v. Ted S. Finkel Inv. Servs., Inc.*, 641 F.2d 323, 325 (5th Cir. 1981); *Eichenholtz v. Brennan*, 52 F.3d 478, 484-85 (3d Cir. 1995) (citation omitted). Accordingly, the Debtors have no valid,

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[8] On this issue, the Debtors' cases (Motion, ¶ 19) are informative but do not support the relief the Debtors seek. In *Reliant Energy Servs., Inc. v. Enron Canada Corp.*, 349 F.3d 816, 825 (5th Cir. 2003), the question was whether to extend the automatic stay to a debtor's non-debtor corporate affiliate, not whether, as the Debtors assert here, that an alleged indemnity obligation mandates extension of the automatic stay to unaffiliated third parties. In *National Oilwell Varco, L.P. v. Mud King Products, Inc.*, No. 4:12-3120, 2013 WL 1948766, at *6 (S.D. Tex. May 9, 2013), the court "decline[d] the invitation to issue a blanket discretionary stay" against non-affiliated defendants and permitted plaintiff "to move forward against these Defendants to the extent that the discovery d[id] not impair the interests of the Debtor or [affiliated defendants]." In *Beran v. World Telemetry, Inc.*, 747 F. Supp. 2d 719, 724 (S.D. Tex. 2010), the court declined to extend the stay to non-debtors because "[t]here must be an actual, as opposed to an alleged or potential, identity of interests, such that a judgment against the nonbankrupt parties would in fact be a judgment against the bankrupt party" and the non-debtor defendants "h[ad] not demonstrated such a relationship and h[ad] not carried their burden to demonstrate that the § 362 stay may be extended to them.").

absolute indemnity obligation to the Non-Debtor Defendants, and their contentions otherwise based on standard language in Cobalt's certificate of incorporation, registration rights agreement, and underwriting agreements do not support the blanket conclusion that the Debtors will face significant indemnification obligations if the Securities Action proceeds against the Non-Debtor Defendants.

30. *Second*, the Securities Action asserts claims against Cobalt's private-equity founders for insider trading in violation of Section 20A of the Exchange Act, which have survived a motion to dismiss. The Section 20A claims are based on billions of dollars in insider sales, do not depend on Cobalt's wrongdoing, and – by the Debtors' own admission (Motion, ¶ 7 n.11) – are *not* subject to indemnification. Simply put, the Section 20A claims do not, and cannot, impact the Debtors or their estate in any way.

31. *Third*, there is no evidence in the record indicating that the Debtors will ever actually indemnify the Non-Debtor Defendants in a manner that would deplete the estate or adversely affect recovery by other, non-subordinated creditors. The claims asserted in the Securities Action against the Non-Debtor Defendants arise out of purchases of the securities of Cobalt, a Debtor. Thus, any claims of the Non-Debtor Defendants for indemnification on account of the Securities Action are subject to mandatory subordination under section 510(b) of the Bankruptcy Code, which states as follows:

> For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, ***or for reimbursement or contribution allowed under section 502 on account of such a claim***, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

11 U.S.C. § 510(b) (emphasis added).

32. By operation of section 510(b), any claims the Non-Debtor Defendants might assert would be subordinated to all $2.8 billion of the Debtors' funded debt, all administrative expense claims, all priority claims and all other unsecured claims (and, in the case of claims arising out of the purchase of common stock, further subordinated to the same priority as common stock). As a result, the Non-Debtor Defendants will never receive a distribution from the Debtors' estate on account of any such claims unless and until all of the Debtors' unsecured creditors are paid in full with interest. As evidenced by the deeply discounted trading prices of the Debtors' senior unsecured notes, which are trading at 23-24% of par (*see* Entwistle Decl. Ex. E), the chances of such an extraordinary outcome are, at best, exceedingly unlikely.

33. *Fourth*, any indemnification claims asserted by the Non-Debtor Defendants in connection with the Securities Action – particularly for damages – are subject to disallowance under section 502(e)(1)(B) of the Bankruptcy Code, which provides that "the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor . . . to the extent that . . . such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance." Here, the Non-Debtor Defendants are co-liable with Cobalt for their violations of the securities laws and any of their potential claims for reimbursement or contribution are, and will remain for some time, contingent. Accordingly, even if indemnification of the Non-Debtor Defendants were permissible, any indemnification claims they assert are likely to be disallowed in any event.

34. *Fifth*, even if the Non-Debtor Defendants do eventually file indemnification claims, and even in the exceedingly unlikely event such claims are allowed and receive a distribution that might dilute the recoveries of other creditors with which such claims are *pari passu*, "such distributive adjustment does not damage the estate. . . . A potential for additional

claims in this case, without more, does not constitute 'unusual circumstances' which would necessitate imposition of the automatic stay upon" litigation between non-debtors. *See In re First Cent. Fin. Corp.*, 238 B.R. 9, 20 (Bankr. E.D.N.Y. 1999) (Securities Exchange Act case). The existence of a right to indemnity does not, as the Debtors suggest, automatically create an identity of interest warranting extension of the stay. *See In re Reliance Acceptance Grp., Inc.*, 235 B.R. 548, 557 (D. Del. 1999) (finding that the existence of indemnification claims was not a basis for enjoining shareholder litigation).

35. *Finally*, Debtors assert that due to the indemnification obligations and the insurance carriers' denial of coverage under the policies, "Debtors will also need to pursue litigation and expenses necessary to enforce coverage, exposing the Debtors to potentially costly securities litigation." (Motion at 12). But Cobalt is *already* pursuing coverage litigation against Cobalt's primary insurer before Judge David Hittner in the District Court,[9] and fifteen director and officer Non-Debtor Defendants have intervened in that action based on their purported indemnification rights. (Coverage Litigation ECF No. 44). Notably, Cobalt *has not* sought to stay or enjoin the Coverage Litigation based on purported hardship or expense. Instead, on December 21, 2017, the parties in that action merely requested a sixty-day extension of the existing schedule to complete discovery. (Coverage Litigation ECF No. 54). Debtors' claim that a stay or injunction of the Securities Action is necessary for Cobalt to avoid costly coverage litigation is spurious.

36. Moreover, if the Coverage Litigation somehow *does* become too burdensome for the estate, the Non-Debtor Defendants (as purported indemnitees) can take up the mantle with respect to that litigation or, alternatively, the Debtors can assign those coverage rights and claims

[9] *See Cobalt Int'l Energy, Inc. v. Illinois Nat'l Ins. Co.*, No. 4:17-cv-01450 (S.D. Tex.) (the "Coverage Litigation").

to the Securities Plaintiffs. In any event, as the Delaware District Court stated in *In re Reliance Acceptance Group, Inc.*, 235 B.R. 548, 557 (D. Del. 1999), "[t]he nature and amount of coverage may be relevant to other issues related to the Shareholders' Litigation, including defense costs and possible settlements. But those are matters that can be resolved between the insurers and insureds, without enjoining the Shareholders from proceeding with their claims."

B. The Debtors Do Not Identify Ongoing Discovery or Legitimate Distraction Affecting the Estate

37. The Debtors next contend that "if the Securities Action continues against the Non-Debtor Defendants, the Debtors will continue to face burdensome discovery" and the estate will be harmed thereby. (Motion, ¶ 24). That is simply not so. As noted above, Securities Plaintiffs have voluntarily dismissed Cobalt, thereby mooting these concerns. Moreover, Cobalt has already completed its document production in the Securities Action and, in any event, the automatic stay shields Cobalt from responding to any remaining discovery requests or participating in upcoming expert discovery. Moreover, at the time Cobalt filed for bankruptcy protection, fact discovery was only days from completion and only two current Cobalt officers remained to be deposed (General Counsel Jeff Starzec and Senior Vice President Richard Smith).

38. The Motion speaks only in vague, conclusory terms about the supposed impact the Debtors anticipate facing from the Securities Action. This alone is fatal to the Motion. *See*, *e.g.*, *In re Fowler*, 259 B.R. 856, 861 (E.D. Tex. Bankr. 2001) (granting motion to lift the stay against debtor where the fact that discovery was concluded "indicate[d] that the Debtors will not be forced to bear substantial additional costs" and "Debtors presented no evidence indicating that any prejudice to them or the administration of the bankruptcy estate"). The Debtors claim that "individual directors and officers, whose full attention to these chapter 11 proceedings, particularly to the proposed sale process, is critical, would be distracted by ongoing discovery

and by other proceedings in the Securities Action." (Motion, ¶ 24). Even if this argument were sufficient to warrant extending the automatic stay, it is meritless and unsupported by any evidence.

39. Only one current Cobalt director remains to be deposed, an outside director who is the managing partner of one of the private-equity founders of Cobalt. The Debtors have failed to specifically identify *any* role this outside director would play in the Chapter 11 Cases or *how* he would be distracted by the Securities Action. This is fatal to their motion.[10] Indeed, both current outside directors already deposed by the Securities Plaintiffs testified that they spent only a few hours preparing to testify in the Securities Action. (*See* Entwistle Deposition Ex. F at 10:10-11:7; Ex. G at 17:23-19:7). However, if the Debtors can demonstrate legitimate prejudice to the Chapter 11 Cases from allowing the deposition of the outside director to go forward, Securities Plaintiffs will defer his deposition for a reasonable period of time.

40. With respect to the only two existing Cobalt employees that the Debtors claim would be distracted by the Securities Action (Messrs. Starzec and Smith), if Debtors can present evidence suggesting that these witnesses cannot prepare for and sit for depositions because they are wholly occupied with the Chapter 11 Cases, Securities Plaintiffs will likewise defer their depositions for a reasonable period of time.[11]

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[10] *See*, *e.g.*, *In re Divine Ripe, L.L.C.*, 538 B.R. 300, 314 (Bankr. S.D. Tex. 2015) (declining to extend the stay where "[t]he rationale offered by the Debtor was that the Automatic Stay was necessary so that [non-debtor] could contribute to the Debtor's reorganization efforts, but the Debtor's evidence, or lack thereof, testimony of its sole witness, and its own petition and schedules do not support this concept."); *In re Univ. Med. Center*, 82 B.R. 754, 756 (Bankr. E.D. Pa. 1988) (denying injunction of actions against non-debtors where one witness "spoke of his duties largely in generalities and . . . did [not] point to any new, particularly time-consuming duties which arose as a result of the Chapter 11 filing" and the other testified that "[h]e did not believe that any of the . . . actions would demand more than 'a couple hours' of his time.").

[11] *In re Calpine Corp.*, 354 B.R. 45, 50 (Bankr. S.D.N.Y. 2006), *aff'd* 365 B.R. 401 (Bankr. S.D.N.Y. 2007), the sole case cited by Debtors for the notion that "distraction of key employees" is adequate to invoke the stay (Motion, ¶ 24), is inapposite. In *Calpine*, the court found the identity of interests was clear from the affidavits, pleading and testimony. Here, by contrast, Debtors present no evidence or even attempt to identify how key personnel can or will be distracted and, if they can do so, the Securities Plaintiffs will defer those depositions.

C. Continued Prosecution of the Securities Action Against the Non-Debtor Defendants Will Not Prejudice the Debtors

41. The Debtors next speculate that Cobalt may be prejudiced if the Securities Action continues against the Non-Debtor Defendants because "[t]estimony in depositions in which Cobalt does not participate may create an incomplete record of evidence with respect to Cobalt's defenses." (Motion, ¶ 26). This argument is likewise without merit.

42. *First*, as noted above, Securities Plaintiffs filed the Notice of Dismissal on December 20, 2017, requesting voluntarily dismissal of Cobalt from the Securities Action in the District Court's discretion. Dismissal of Cobalt obviously would moot Debtors' prejudice argument by ensuring there is no remaining litigation risk to Cobalt in the Securities Action, now or in the future.

43. *Second*, even in the unlikely event the District Court for some reason declines to dismiss Cobalt, the economic reality discussed above mitigates any risk of prejudice to the Debtors. Because it is a near certainty that unsecured creditors (including approximately $1.4 billion of unsecured notes) will not be paid in full with interest, there is most likely no value in the Debtors' estate for claims subordinated pursuant to section 510(b). Thus, Cobalt is unlikely *ever* to face the claims alleged against it in the Securities Action or be prejudiced by any adverse rulings issued in connection therewith.

44. *Third*, the suggestion by the Debtors that rulings by the District Court will become "law of the case" and have a preclusive effect on Cobalt as a non-participant in upcoming proceedings is pure conjecture. "The law of the case doctrine is . . . discretionary." *United States v. Agofsky*, 516 F.3d 280, 283 (5th Cir. 2008); *see also In re Ramey*, No. 03-60254, 2006 WL 2818987, at *4 (Bankr. S.D. Tex. Sept. 29, 2006) ("When the law of the case doctrine is applied by a court to its own prior decisions, it is properly characterized as discretionary in

nature."). For this reason, Debtors' speculation that Judge Atlas *might* in the future refuse to consider an argument by Cobalt despite the intervening Chapter 11 filing and the impact of the automatic stay on Cobalt merely because she previously decided the same or similar issue prior to the Company's renewed participation in the Securities Action is insufficient to meet their burden to demonstrate an immediate adverse effect on the estate.[12]

II. The Debtors Have Established No Bases For The Extraordinary Remedy Of An Injunction Under Section 105(a)

45. The Debtors alternatively seek an injunction under section 105(a) of the Bankruptcy Code halting the Securities Action against all Non-Debtor Defendants. For the same reasons an extension of the automatic stay to the Non-Debtor Defendants is unwarranted, and because both the balance of the equities and the public interest favor permitting the Securities Action to continue against the Non-Debtor Defendants, the Debtors cannot carry the heavy burden they bear to obtain an injunction, either.

46. A party seeking an injunction under section 105(a) "must satisfy the traditional four-part test for an injunction: (1) likelihood that the movant will prevail on the merits; (2) irreparable injury; (3) balance of the equities favoring the movant; and (4) a demonstration that the injunction would serve the public interest." *In re FiberTower Network Servs. Corp.*, 482 B.R. 169, 182 (Bankr. N.D. Tex. 2012). Such "[i]njunctive relief is an extraordinary and drastic remedy, not to be granted routinely, but only when the movant, by a clear showing carries the burden of persuasion." *In re Cont'l Air Lines, Inc.*, 61 B.R. 758, 782 (S.D. Tex. 1986).

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[12] The Debtors cite *In re Lion Capital Grp.*, 44 B.R. 690, 703-04 (Bankr. S.D.N.Y. 1984) to support the need to "halt litigation against non-debtor defendants where, as here, that litigation *might* disadvantage the debtor in future proceedings." (Motion, ¶ 26) (emphasis added). But in *Lion Capital*, which involved claims for violations of the Securities Act and the Securities Exchange Act (among other things), the potential harm to the estate was not contingent or speculative, but rather "[a] concession by the defendants that they [would] seek to collaterally estop the Trustee from litigating issues resolved in the district court action support[ed] the issuance of a stay pursuant to § 105 of the Code."

"If any one of these four elements is lacking, the party seeking the injunction cannot prevail." *Registral.com, LLC v. Fisher Controls Int'l., Inc.*, No. Civ.A. H-01-1423, 2001 WL 34109376, at *5 (S.D. Tex. June 28, 2001). The Debtors have failed to meet (and indeed, cannot meet) that considerable burden.

A. The Debtors Do Not Face Irreparable Injury

47. To support a claim for injunctive relief, the possibility of irreparable injury cannot be speculative, potential, or remote. *See*, *e.g.*, *Texas Health & Human Servs. Comm'n v. U.S.*, 166 F. Supp. 3d 706, 710 (N.D. Tex. 2016) ("To establish irreparable injury, [plaintiff] must demonstrate that the harm is "real, imminent, and significant—not merely speculative or potential—with admissible evidence and a clear likelihood of success.").

48. For the reasons set forth in Part I above, the Debtors have not established a substantial likelihood of irreparable injury. They have not established, nor can they establish, that the Non-Debtor Defendants' supposed indemnification claims are valid and allowable claims or that the estate will ultimately pay those claims (which, even if allowed, would be subordinated to all $2.8 billion of the Debtors' funded debt as well as all administrative expenses, priority claims and other unsecured claims). Similarly, the Debtors have not established that they, despite now being protected by the automatic stay, will be prejudiced by the limited remaining discovery, and have provided no details to support their conjecture that the one director Defendant and two current Cobalt employees who were scheduled to be deposed will be distracted from duties in connection with the Chapter 11 Cases. Finally, there is no basis beyond speculation to find that Debtors' will be prejudiced by rulings by Judge Atlas in the Securities Action – Cobalt will likely be dismissed from that proceeding or, if not, is nonetheless exceedingly unlikely to ever be economically impacted by the claims against it.

B. The Debtors Have Not Established the Remaining Factors for an Injunction

49. The Debtors' stated purpose in the Chapter 11 Cases is to sell their assets on an expedited timetable (within the next approximately 60 days). Thus, the Debtors cannot demonstrate any likelihood of a successful restructuring. More fundamentally, however, the absence of any immediate, irreparable harm precludes the Debtors from ever demonstrating that the risk of harm from permitting the Securities Action to proceed against the Non-Debtor Defendants outweighs the prejudice to Securities Plaintiffs and Class.

50. The Debtors' assertion that a stay will not harm the Securities Plaintiffs or the Class (Motion, ¶ 35) is incorrect. The certified Class sustained billions of dollars in damages due to the Non-Debtor Defendants' wrongdoing. The Securities Plaintiffs are responsible for seeking an expeditious resolution of the Class's claims, particularly on the eve of summary judgment briefing. *See*, *e.g.*, *In re Rail Freight Fuel Surcharge Antitrust Litig.*, 286 F.R.D. 88, 93-93 (D.D.C. 2012) ("In this five-year old lawsuit, delayed resolution of the claims would substantially harm class members, as a stay would postpone summary judgment and trial for many months, or possibly over a year."). Indeed, a stay or injunction is prejudicial where, as here, it "would postpone any compensation that class members might receive if plaintiffs succeed on the merits, and would delay a definitive resolution of the case regardless of who ultimately prevails." *Id*. at 94. Moreover, "the factual record will grow weaker with age and . . . some witnesses may become unavailable." *Id*. Given the economic realities of the Debtors' financial condition and the impact of statutory subordination of the Class's claims against Cobalt, the Securities Action against the Non-Debtor Defendants is likely the only vehicle available to defrauded Class members to recoup their massive losses.

51. Likewise, the Debtors claim that the public interest is served by "promoting the Debtors' speedy and successful conclusion of these bankruptcy proceedings and proposed sale process." (Motion, ¶ 36). What the Debtors ignore, however, is that permitting the Securities Action to continue against the Non-Debtor Defendants unimpeded will not impair – or even affect – the conclusion of the Chapter 11 Cases at all. To the contrary, "the public interest favors a speedy trial and resolution of" pending litigation. *In re Elec. Books Antitrust Litig.*, Nos. 11 MD 2293(DLC), 12 Civ. 3394(DLC), 2014 WL 1641699, at *12 (S.D.N.Y. April 24, 2014); *see also Weingarten Realty Inv'rs v. Miller*, 661 F.3d 904, 913 (5th Cir. 2011) ("the public interest in speedy resolution of disputes prevails").

52. Here, the public interest implicated by the Motion is simple: the integrity of the capital markets, public trust, and investor confidence are served by prompt resolution of civil litigation alleging securities law violations by officers and directors of publicly traded companies and others. The United States Supreme Court has long held that there is a public interest in the integrity of the securities markets. *See Basic Inc. v. Levinson*, 485 U.S. 224, 230 (1988). The Bankruptcy Code was never intended to be used as a shield behind which officers and directors of a chapter 11 debtor or its non-debtor parent and affiliates could hide their violations of the federal securities laws. *See In re Chateaugay Corp.*, 76 B.R. 945, 948-49 (S.D.N.Y. 1987). Extending the benefits of the Bankruptcy Code to parties who did not submit themselves to the procedural and substantive strictures appurtenant to being a chapter 11 debtor-in-possession "is simply to invite a wholesale restructuring of the expectations of those involved in commercial transactions without any indication from Congress that such a profound change was intended." *Robbins v. The Chase Manhattan Bank, N.A.*, Civ. A. No. 93-0063-H, 1994 WL 149597, at *6 (W.D. Va. 1994), *quoting In re Venture Properties, Inc.*, 37 B.R. 175, 177 (Bankr. D.N.H. 1984).

53. Rather, class actions on behalf of investors in chapter 11 debtors routinely are "vigorously litigated" outside of the bankruptcy court. *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1093-95 (2d Cir. 1995) (holding that claims for fraud and negligence in connection with the purchase of securities can only be prosecuted by the investors, not by the bankruptcy trustee); *see also Teledyne Indus., Inc. v. Eon Corp.*, 401 F. Supp. 729, 734–36 (S.D.N.Y. 1975), *aff'd sub nom Teledyne Indus., Inc. v. Podell*, 546 F.2d 495 (2d Cir. 1976). To that end, multiple successful corporate reorganizations have coexisted with major securities class actions against the current and former debtors' officers, directors, accountants, and underwriters of chapter 11 debtors without undue inconvenience to, or any burden on, the debtors. *See, e.g.*, *In re Equity Funding Corp. of Am. Sec. Lit.*, 438 F. Supp. 1303 (C.D. Cal. 1977); *In re King Resource Co. Sec. Lit.*, 420 F. Supp. 610 (D.C. Colo. 1976); *In re Penn Cent. Sec. Litig.*, 347 F. Supp. 1327 (E.D. Pa. 1972), aff'd, 494 F.2d 528 (3d Cir. 1974).

Securities class actions involving the debtors in *In re Enron Corporation*, *In re WorldCom, Inc.*, *In re Delphi Corporation*, *In re Washington Mutual Inc.*, *In re Lehman Brothers Holdings, Inc.*, and *In re New Century TRS Holdings, Inc.*, some of the largest and most complicated chapter 11 bankruptcy proceedings in the history of American jurisprudence, continued against non-debtor defendants despite the debtors' bankruptcy proceedings. The debtors in each of those cases filed and confirmed plans of reorganization or liquidation in the face of active securities litigation. Imposition of a stay of the Securities Action as to the Non-Debtor Defendants not only would ignore these lessons of past experience, but also would set a very unfortunate and dangerous precedent for the future.

54. In *In re Northwest Airlines Corp.*, Adv. Pro. No. 06-01219 (ALG) (Bankr. S.D.N.Y. Apr. 27, 2006), Judge Allan Gropper of the United States Bankruptcy Court for the

Southern District of New York, denied the debtors' motion to enjoin both securities and ERISA class action litigation. In rendering his decision, Judge Gropper recognized that the subject class actions were typical of those filed against the directors and officers of a corporate debtor.[13] In responding to the debtors' argument that their officers and directors will be distracted by the securities and ERISA litigation, Judge Gropper correctly determined that the record before the Court did "not justify a blanket injunction." (*Id*. at 66:18-25). Acknowledging that some cases have extended the automatic stay to non-debtors but only when the debtor therein has shown "true irreparable injury and a balance of the harm that demonstrates an immediate need for relief," Judge Gropper concluded that such "relief has not been routinely granted in routine class actions, and the law should not be so extended." (*Id*. at 67:21-68:9 (citations omitted). Judge Gropper's reasoning is persuasive here. Indeed, Judge Gropper noted that if such relief were appropriate in a case like *Northwest Airlines*, it would then be appropriate in any corporate Chapter 11 proceeding where officers and directors of a debtor are being sued: "if I stay their action, I think the result would be that any class action brought against any large company in bankruptcy would be stayed." (*Id*. at 35:3-6).

55. Clearly, staying or enjoining the continued prosecution of the Securities Action against the Non-Debtor Defendants flies in the face of sound public policy. If such expansive protection for non-debtors was intended under the Bankruptcy Code, Congress would have expressly provided such protection. However, chapter 11 affords no such protection to non-debtors—in fact, officers and directors subject to claims under the federal securities laws cannot even obtain a discharge of those claims in their own chapter 7 proceedings. *See* 11 U.S.C. § 523(a)(19)(A)(i). The sweeping relief the Debtors seek through the Motion risks further

[13] *See* Entwistle Declaration Ex. H at p. 65:5-10.

destroying the integrity of and investor confidence in the securities markets. Quite simply, a stay of the Securities Action with respect to the Non-Debtor Defendants violates the public interest, and sound public policy requires that the Motion be denied.

CONCLUSION

For all of the foregoing reasons, the Securities Plaintiffs respectfully request that the Court deny the Motion in its entirety.

[*signature page follows*]

Dated: December 22, 2017

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CERTIFICATE OF SERVICE

I certify that on December 22, 2017, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Thomas R. Ajamie
Thomas R. Ajamie

Exhibit A

Proposed Order

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

In re:	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., *et al.*,	Case No. 17-36709 (MI)
Debtors,	(Jointly Administered)
COBALT INTERNATIONAL ENERGY, INC., *et al.*,	Adv. Pro. No. 17-03457 (MI)
Plaintiffs,	
v.	
GAMCO GLOBAL GOLD, NATURAL RESOURCES & INCOME TRUST, GAMCO NATURAL RESOURCES, GOLD & INCOME TRUST, ST. LUCIE COUNTY FIRE DISTRICT FIREFIGHTERS' PENSION TRUST FUND, FIRE AND POLICE RETIREE HEALTH CARE FUND, SAN ANTONIO, SJUNDE AP-FONDEN, and UNIVERSAL INVESTMENT GESELLSCHAFT M.B.H.,	
Defendants.	

ORDER DENYING DEBTORS' MOTION TO STAY OR ENJOIN CERTAIN PENDING LITIGATION AGAINST NON-DEBTORS

Upon the motion of the debtors and plaintiffs in the above-captioned adversary proceeding (the "Motion") for entry of an order pursuant to 11 U.S.C. § 362(a) and 11 U.S.C. § 105(a) staying or enjoining continued litigation against non-debtor defendants in the class action lawsuit entitled *In re Cobalt International Energy, Inc. Securities Action*, No. 4:14-cv-3428 (S.D. Tex.) (the "District Court Action"), and this Court having reviewed the Motion and the oppositions thereto,

and having heard the statements in support of and in opposition thereto at a hearing before this Court:

IT IS HEREBY ORDERED THAT that the Motion is DENIED and the prosecution of the District Court Action can proceed against the non-debtor defendants in that action.

Dated: January ___, 2018
Houston, Texas

_____
THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

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

In re:	Chapter 11
COBALT INTERNATIONAL ENERGY, INC., *et al.*,	Case No. 17-36709 (MI)
Debtors,	(Jointly Administered)
COBALT INTERNATIONAL ENERGY, INC., *et al.*,	Adv. Pro. No. 17-03457 (MI)
Plaintiffs,	
v.	
GAMCO GLOBAL GOLD, NATURAL RESOURCES & INCOME TRUST, GAMCO NATURAL RESOURCES, GOLD & INCOME TRUST, ST. LUCIE COUNTY FIRE DISTRICT FIREFIGHTERS' PENSION TRUST FUND, FIRE AND POLICE RETIREE HEALTH CARE FUND, SAN ANTONIO, SJUNDE AP-FONDEN, and UNIVERSAL INVESTMENT GESELLSCHAFT M.B.H.,	
Defendants.	

DECLARATION OF ANDREW J. ENTWISTLE IN SUPPORT OF SECURITIES PLAINTIFFS' OPPOSITION TO THE DEBTORS' MOTION TO STAY OR ENJOIN PROSECUTION OF THE PENDING SECURITIES ACTION AGAINST NON-DEBTOR DEFENDANTS

I, Andrew J. Entwistle, hereby declare under penalty of perjury as follows:

1. I am a partner at the law firm of Entwistle & Cappucci LLP, court-appointed Co-Lead Counsel for the certified class of investors in *In re Cobalt International Energy, Inc. Securities Litigation*, No. 4:14-cv-3428 (S.D. Tex.) (the "Securities Action"), pending in the United States District Court, Southern District of Texas (the "District Court"). I am admitted to practice law in the State of Texas and before this Court.

2. I respectfully submit this declaration in support of the Securities Plaintiffs'[1] Opposition to the Debtors' Motion to Stay or Enjoin Prosecution of the Pending Securities Action Against Non-Debtor Defendants.

The Securities Action

3. On November 30, 2014, the Securities Action was commenced by certain of the Securities Plaintiffs who filed their initial Complaint for Violations of the Federal Securities Laws against Debtor Cobalt International Energy, Inc. ("Cobalt") and other defendants in the District Court. (SA ECF No. 1).[2]

4. On May 1, 2015, Securities Plaintiffs filed the Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws against Cobalt and the Non-Debtor Defendants[3] (the "Amended Complaint"). The Amended Complaint asserted the following claims against Cobalt and the Non-Debtor Defendants on behalf of a class of investors in Cobalt's common stock and convertible notes[4] from March 1, 2011 through November 3, 2014 (the "Class Period"):

a. Violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 against Cobalt and the Executive Defendants;[5]

b. Violations of Section 20(a) of the Exchange Act against the Executive Defendants;

[1] Securities Plaintiffs are the court-appointed Class Representatives (i) GAMCO Global Gold, Natural Resources & Income Trust, (ii) GAMCO Natural Resources, Gold & Income Trust, (iii) St. Lucie County Fire District Firefighters' Pension Trust Fund, (iv) Fire and Police Retiree Health Care Fund, San Antonio, (v) Sjunde AP-Fonden, and (vi) Universal Investment Gesellschaft m.b.H.

[2] References herein to "SA ECF No." are to the ECF docket numbers in the Securities Action (No. 4:14-cv-3428 (S.D. Tex.)).

[3] The Non-Debtor Defendants are collectively defined as (i) the Executive Defendants, (ii) the Director Defendants, (iii) the Underwriter Defendants, and (iv) the Controlling Entity Defendants, each defined below in footnotes 5-8.

[4] The Cobalt convertible notes at issue in the Securities Action are the (i) 2.625% senior unsecured convertible notes due 2019, and (ii) 3.125% senior unsecured convertible notes due 2024.

[5] The Executive Defendants are former Cobalt officers (i) Joseph Bryant, (ii) James Farnsworth, and (iii) John Wilkirson.

c. Violations of Section 11 of the Securities Act of 1933 ("Securities Act") against Cobalt, the Director Defendants,[6] and the Underwriter Defendants;[7]

d. Violations of Section 15 of the Securities Act against the Executive Defendants, the Director Defendants, Goldman, Sachs & Co, and the Controlling Entity Defendants;[8] and

e. Violations of Section 12(a)(2) of the Securities Act against the Underwriter Defendants.

5. On January 19, 2016, the Honorable Nancy F. Atlas denied almost entirely motions to dismiss the Amended Complaint filed by Cobalt and the Non-Debtor Defendants. (SA ECF No. 108). Thereafter, the Securities Plaintiffs commenced document discovery from Cobalt and the Non-Debtor Defendants.

6. On March 14, 2016, Judge Atlas denied Defendants' motions under 28 U.S.C. § 1292(b) seeking interlocutory appeal of her order denying Defendants' motions to dismiss the Amended Complaint. (SA ECF No. 125).

7. On November 2, 2016, the Securities Plaintiffs filed their Motion for Class Certification and Appointment of Class Representatives and Class Counsel (the "Motion for Class Certification"). (SA ECF No. 163). The Motion for Class Certification was supported by extensive briefing, expert reports, and depositions of the parties' respective experts totaling over

[6] The Director Defendants are current and former Cobalt directors (i) Peter R. Coneway, (ii) Henry Cornell, (iii) Jack E. Golden, (iv) N. John Lancaster, (v) Jon A. Marshall, (vi) Kenneth W. Moore, (vii) J. Hardy Murchison, (viii) Kenneth A. Pontarelli, (ix) Myles W. Scoggins, (x) D. Jeff van Steenbergen, (xi) William P. Utt, (xii) Martin H. Young, (xiii) Michael G. France, and (xiv) Scott L. Lebovitz.

[7] The Underwriter Defendants are (i) Goldman, Sachs & Co., (ii) Morgan Stanley & Co. LLC, (iii) Credit Suisse Securities (USA) LLC, (iv) Citigroup Global Markets Inc., (v) J.P. Morgan Securities LLC, (vi) Tudor, Pickering, Holt & Co. Securities, Inc., (vii) Deutsche Bank Securities Inc., (viii) RBC Capital Markets, LLC, (ix) UBS Securities LLC, (x) Howard Weil Incorporated, (xi) Stifel, Nicolaus & Company, Inc., (xii) Capital One Southcoast, Inc., and (xiii) Lazard Capital Markets LLC.

[8] The Controlling Entity Defendants are the following private-equity founders of Cobalt: (i) Goldman Sachs Group, Inc., (ii) Riverstone Holdings LLC, (iii) The Carlyle Group, L.P., (iv) FRC Founders Corporation, and (v) ACM Limited.

1,600 pages of material.

8. With leave of Judge Atlas, the Securities Plaintiffs filed the Second Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws (the "Second Amended Complaint") on March 15, 2017. (SA ECF No. 200). The Second Amended Complaint asserted the same claims listed in paragraph 4 above, and added an insider trading claim under Section 20A of the Exchange Act against the Controlling Entity Defendants. The Section 20A claim was based on document discovery obtained from Defendants demonstrating that the Controlling Entity Defendants sold billions of dollars in Cobalt common stock while in possession of material non-public information concerning Cobalt's business operations in Angola.

9. On June 15, 2017, Judge Atlas denied the Controlling Entity Defendants' motion to dismiss the Section 20A claim. Attached hereto as Exhibit A is a true and correct copy of Judge Atlas's Memorandum and Order denying the motion to dismiss the Section 20A claim.

10. On June 15, 2017, Judge Atlas also granted the Securities Plaintiffs' Motion for Class Certification, thereby certifying a class of investors in Cobalt common stock and convertible notes during the Class Period. (SA ECF No. 244).

11. On June 30, 2017, Cobalt and the Non-Debtor Defendants filed a petition for permission to appeal Judge Atlas's order granting class certification with the United States Court of Appeals for the Fifth Circuit. (*See St. Lucie County Fire District Firefighters' Pension Trust Fund, et al. v. Cobalt Int'l. Energy, Inc., et al.*, Case No. 17-90024 (5th Cir. 2017) (5th Cir. Doc. No. 514057557)). The Fifth Circuit granted the petition on August 4, 2017 (5th Cir. Doc. No. 514103749).

12. On July 13, 2017, Cobalt and the Non-Debtor Defendants filed a Motion to Stay Discovery Pending Appeal of Class Certification Order before the District Court. (SA ECF No.

252). Defendants' motion claimed irreparable harm to Cobalt if the Securities Action was not stayed. Specifically, Cobalt alleged that "Cobalt's auditors have concluded that there is substantial doubt about Cobalt's ability to continue as a going concern" and that Cobalt was bearing the financial burden of continued discovery because "Cobalt's insurance carriers are disputing coverage . . ." (*Id*. at 5).

13. On August 23, 2017, Judge Atlas denied Defendants' motion to stay discovery pending appeal of her class certification order. In her order, Judge Atlas found that any potential harm to Cobalt caused by the continuation of discovery did not outweigh prejudice to the Securities Plaintiffs and the Class if discovery was stayed. Attached hereto as Exhibit B is a true and correct copy of Judge Atlas's Memorandum and Order denying Defendants' motion to stay discovery.

14. Defendants filed a motion to stay the Securities Action with the Fifth Circuit on August 24, 2017. (*See St. Lucie County Fire District Firefighters' Pension Trust Fund, et al. v. Cobalt Int'l. Energy, Inc, et al.*, Case No. 17-20503 (5th Cir. 2017) (5th Cir. Doc. No. 514131225)).

15. On September 15, 2017, the Fifth Circuit summarily denied Defendants' motion to stay the Securities Action pending the appeal of Judge Atlas's class certification order. (Case No. 17-20503, Doc. No. 514157899).

Current Status of Discovery

16. On September 5, 2017, Judge Atlas entered a Joint Proposed Docket Control Order, which set the completion of fact discovery on December 18, 2017. Under this schedule, fact discovery is virtually complete, and only a few depositions remained when Cobalt filed its voluntary petition before this Court. Of those remaining depositions, only two are of witnesses that are current Cobalt employees; non-party Jeffrey Starzec (Cobalt Executive Vice President and

General Counsel) and non-party Richard Smith (Cobalt Senior Vice President, Strategy and Business Development).

17. In addition, there is only one current director, Non-Debtor Defendant Jeff van Steenbergen (an outside Cobalt director), who was scheduled to be deposed. Securities Plaintiffs have already deposed two other Non-Debtor Defendants who were outside directors. Attached hereto as Exhibits F and G are true and correct excerpts of the relevant portions of the testimony of these outside director Non-Debtor Defendants.

Voluntary Dismissal of Cobalt

18. On December 22, 2017, by virtue of Cobalt's Chapter 11 filing and the impact of the automatic stay with respect to Cobalt, the Securities Plaintiffs filed a Notice of Request of Voluntary Dismissal (the "Notice of Dismissal") of Cobalt and proposed order (SA ECF No. 306) pursuant to the District Court's authority under Federal Rule of Civil Procedure 41. Attached hereto as Exhibit C is a true and correct copy of the Notice of Dismissal.

19. The Securities Plaintiffs' request to dismiss Cobalt is pending.

Cobalt's Indebtedness

20. Debtors listed secured and senior unsecured funded debt of approximately $2.84 billion in its first-day filings. (Bankruptcy ECF No. 16 ¶¶ 27-31). This includes the following:

INSTRUMENT	PRINCIPAL OUTSTANDING (APPROXIMATE)
10.75% First-Lien Secured Notes Due 2021	$500,000,000
7.75% Second-Lien Secured Notes Due 2023	$934,700,000
2.625% Senior Unsecured Convertible Notes Due 2019	$619,200,000
3.125% Senior Unsecured Convertible Notes Due 2024	$786,900,000
Total Funded Indebtedness	**$2,840,000,000**

21. On December 19, 2017, Cobalt announced the settlement of its dispute with the Angolan national oil company concerning the $1.75 billion agreement to sell Cobalt's remaining development interests in Angola in exchange for cash payments totaling $500 million (subject to

this Court's approval). Attached hereto as Exhibit D is a true and correct copy of Cobalt's press release announcing the settlement.

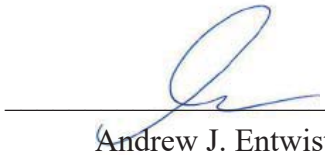
22. As of the date hereof, Cobalt's second-lien notes are trading at approximately 65% to 68% of par, its senior unsecured 3.125% notes due 2014 are trading at 23.785% of par, and its senior unsecured 2.625% notes due 2019 are trading at 24% of par. Attached hereto as Exhibit E is a true and correct copy of Bloomberg pricing information on Cobalt's notes.

* * *

23. In *In re Northwest Airlines Corp.*, Adv. Pro. No. 06-01219 (ALG) (Bankr. S.D.N.Y. Apr. 27, 2006), Judge Allan Gropper of the United States Bankruptcy Court for the Southern District of New York denied a motion by the debtors in that case seeking similar relief as the Debtors seek here. Attached hereto as Exhibit H is true and correct copy of excerpts from Judge Gropper's decision.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 22nd day of December 2017



Andrew J. Entwistle

Exhibit A

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

IN RE COBALT INTERNATIONAL ENERGY, INC. SECURITIES LITIGATION	§ § §	CIVIL ACTION NO. H-14-3428

MEMORANDUM AND ORDER

This securities case is before the Court on the Motion to Dismiss Count III of Plaintiffs' Second Amended Complaint ("Motion to Dismiss") [Doc. # 216] filed by Defendants Goldman, Sachs & Co. ("Goldman Sachs"), Riverstone Holdings LLC ("Riverstone"), FRC Founders Corp. ("FRC"), and ACM Ltd. ("ACM"), and the Motion to Dismiss Count III of the Second Amended Complaint ("Carlyle Motion to Dismiss") [Doc. # 219] filed by Defendant The Carlyle Group L.P. ("Carlyle"). Plaintiffs filed a consolidated Opposition [Doc. # 23] to the Motions to Dismiss, and Defendants filed separate Replies [Docs. # 240 and # 241].

The Court has reviewed the full record, including its prior rulings in this case and Plaintiffs' Second Amended Complaint [Doc. # 200], as well as all briefing submitted by the parties. Based on this review, and the application of relevant legal authorities, the Court **grants** the Carlyle Motion to Dismiss and **denies** the Motion to Dismiss filed by the other moving Defendants.

I. BACKGROUND

The background of this case is set forth fully in the Court's Memorandum and Order [Doc. # 108] entered January 19, 2016. Briefly, Cobalt is an exploration and production company that was formed in 2005 as a private company. Cobalt conducted an initial public offering ("IPO") of its shares in December 2009. After the IPO, the moving Defendants, except Carlyle, designated an individual of their choice to serve as a member of Cobalt's Board.

In 2007, Cobalt entered into an agreement with Sonangol E.P. ("Sonangol"), the Angolan national oil company, to acquire a 40% interest in oil exploration Blocks 9, 20, and 21 in offshore Angola. In 2009, the Angolan Parliament issued two decrees assigning an interest in the Blocks to Nazaki Oil & Gaz ("Nazaki"), Sonangol P&P, and Alper Oil, Limitada ("Alper"). In February 2010, Cobalt and these other companies signed Risk Services Agreements ("RSAs") with Sonangol.

On January 4, 2011, Cobalt filed a Registration Statement and Prospectus ("January 2011 Registration Statement") with the Securities and Exchange Commission ("SEC"). Based on this 2011 Registration Statement, Cobalt conducted, *inter alia*, a stock offering in late February 2012 ("February 2012 Stock Offering").

On March 10, 2011, Cobalt learned that the SEC was conducting an informal inquiry into allegations that there existed a connection between Nazaki and senior

government officials in Angola. The next day, Cobalt contacted the Department of Justice ("DOJ") regarding the same allegations. Both the SEC and the DOJ later began formal investigations into whether Cobalt had violated the Foreign Corrupt Practices Act of 1977 ("FCPA"). The SEC investigation and the DOJ investigation regarding FCPA violations have ended with no recommendation for enforcement action against Cobalt.[1]

Meanwhile, Cobalt drilled two exploration wells in the offshore Angola drilling region: Lontra on Block 20 and Loengo on Block 9. Cobalt had no rights to gas discoveries and, instead, had rights only to any oil that was discovered in the Blocks. Ultimately, Lontra was found to contain a substantially higher percentage of gas than originally estimated, and drilling at Loengo failed to discover oil.

On May 1, 2015, Plaintiffs filed their Consolidated Amended Class Action Complaint ("CAC") [Doc. # 72]. Plaintiffs alleged in Count I of their CAC that Cobalt and its executives violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5. In Count II, Plaintiffs alleged that Cobalt and its executives violated Section 20(a) of the Exchange Act. Plaintiffs asserted in Count III a claim under Section 11 of the Securities Act of 1933 ("Securities Act") against

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[1] Earlier this year, the SEC initiated a new informal inquiry regarding Cobalt and the Sonangol Research and Technology Center.

Cobalt, its directors, and the underwriters of the various offerings of Cobalt securities. In Count IV, Plaintiffs asserted a claim against Goldman Sachs, Riverstone, Carlyle and others (identified as the "Control Defendants") under Section 15 of the Securities Act. In Count V, Plaintiffs asserted a claim against the underwriters under Section 12(a)(2) of the Securities Act.

In its January 2016 Memorandum and Order, the Court dismissed the Section 11 claim by individuals who purchased Cobalt stock after April 30, 2013. The Court denied the Motions to Dismiss in all other respects. Plaintiffs elected not to amend their Section 11 claim to allege reliance by the post-April 30, 2013 purchasers.

On March 15, 2017, Plaintiffs, with leave of Court, filed their Second Amended Complaint. In Count III of the Second Amended Complaint, Plaintiffs assert a claim against the Control Defendants under Section 20A of the Exchange Act. The Control Defendants have filed their Motions to Dismiss, which have been fully briefed and are now ripe for decision.

II. STANDARD FOR MOTION TO DISMISS

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure is viewed with disfavor and is rarely granted. *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Cir. 2011) (citing *Harrington v. State Farm Fire & Cas. Co.*, 563 F.3d 141, 147 (5th Cir. 2009)). The complaint must be liberally construed in favor of the

plaintiff, and all facts pleaded in the complaint must be taken as true. *Harrington*, 563 F.3d at 147. The complaint must, however, contain sufficient factual allegations, as opposed to legal conclusions, to state a claim for relief that is "plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Patrick v. Wal-Mart, Inc.*, 681 F.3d 614, 617 (5th Cir. 2012). When there are well-pleaded factual allegations, a court should presume they are true, even if doubtful, and then determine whether they plausibly give rise to an entitlement to relief. *Iqbal*, 556 U.S. at 679. Except as explained below regarding the special pleading requirements for certain elements of a Section 10(b) claim, including the scienter element, these pleading requirements apply to Plaintiffs' claims in this case. *See Kapps v. Torch Offshore, Inc.*, 379 F.3d 207, 210 (5th Cir. 2004).

III. CONTROL DEFENDANTS' MOTIONS TO DISMISS

Section 20A of the Exchange Act imposes liability for "insider trading," providing specifically that:

> Any person who violates any provision of this chapter or the rules and regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information shall be liable . . . to any person who, contemporaneously with the purchase or sale of securities that is the subject of such violation, has purchased (where such violation is based on a sale of securities) or sold (where such violation is based on a purchase of securities) securities of the same class.

15 U.S.C. § 78t-1(a). Plaintiffs allege that the Control Defendants engaged in insider trading by violating Section 10(b) and Rule 10b-5 when they sold shares of Cobalt stock while in possession of material, non-public information. Plaintiffs allege also that named Plaintiffs and members of the prospective class purchased Cobalt shares contemporaneously with the Control Defendants' sales. The Control Defendants argue that Plaintiffs failed to allege scienter adequately to support the Section 10(b) claim, that Plaintiffs improperly engaged in group pleading, and that Plaintiffs failed to identify a contemporaneous purchaser of Cobalt stock in connection with Goldman Sachs's 2014 sales.

A. Allegations of Scienter

Plaintiffs base their Section 20A claim on an alleged violation of Section 10(b) of the Exchange Act. Scienter is an element of a Section 10(b) claim. The PSLRA requires a plaintiff to allege facts "giving rise to a strong inference that the defendant acted with the required state of mind." *See* 15 U.S.C. § 78u–4(b)(2). To satisfy the pleading standard for the required "strong inference" of scienter, the allegations must create an inference of scienter that is "at least as compelling as any opposing inference one could draw from the facts alleged." *Owens v. Jastrow*, 789 F.3d 529, 536 (5th Cir. 2015) (quoting *Tellabs, Inc. v. Makor Issues & Rights Ltd.*, 551 U.S. 308, 324 2007)). "[A] tie favors the plaintiff." *Id.* (quoting *Lormand v. US Unwired, Inc.*, 565

F.3d 228, 254 (5th Cir. 2009)). "When analyzing a complaint for scienter, a court must 'assess all the allegations holistically,' not in isolation." *Id.* (quoting *Tellabs,* 551 U.S. at 326).

A plaintiff makes a *prima facie* case that a defendant is liable for insider trading under Section 20A by showing that the defendant was 'aware of the material nonpublic information' when he made the purchase or sale of the securities." *In re Enron Corp. Sec., Derivative & ERISA Litig*., 258 F. Supp. 2d 576, 592 (S.D. Tex. 2003) (quoting 17 C.F.R. § 240.10b5-1(b)). Actual knowledge that public statements are false, based on actual knowledge of material, non-public information, will establish scienter for purposes of an insider trading claim. *See S.E.C. v. Pardue*, 2005 WL 736884, *6 (E.D. Pa. Apr. 1, 2005); *see also In re Am. Italian Pasta Co. Sec. Litig*., 2006 WL 1715168, *3 (W.D. Mo. June 19, 2006); *S.E.C. v. Bunrock*, 2004 WL 1179423, *13 (N.D. Ill. May 25, 2004).

Plaintiffs have alleged that prior to the February 2012 Common Stock Offering, the Control Defendants – through the individuals they designated to be members of the Cobalt Board of Directors – had actual knowledge of material, undisclosed information indicating that Nazaki was owned by Angolan officials. Specifically, in November 2010, the Control Defendants through their designees on the Cobalt Board of Directors received information that Navigant Consulting ("Navigant") in an

October 2010 due diligence report advised that three Angolan officials each owned one-third of Grupo Aquattro, which owned 99.96% of Nazaki. Plaintiffs allege that the Navigant report was not disclosed prior to the February 2012 Common Stock Offering, in which the Control Defendants sold 40,709,730 shares of Cobalt stock for $1,139,872,440.00.

Plaintiffs have similarly alleged that prior to the Common Stock Offerings in January 2013 and May 2013, the Control Defendants possessed material, undisclosed information that there was little chance that Loengo would be successful and that, as a result, Cobalt was looking for an exit strategy from Loengo in order to recover "sunk costs." With actual knowledge of the undisclosed information regarding Loengo, the Control Defendants sold 40 million shares of Cobalt stock in January 2013 and another 50 million in May 2013.

The Control Defendants argue that the circumstances and timing of their stock sales do not support a strong inference of scienter. They note correctly that their first sale of Cobalt stock occurred in February 2012, more than one year after their designees were given material non-public information. Plaintiffs note correctly, however, that the Control Defendants were restricted from selling shares for a two-year period beginning on the date of the December 16, 2009 IPO. Therefore, the Control Defendants could not legally sell their shares until December 2011. This was

approximately two months prior to these Defendants' February 2012 sale of 40,709,730 shares of Cobalt stock. The timing of the sales does not justify dismissal of Count III.

Similarly unpersuasive is the Control Defendants' argument that scienter is not alleged adequately because they did not "rush to cash out" by selling all of their shares as soon as possible after December 2011. The Control Defendants owned 71% of all outstanding shares of Cobalt stock, more than 255 million shares. They could not, without serious negative impact on the company, dump these shares into the market at one time.

Viewing all the factual allegations in the Second Amended Complaint holistically and not in isolation, the Court concludes that Plaintiffs have alleged with adequate particularity that the Control Defendants acted with the requisite scienter when they sold Cobalt stock while in possession of material, undisclosed information regarding the ownership of Nazaki and the likelihood that drilling for oil in Loengo would be unsuccessful.

The factual allegations supporting the Section 20A claim in Count III are based on information that was not disclosed to the public, but was provided to each Control Defendant through its designated member of the Cobalt Board of Directors. There is no allegation, however, that Carlyle had a designee on the Cobalt Board. Although

Plaintiffs allege that Carlyle and Riverstone were acting together, it is undisputed that Riverstone designated two board members and Carlyle had no designee on the Board of Directors. As a result, there are no allegations that permit a strong inference that Carlyle possessed the material, undisclosed information provided to the Cobalt Board of Directors. Unlike the other Control Defendants, Carlyle is entitled to dismissal of the Section 20A claim against it.

B. Individualized Allegations

Plaintiffs in a securities fraud complaint are required "to distinguish among those they sue and enlighten each defendant as to his or her particular part in the alleged fraud." *Owens v. Jastrow*, 789 F.3d 529, 537 (5th Cir. 2015) (quoting *Southland Sec. Corp. v. INSpire Ins. Solutions, Inc.*, 365 F.3d 353, 365 (5th Cir. 2014)). Therefore, the Court does not impute to any particular Defendant those allegations asserted against Defendants as a group "unless the connection between the individual defendant and the allegedly fraudulent statement is specifically pleaded." *Id.*

In this case, Plaintiffs' insider trading allegations against the Control Defendants are adequately individualized. Although there are allegations against the Control Defendants as a group, those group allegations are based on each Control Defendant's knowledge acquired through its designee on the Cobalt Board of

Directors. Plaintiffs identify the specific Board of Directors designee for each Control Defendant, specify the dates the designee was a member of the Cobalt Board, and identify the specific information received by the designees and when they received that information. Additionally, Plaintiffs allege the dates each Control Defendant sold shares of Cobalt stock, the number of shares sold on each date, and the amount received by each Control Defendant in connection with each sale. These allegations are adequately individualized to avoid a group pleading challenge, and the Motion to Dismiss on this basis is denied.

C. Allegations of Contemporaneous Trading

Liability under Section 20A requires that a plaintiff have purchased shares of stock "contemporaneously" with the defendant's sale of shares. *See* 15 U.S.C. § 78t-1(a). Defendants argue that, with respect to Goldman Sachs's sale of Cobalt stock in 2014, there is no allegation of a contemporaneous purchaser. Defendants note that the only identified purchaser, Plaintiff Universal Investment Gesellschaft m.b.h. ("Universal"), purchased shares six days after Goldman Sacks's sale of shares on July 25, 2014.

Section 20A does not define the word "contemporaneously." Various courts to address the issue have identified no clear agreement about how much time between the trade by the defendant and the purchase by the plaintiff is allowed for purposes of

the "contemporaneous" requirement. "Different courts have found that 'contemporaneity' requires the insider and the investor/plaintiff to have traded anywhere from on the same day, to less than a week, to within a month, to 'the entire period while relevant and nonpublic information remained undisclosed.'" *See In re Enron Corp. Sec., Derivative & ERISA Litig.*, 258 F. Supp. 2d 576, 599 (S.D. Tex. 2003), and cases cited therein. As a result, the Court cannot conclude that an allegation of a six-day gap between Goldman Sachs's sale and Universal's purchase is too long as a matter of law to constitute "contemporaneous" trades for purposes of Section 20A liability. Control Defendants' Motion to Dismiss on this basis is denied.

IV. CONCLUSION AND ORDER

Based on the foregoing, it is hereby

ORDERED that the Carlyle's Motion to Dismiss [Doc. # 219] is **GRANTED** and Plaintiffs' Section 20A claim against Carlyle is **DISMISSED WITH PREJUDICE**. It is further

ORDERED that the Motion to Dismiss [Doc. # 216] filed by the remaining Control Defendants is **DENIED**.

SIGNED at Houston, Texas, this **15th** day of **June, 2017**.

NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE

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Exhibit B

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

IN RE COBALT INTERNATIONAL ENERGY, INC. SECURITIES LITIGATION	§ § §	CIVIL ACTION NO. H-14-3428

MEMORANDUM AND ORDER

This securities case is before the Court on Defendants' Motion to Reconsider the Court's Memorandum and Order Granting Class Certification ("Motion to Reconsider") [Doc. # 251], to which Plaintiffs filed an Opposition [Doc. # 256], and Defendants filed a Reply [Doc. # 263]. Also pending is Defendants' Motion to Stay Discovery Pending Appeal of Class Certification Order ("Motion to Stay") [Doc. # 252], to which Plaintiffs filed an Opposition [Doc. # 257], and Defendants filed a Reply [Doc. # 264]. Having reviewed the record and the relevant legal authorities, the Court **denies** both Motions.

I. BACKGROUND

The background of this case has been set forth fully in the Court's prior rulings, including the Memorandum and Order granting class certification. *See* Memorandum and Order [Doc. # 244], entered June 15, 2017. Briefly, Cobalt International Energy, Inc. ("Cobalt"), is an exploration and production company that was formed in 2005

as a private company. Cobalt conducted an initial public offering ("IPO") of its shares in December 2009.

In 2007, Cobalt entered into an agreement with Sonangol E.P. ("Sonangol"), the Angolan national oil company, to acquire a 40% interest in oil exploration Blocks 9, 20, and 21 in offshore Angola. In 2009, the Angolan Parliament issued two decrees assigning an interest in the Blocks to Nazaki Oil & Gaz ("Nazaki"), Sonangol P&P, and Alper Oil, Limitada ("Alper"). In February 2010, Cobalt and these other companies signed Risk Services Agreements ("RSAs") with Sonangol.

On January 4, 2011, Cobalt filed a Registration Statement and Prospectus ("January 2011 Registration Statement") with the Securities and Exchange Commission ("SEC"). Based on this 2011 Registration Statement, Cobalt conducted, *inter alia*, a stock offering in late February 2012 ("February 2012 Stock Offering"). Additionally, Cobalt conducted registered public offerings of Cobalt convertible senior notes ("Cobalt Notes") in December 2012 and May 2014.

On March 10, 2011, Cobalt learned that the SEC was conducting an informal inquiry into allegations that there existed a connection between Nazaki and senior government officials in Angola. The next day, Cobalt contacted the Department of Justice ("DOJ") regarding the same allegations. Both the SEC and the DOJ later began formal investigations into whether Cobalt had violated the Foreign Corrupt

Practices Act of 1977 ("FCPA"). These SEC and DOJ investigations regarding FCPA violations ended with no recommendation for enforcement action against Cobalt.

Meanwhile, Cobalt drilled two exploration wells in the offshore Angola drilling region: Lontra on Block 20 and Loengo on Block 9. Cobalt had no rights to gas discoveries and, instead, had rights only to any oil that was discovered in the Blocks. Ultimately, Lontra was found to contain a substantially higher percentage of gas than originally estimated, and drilling at Loengo failed to discover oil.

On April 15, 2012, the *Financial Times* published two reports that Nazaki was owned by Angolan officials, who had admitted their ownership interest to the *Financial Times*. On December 1, 2013, Cobalt issued a press release disclosing that the Lontra well contained primarily gas to which Cobalt had no rights. On August 5, 2014, Bloomberg reported that the SEC had issued a "Wells Notice" recommending the institution of an enforcement action, and that "social payments" that Cobalt was required to make to the Angolan government to fund a research center were for a center that did not exist. On November 4, 2014, Cobalt issued a press release disclosing that the Loengo well was a "dry hole" with no oil. The price of Cobalt shares declined after each of these reports.

On November 30, 2014, Plaintiffs St. Lucie County Fire District Firefighters' Pension Trust Fund and Fire and Police Retiree Health Care Fund of San Antonio

filed this Class Action lawsuit. By Orders [Docs. # 67 and # 68] entered March 3, 2015, the Court consolidated all pending securities lawsuits against Cobalt into the *St. Lucie* case and appointed lead plaintiffs, lead counsel, and liaison counsel. On May 1, 2015, Plaintiffs filed their Consolidated Amended Class Action Complaint [Doc. # 72].

On March 15, 2017, Plaintiffs filed their Second Amended Complaint. Plaintiffs assert a claim under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5; Section 20(a) of the Exchange Act; Section 20A of the Exchange Act; Section 11 of the Securities Act of 1933 ("Securities Act"); Section 15 of the Securities Act; and Section 12(a)(2) of the Securities Act. Plaintiffs moved for class certification, appointment of class representatives, and appointment of class counsel. The Court granted the requests by Memorandum and Order [Doc. # 244] entered June 15, 2017.[1]

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[1] The Court certified the following class with exclusions not relevant to the Motion to Reconsider:

> All persons and entities who purchased or otherwise acquired Cobalt securities between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby. Included within the Class are all persons and entities who purchased shares of Cobalt common stock on the open market and/or pursuant or traceable to the registered public offerings on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013. Also included within the Class are all persons and entities

(continued...)

Defendants filed a petition pursuant to Rule 23(f) of the Federal Rules of Civil Procedure with the United States Court of Appeals for the Fifth Circuit, seeking to appeal this Court's class certification ruling. The Fifth Circuit granted the petition on August 4, 2017.

Defendants also moved in this Court for reconsideration of specific issues, and for a stay of all discovery pending their appeal of the Court's class certification order. The pending Motions have been fully briefed and are now ripe for decision.

II. MOTION TO RECONSIDER CLASS CERTIFICATION

A. Applicable Legal Standard

Rule 54(b) of the Federal Rules of Civil Procedure allows a district court to revise an interlocutory order at any time before entry of final judgment. *See* FED. R. CIV. P. 54(b). Some courts, including district courts in the Southern District of Texas, apply the legal standards of Rule 59(e) to Rule 54(b) motions for reconsideration of interlocutory orders. *See, e.g., Banik v. Tamez*, 2017 WL 1228498, *1 (S.D. Tex. Apr. 4, 2017). Under Rule 59(e), a motion for reconsideration may be granted if there has been an intervening change in controlling law, there exists new evidence not

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[1] (...continued)

> who purchased Cobalt convertible senior notes on the open market and/or pursuant or traceable to registered public offerings on or about (i) December 12, 2012; and (ii) May 8, 2014.

previously available, or there exists a clear error of law. *See id.* (citing *In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th Cir. 2002)).

B. *CalPERS* Decision

Relying on the recent Supreme Court decision in *Cal. Pub. Emp. Ret. Sys. v. ANZ Sec., Inc.*, __ U.S. __, 137 S. Ct. 2042 (June 26, 2017) ("*CalPERS*"), Defendants seek reconsideration of the class certification ruling in connection with the February 2012 Offerings. Defendants argue that the Securities Act claims of unnamed class members were not filed individually within the three-year statute of repose.[2] Again relying on *CalPERS*, Defendants also seek reconsideration of the class certification ruling, based on an argument that class members' Exchange Act claims based on purchases before June 15, 2012, are likewise barred by the statute of repose.

Defendants' reliance on the Supreme Court's decision in *CalPERS* as an intervening change in controlling law is misplaced. In *CalPERS*, a class action complaint was filed prior to the expiration of the statute of repose. Later, after the statute of repose expired, a member of the putative class filed a separate, individual action in a different court. When the case settled and an agreed class was certified as part of the settlement, the same class member opted out in order to pursue its

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[2] The Securities Act provides that "[i]n no event shall any such action be brought to enforce a liability created under [§ 11] more than three years after the security was bona fide offered to the public. . .." 15 U.S.C. § 77m.

individual lawsuit. The Supreme Court, noting that equitable tolling does not apply to a statute of repose, held that the pending class action did not toll the statute of repose for putative class members who opted out and filed individual actions. *See id.* at 2054-55. The Supreme Court noted that the statute of repose in the Securities Act requires that an "action" must be brought within three years after the relevant securities offering. *See id.* at 2054. The Supreme Court held that the opt-out plaintiff's individual lawsuit was a separate "action" from the putative class action, and that the separate "action" was not filed within three years. *See id.* There is nothing in the Supreme Court's decision in *CalPERS* that suggests that the putative class action, filed within the three-year statute of repose, does not protect putative class members who remain in the class and do not opt out to pursue individual lawsuits. Indeed, the majority and dissenting opinions both rely on a presumption that the plaintiff was a proper class member and could have pursued his claims as a member of the class even though the class was not certified within the statute of repose. As a result, there is nothing in the *CalPERS* decision that suggests a timely-filed class "action" does not satisfy the statute of repose for class members who do not opt out. Moreover, there is nothing in the *CalPERS* decision that suggests class certification in a timely-filed putative class action is precluded once the statute of

repose expires. Defendants' Motion to Reconsider based on the *CalPERS* decision is **denied**.[3]

C. Class Certification of Certain Cobalt Noteholders

Defendants seek reconsideration of the class certification ruling regarding Cobalt noteholders based on a recent decision from the Second Circuit in *In re Petrobras Sec.*, 862 F.3d 250 (2d Cir. 2017). Initially, it is noted that the Second Circuit's recent decision is not an intervening change in controlling law in the *Fifth* Circuit that would support reconsideration.

Moreover, the Court does not find reconsideration appropriate under the Second Circuit's decision in *Petrobras*. In that case, investors in a Brazilian company filed securities fraud claims in connection with purchases of shares that traded on the Brazilian stock exchange, and purchases of Petrobras Notes that are not traded on any exchange in the United States. The Second Circuit noted in *Petrobras*, 862 F.3d at 262, as did this Court in its Memorandum and Order granting class certification, that federal securities laws apply only to conduct "in connection with the purchase or sale of a security listed on an American stock exchange, and the purchase or sale of any other security in the United States." *Morrison v. Nat'l Austl. Bank. Ltd.*, 561 U.S.

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[3] Clearly, the *CalPERS* decision would operate to bar any class member who now opts out of this class action and files a separate lawsuit. This, however, is not the situation currently presented in this case.

247, 273 (2010). The Second Circuit in *Petrobras* remanded the case to the district court for consideration regarding whether the *Morrison* issue predominated over common issues.

This Court, in considering the predominance factor for class certification, recognized that there could conceivably be a member of the proposed class who engaged in foreign transactions, as opposed to foreign purchasers who engaged in domestic transactions. The Court further noted the ease of determining whether that was the case, and noted that the Cobalt Notes were convertible upon maturity into shares of Cobalt's common stock, which are listed and traded on a domestic exchange.[4] Based on these considerations, as well as the significant issues of law and fact that were common to putative class members, the Court held that the multiple, significant common issues of law and fact were more substantial than the *Morrison* issue and that the predominance factor was therefore satisfied. Nothing in the Second Circuit's decision in *Petrobras* leads the Court to reconsider its prior ruling. The Motion to Reconsider based on the Second Circuit's *Petrobras* ruling is **denied**.

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[4] *See* Memorandum and Order [Doc. # 244], pp. 16-17 (citing *Valentini v. Citigroup, Inc.*, 837 F. Supp. 2d 304, 323 (S.D.N.Y. 2011)).

D. Dismissed Claims

Defendants note correctly that this Court previously dismissed certain claims in this case. Defendants ask the Court to revise the class definition to "make clear that class members whose claims this Court already dismissed are not included in the class definition." *See* Motion to Reconsider, p. 2. The class definition includes purchasers of certain Cobalt securities during the Class Period who "were damaged" by those purchases. A class member may have purchased a variety of Cobalt securities. Such a class member may, therefore, have both live claims and dismissed claims. The class member may not recover based on dismissed claims, but the existence of the dismissed claims does not preclude the purchaser from being a class member as to the live claims. As a result, the Motion to Reconsider the class definition is **denied**.

III. MOTION TO STAY

Rule 23(f) of the Federal Rules of Civil Procedure provides that a court of appeals "may permit an appeal from an order granting or denying class-action certification . . .." *See* FED. R. CIV. P. 23(f). The Fifth Circuit has granted leave for Defendants to pursue an interlocutory appeal of this Court's class certification ruling. Rule 23(f) provides further that an appeal "does not stay proceedings in the district court unless the district judge or the court of appeals so orders." *See id.* Defendants have filed a Motion to Stay Discovery pending their Rule 23(f) appeal.

Stays issued pursuant to Rule 23(f) are discretionary and rare. *See M.D. v. Perry*, 2011 WL 7047039, *1 (S.D. Tex. July 21, 2011); *In re Mounce*, 2008 WL 2714423, *6 (Bankr. W.D. Tex. July 10, 2008). When deciding a motion to stay, the district court considers the following factors: "(1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant has made a showing of irreparable injury if the stay is not granted; (3) whether the granting of the stay would substantially harm the other parties; and (4) whether the granting of the stay would serve the public interest." *Id*. (citing *In re First South Sav. Ass'n*, 820 F.2d 700, 704 (5th Cir. 1987)).

In this case, for the reasons stated in the Court's Memorandum and Order on class certification and in this Memorandum and Order, Defendants have failed to demonstrate a likelihood of success on the merits. Although Defendants may possibly succeed on certain issues, it is unlikely that they will succeed in their attempt to have the class certification order fully reversed or otherwise vacated.

Defendants have failed to demonstrate irreparable injury if the stay is not granted. Defendants have shown that Cobalt is suffering financial difficulties, but no such showing has been made for any of the other Defendants. Defendants argue that they will be required to participate in discovery, but the prospect of having to engage in discovery is not irreparable harm for purposes of a stay pending appeal. *See, e.g.*,

In re BP P.L.C. Sec. Litig., 2016 WL 164109, *2 (S.D. Tex. Jan. 14, 2016); *Perry*, 2011 WL 7047039 at *2. This is particularly true where, as here, the Rule 23(f) appeal will, at best, eliminate the class certification. It will not eliminate the claims of the individual named Plaintiffs. As a result, the discovery will be necessary whether or not the appeal is successful.

Plaintiffs, on the other hand, will be prejudiced by a stay of discovery. The case was originally filed in November 2014. Further delay will jeopardize Plaintiffs' ability to obtain discovery from individuals whose memories may be fading as time passes, as well as their ability to obtain and collect a judgment against Cobalt who, by Defendants' own arguments, is currently in a negative financial condition.

Defendants argue that a stay will serve the public interest because it will promote judicial economy. The public interest, however, also favors speedy resolution of disputes. Moreover, the Court finds that a stay will not further judicial economy because, as noted above, most of the discovery will need to be conducted even if the Rule 23(f) appeal is successful.

The Court has carefully considered each of the factors that are relevant to a stay pending appeal. The Court finds that none of the factors favors a stay of discovery in this case.[5] As a result, the Motion to Stay is **denied**.

IV. CONCLUSION AND ORDER

Based on the foregoing, it is hereby

ORDERED that Defendants' Motion to Reconsider [Doc. # 251] and Motion to Stay [Doc. # 252] are **DENIED**.

SIGNED at Houston, Texas, this **23rd** day of **August, 2017**.

NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE

[5] Defendants rely on a Northern District of Texas court's decision to stay consideration of a motion to certify a class until the Rule 23(f) appeal in this case is completed. *See* Motion to Stay, p. 2 (citing *Deka Inv. GMBH v. Santander Consumer USA Holdings Inc.*, No. 3:15-cv-2129 (N.D. Tex. July 11, 2017)). The Northern District court's decision to await guidance before ruling on the class certification issue does not convince this Court to stay discovery during the Rule 23(f) appeal of a class certification ruling that has already been made.

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL ENERGY, INC. SECURITIES LITIGATION,	Lead Case No. 4:14-cv-3428 (NFA) **CLASS ACTION** Hon. Nancy F. Atlas

NOTICE OF REQUEST OF VOLUNTARY DISMISSAL OF DEFENDANT COBALT INTERNATIONAL ENERGY, INC.

NOTICE IS HEREBY GIVEN that Plaintiffs, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, request dismissal of their action against Defendant Cobalt International Energy, Inc. ("Cobalt"). In support of which, Plaintiffs state as follows:

1. Plaintiffs' claims against Cobalt have been stayed in accordance with 11 U.S.C. § 362(a)(1) of the Bankruptcy Code. *See* ECF No. 305.

2. This Court has the authority to dismiss Plaintiffs' claims against Cobalt under Rule 41 of the Federal Rules of Civil Procedure. *See Arnold v. Garlock Inc.*, 288 F.3d 234, 237 (5th Cir. 2002) ("The district courts in the instant cases were similarly entitled to dismiss the debtor on the plaintiffs' motions as a matter consistent with the terms of § 362(a) and the effective management of their dockets."); *Villarreal v. City of Laredo*, 2007 WL 2900572, at *5 (S.D. Tex. Sept. 28, 2007) ("The prohibition under Section 362 against further proceedings is not absolute, and . . . this general rule is not a bar to voluntary dismissal of the remaining claims against [defendant in bankruptcy].")

3. This voluntary dismissal does not dismiss the claims against any of the other Defendants.

Plaintiffs therefore request that the Court dismiss their claims without prejudice against Defendant Cobalt International Energy, Inc. pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. A proposed order is attached.

Dated: December 22, 2017

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By: */s/Andrew J. Entwistle*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL ENERGY, INC. SECURITIES LITIGATION,	Lead Case No. 4:14-cv-03428 (NFA) **CLASS ACTION** Hon. Nancy F. Atlas

[PROPOSED] ORDER

After considering the Request for Voluntary Dismissal of Defendant Cobalt International Energy, Inc. filed by Plaintiffs, and with good cause appearing, **IT IS HEREBY ORDERED THAT**:

All Claims against Defendant Cobalt International Energy, Inc. are dismissed without prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. This Order does not dismiss any claims alleged against any other Defendant.

Dated: _____, 2017.

_____
Hon. Nancy F. Atlas
United States District Judge

Exhibit D

SONANGOL AND COBALT ANNOUNCE US$500 MILLION SETTLEMENT

Dec 19 2017 17:10:00

Sonangol and Cobalt Announce US$500 Million Settlement

Business Wire

HOUSTON -- December 19, 2017

The Angolan National Concessionaire Sociedade Nacional de Combustíveis de Angola - Empresa Pública ("Sonangol") and Cobalt International Energy, Inc. ("Cobalt") today announced the signing of an agreement to resolve all disputes and transition Cobalt's interests in Blocks 20 and 21 offshore Angola to Sonangol for $500 million. The settlement is subject to approval by the U.S. Bankruptcy Court for the Southern District of Texas. An initial non-refundable payment of $150 million is to be paid by Sonangol no later than February 23, 2018 with the final $350 million payment to be received no later than July 1, 2018.

Mr. Carlos Saturnino, Chairman and Chief Executive Officer of Sonangol said: "I would like to thank Mr. Tim Cutt and Cobalt team for all efforts made to conclude with success, the settlement of all issues related to the Angolan offshore oil concessions, i.e., Block 21/09 and Block 20/11. Sonangol will continue the development of strategies and actions with all stakeholders to relaunch the stability and attractiveness of the hydrocarbons industry in Angola."

"I want to thank Mr. Carlos Saturnino for his leadership in decisively and successfully resolving the outstanding issues between our companies. I also wish to thank Sonangol's Board of Directors. I believe this resolution is in the best interest of our stakeholders," said Timothy J. Cutt, Cobalt's Chief Executive Officer. "We look forward to working with Sonangol to implement this agreement and wish them all the best in developing these world class assets."

For more information about this announcement, see Cobalt's Form 8-K to be filed with SEC.

About Cobalt

Cobalt is an independent exploration and production company active in the deepwater U.S. Gulf of Mexico and offshore West Africa. Cobalt was formed in 2005 and is headquartered in Houston, Texas.

Forward-Looking Statements

This press release includes "forward-looking statements" within the meaning of the federal securities laws, including the safe harbor provisions of the Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 - that is, statements related to future, not past, events. Forward-looking statements are based on current expectations and include any statement that does not directly relate to a current or historical fact. In this context, forward-looking statements often address Cobalt's expected future business and financial performance, and often contain words such as "anticipate," "believe," "may," "will," "aim," "estimate," "continue," "intend," "could," "expect," "plan," and other similar words. These forward-looking statements involve certain risks and uncertainties that ultimately may not prove to be accurate. Actual results and future events could differ materially from those anticipated in such statements. For further discussion of risks and uncertainties, individuals should refer to Cobalt's SEC filings. Cobalt disclaims any obligation or undertaking, and does not intend, to update these forward-looking statements to reflect events or circumstances occurring after this press release, other than as required by law. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this press release. All forward-looking statements are qualified in their entirety by this cautionary statement.

View source version on businesswire.com: **http://www.businesswire.com/news/home/20171219006293/en/**

Contact:

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Aaron Skidmore, +1 713-457-4426

Director, Investor Relations

-0- Dec/19/2017 22:10 GMT

Exhibit E

Exhibit G

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE COBALT INTERNATIONAL ENERGY, INC. SECURITIES LITIGATION	Case No. 4:14-cv-3428 (NFA) CLASS ACTION

DEPOSITION OF WILLIAM UTT

Houston, Texas

November 17, 2017

9:31 a.m.

Reported by:
SUSAN PERRY MILLER, RDR, CRR, CRC
JOB NO. 52709

WILLIAM UTT

Friday, November 17, 2017

9:31 a.m.

The deposition of WILLIAM UTT, called by Plaintiffs for examination, taken pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions, taken before Susan Perry Miller, RDR, CRR, CRC, Notary Public in and for the State of Texas, taken at Baker Botts, LLP, 910 Louisiana Street, Suite 3200, Houston, Texas, on Friday, November 17, 2017, beginning at 9:31 a.m.

* * * * *

the board of directors of Cobalt, yes.

Q. And when did you become chairman of the board?

A. It was approximately June 1st, 2016.

Q. Okay. And is Cobalt currently paying the fees for your representation?

A. Yes.

Q. Mr. Utt, what, if anything, did you do to prepare for today's deposition?

A. I had a meeting with Mr. Sterling and his co- --

THE WITNESS: Is he a partner?

A. -- his partner, Russell Lewis, to go through documents that were represented to me to have been provided as part of this case.

BY MR. PORTER:

Q. And was it just the three of you, Mr. Sterling and Mr. Lewis?

A. Yes.

Q. Okay. And how many meetings did you have?

A. We had a meeting on Wednesday

for three hours. We had a phone call yesterday for 10 minutes, and then we met this morning and chatted for half an hour.

Q. So approximately four to five hours total?

A. Less than that.

Q. Okay. And was anybody else in attendance on any of those calls?

A. Not to my knowledge.

Q. Okay. And you said you reviewed documents in preparation for the deposition. Did your counsel select those documents?

A. Yes.

Q. Do you recall what documents you reviewed?

A. The documents were board minutes that had -- as well as various e-mails that I was told had been provided as part of discovery.

Q. Okay. Do you recall reading any due diligence reports from an organization called Control Risk Group?

A. No.

Exhibit F

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

----------x

IN RE COBALT INTERNATIONAL	Case No.
ENERGY, INC. SECURITIES	4:14-cv-3428 (NFA)
LITIGATION	CLASS ACTION

----------x

VIDEOTAPED DEPOSITION OF KENNETH W. MOORE

New York, New York

November 29, 2017

9:37 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO. 52715

KENNETH W. MOORE

November 29, 2017

9:37 a.m.

Videotape deposition of KENNETH W. MOORE, held at the offices of Wachtell Lipton Rosen & Katz, 51 West 52nd Street, New York, New York, pursuant to Notice, before Erica L. Ruggieri, Registered Professional Reporter and Notary Public of the State of New York.

Q. And what is your understanding, if any, concerning the allegations against First Reserve?

A. Well, I'm not an attorney here, I'm surrounded by some, but I understand that First Reserve is being -- there's an allegation that First Reserve engaged in insider trading.

Q. What do you understand, if anything, about that allegation?

A. I'm sorry, I'm not following you. What do I understand about it?

Q. They engaged in trading -- they create some transactions in the stock while in possession of the --

A. I understand that the plaintiffs are making some allegations, I understand that.

Q. Mr. Moore, what, if anything, did you do to prepare for your deposition today?

A. I had a couple meetings with the people that you see present.

Q. All three of them?

A. Yes. They were all present.

Q. When you say a couple meetings, how many, two?

A. Well, actually, there was a telephonic call a couple weeks ago with one of David's partners, Paul Elliot.

THE WITNESS: Right? And I believe, Cecilia, you were on the call as well.

A. And then we had an in-person meeting. There were two in-person meetings, one yesterday and one last week with these three folks.

Q. And was anybody else in attendance at those meetings?

A. No.

Q. And approximately how long

did they last in aggregate?

A. Gosh, so six hours maybe.

Q. Total?

A. That's the best of my recollection but something like that, yeah. Total, yes.

Q. And during those meetings did you review documents?

A. Yes.

Q. And documents that you brought or documents provided to you by your counsel?

A. Provided by counsel.

Q. And do you recall what documents you reviewed?

A. There were some minutes that I reviewed. There were a couple of legal memos that had been prepared by counsel. That was it.

Q. Do you recall whether you had seen those -- you remembered seeing those documents before?

A. No.

Q. You had never seen them or

Exhibit H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	Case No. 05-17930 (ALG)
NORTHWEST AIRLINES CORPORATION, et al,	New York, New York Tuesday, March 7, 2006 11:15 a.m.
Debtors.	

TRANSCRIPT OF MOTIONS
BEFORE THE HONORABLE ALLAN L. GROPPER
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	Bruce R. Zirinsky, Esq. Gregory M. Petrick, Esq. Nathan A. Haynes, Esq. Mark C. Ellenberg, Esq. CADWALADER, WICKERSHAM & TAFT, LLP One World Financial Center New York, New York 10261 (212) 504-6000
For the Official Committee of Unsecured Creditors:	Scott Hazan, Esq Todd M. Goren, Esq. OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C. 250 Park Avenue New York, New York 10169 (212) 661-9100

(Appearances continued)

Audio Operator:	Electronically Recorded by Court ECRO
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

A P P E A R A N C E S: (Continued)

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the debtors. If the action proceeds against any one of them, the potential prejudice to the debtors exists.

THE COURT: If I stay this action, I think the result would be that any class action brought against any large company in bankruptcy would be stayed. Is that not the implication of this motion?

MR. PETRICK: Your Honor, I know of no -- in all circumstances -- there may be different circumstances in different cases where class actions should proceed.

THE COURT: Well, you have the --

MR. PETRICK: But certainly --

THE COURT: It would be in almost any case you would have involvement of executives, assuming that the top executives are named which is routine, you have possibility of indemnification claims, you have insurance issues. What makes this unique?

MR. PETRICK: Your Honor, I think many of the --

THE COURT: It's a complicated case. It's a large case. It's a well-managed case with counsel who are being well-compensated. And there is insurance. I gather there's a large deductible, if I read the papers correctly.

MR. PETRICK: Yes, Your Honor.

THE COURT: That might be a little unusual. But what else is unusual about this case?

MR. PETRICK: All of those factors that you've

Northwest Airlines, et al, for a preliminary injunction to extend the automatic stay of the Bankruptcy Code to cover claims brought against certain president, former officers and directors in several class action lawsuits.

As far as I can tell from the record before me, these are, in the vernacular, "plain vanilla" or "garden-variety" class actions brought in the wake of the debtors' bankruptcy filing. One charges securities fraud; the other contains charges of ERISA liability based upon the purchase of securities of the debtor.

This preliminary injunction motion requires the movant to show irreparable injury and a substantial probability of success on the merits, or at least a likelihood of success and a balance of the equities tipping decidedly in the debtors' favor.

(Pause in proceedings.)

THE COURT: The debtors quote In Re: United Health Care Organization, 210 B.R. at 233, for the heavy burden that they must meet, quote:

"The first requirement is that there be a danger of imminent irreparable harm to the estate or the debtors' ability to reorganize. Second, there must be a reasonable likelihood of a successful reorganization. Third, the Court must balance the relative harm as between the debtor and the

creditor, who would be restrained. Fourth, the Court must consider the public interest. This requires a balancing of the public interest and successful bankruptcy reorganizations with competing societal interests."

The debtors concede, as they must, that they are not defendants in the class actions. They make three arguments in support of their having met their burden:

First, the debtors argue that they are the real target of the lawsuits. Plaintiffs concede, as they must, that the debtors will not be bound as a result -- by a result in the litigation adverse to the defendants. If the company is the real target, the plaintiffs have seriously compromised their case by proceeding against the other defendants only. But that does not constitute grounds to stay the litigation.

The debtors further argue that they will be affected by the continuation of the litigation in at least three ways:

First, the officers and directors will be diverted by the existence of the litigation at a time when they need to expend all of their energy on the reorganization process. This is a very important consideration and may merit some relief in the future and, if the debtors want it, an evidentiary hearing. But it does not justify a blanket injunction on the basis of the record to date, including the debtors' proffer.

As the plaintiffs argue, there is a period during which discovery is stayed, and discovery against the debtors cannot proceed in absence from relief from the stay in any event. If the debtors need protection in the future, they can seek it on a showing that their officers and directors' attention to critical reorganization issues is, in fact, being diverted.

Debtors further argue that they will be affected by the depletion of available insurance, a fund that they can access, as well as the relevant officers and directors. Further, they claim that the officers and directors have indemnification rights against the estate that may be fixed by the results in the class action.

The Court does not have any issues before it that directly involve indemnification or access to insurance. The debtors' argument, however, proves too much. In their argument, every garden-variety class action would be subject to a stay against non-debtor defendants. The existence of insurance would, in every case, justify such a blanket extension, as would the existence of indemnification rights.

There is authority that extends the stay beyond the debtor, but many of these cases reserve stays to situations where the movant shows true irreparable injury and a balance of the harm that demonstrates an immediate need for relief.

"In the leading circuit court cases, relief has been

granted in mass tort cases, where officers and directors were added to thousands upon thousands of personal injury suits."

See In Re: Johns-Manville, 837 F.2d 89 (2d Cir. 1988), and 33 B.R. 254 (Bankruptcy SDNY 1983); A.H. Robins v. Piccinin, 788 F.2d 994 (4th Cir.), cert. den. 479 U.S. 876 (1986).

Relief has not been routinely granted in routine class actions, and the law should not be so extended.

Balancing the harms on the record before the Court today demonstrates more harm to the class action plaintiffs and a lack of a substantial probability of success on the debtors' part to demonstrating irreparable injury in the future. The motion, of course, does not implicate the strength of the underlying cases; and, if the debtors can show particularized harm to the reorganization process because of interference with the activities of their officers and directors in the future, the motion can be renewed.

One other issue must be considered. There appears to be a large deductible in this case that would leave the defendants uninsured for up to $5 million. It appears from colloquy that the insurer's obligation to defend does not provide for defense costs in the interim. If that is so, the debtors have their remedies before this Court because the Court certainly understands that the incurrence of costs that

the debtors have obligations to advance under their charter, or at least so I assume, might constitute an immediate distraction.

On the other hand, the Court cannot see that the question of irreparable injury or balance of the harms should be adversely determined to the class action plaintiffs because the defendants made a business decision to have a large insurance deductible. As stated, the debtors have their remedies.

The class action plaintiffs should settle an order on five days' notice.

COUNSEL: Thank you, Your Honor. Thank you.

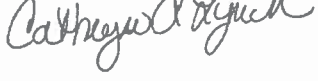
THE COURT: Thank you.

COUNSEL: Thank you. Thank you, Your Honor.

(Proceedings concluded at 1:03 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.



March 8, 2006

Cathryn Lynch
Certified Court Transcriptionist
For Rand Transcript Service, Inc.