

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

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In re:	)	
	)	Chapter 11
	)	
COBALT INTERNATIONAL ENERGY, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 17-36709 (MI)
	)	
Reorganized Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. 784</b>

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**MOTION OF THE SECOND LIEN INDENTURE TRUSTEE FOR ENTRY OF AN ORDER IN AID OF CONFIRMATION (I) AUTHORIZING THE DISTRIBUTION TO THE HOLDERS OF ALLOWED SECOND LIEN NOTES SECURED CLAIMS OF SUBSTANTIALLY ALL OF THE TRUSTEE RESERVE HELD BY THE SECOND LIEN INDENTURE TRUSTEE, AND (II) DISCHARGING THE SECOND LIEN INDENTURE TRUSTEE FROM ITS DUTIES UNDER THE CONFIRMATION ORDER, PLAN, AND RELATED DOCUMENTS**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTIES TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTIES CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTIES. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.**

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<sup>1</sup> The Reorganized Debtors in the Chapter 11 Cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Reorganized Debtors' service address is: 920 Memorial City Way, Suite 100, Houston, Texas 77024.



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U.S. Bank National Association, solely in its capacity as indenture trustee and collateral agent (in both capacities, the “Second Lien Indenture Trustee”) under that certain Senior Secured Notes Indenture, dated as of December 6, 2016 (as amended, restated, supplemented, or otherwise modified from time to time, the “Second Lien Indenture”), among Cobalt International Energy, Inc., the Subsidiary Guarantors party thereto, and the Second Lien Indenture Trustee, moves (the “Motion”) this Court for entry of an order (i) authorizing the distribution to the Holders of Allowed Second Lien Notes Secured Claims of substantially all of the Trustee Reserve (as defined herein) held by the Second Lien Indenture Trustee pursuant to the provisions of the *Order (I) Confirming The Fourth Amended Joint Chapter 11 Plan Of Cobalt International Energy, Inc. And Its Debtor Affiliates And (II) Approving The Sale Transaction* [Dkt. No. 784] (the “Confirmation Order”),<sup>2</sup> and (ii) discharging the Second Lien Indenture Trustee from its duties under the Confirmation Order, Plan, and related documents as more fully described herein. In support of this Motion, the Second Lien Indenture Trustee states as follows:

### **BACKGROUND**

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

2. On April 5, 2018, this Court entered the Confirmation Order confirming the Plan. Under the Plan, each Holder of an Allowed Second Lien Notes Secured Claim is entitled to receive

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<sup>2</sup> Unless otherwise indicated, all capitalized terms in this Motion shall have the same meaning as ascribed to them in the *Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates* (as may be amended, supplemented, or otherwise modified from time to time, and including all exhibits and supplements thereto, the “Plan”) or the Confirmation Order, as applicable.

its Pro Rata share of the Second Lien Recovery up to payment in full of such Second Lien Noteholder's Allowed Second Lien Notes Secured Claim. Under the confirmed Plan, distributions on account of the Allowed Second Lien Notes Claims will be made to the Second Lien Indenture Trustee, who will thereafter, in turn, make distributions to the individual Holders of the Allowed Second Lien Notes Claims through the Depository Trust Company ("DTC"), which is the central depository and clearing house for the Second Lien Notes.

3. The Effective Date of the Plan was April 10, 2018. Pursuant to paragraph 158 of the Confirmation Order and notwithstanding the general cancellation of the Second Lien Indenture on the Effective Date pursuant to paragraph 157 of the Confirmation Order, the Second Lien Indenture Trustee retained certain of the rights, benefits, and protections provided to it under the Second Lien Indenture, including the right to prosecute the claims of the Holders of the Second Lien Notes Claims for Diminution in Value and the Applicable Premium,<sup>3</sup> to defend the Second Lien Claims Objection, and to act as paying agent and make disbursements to the Holders of the Allowed Second Lien Notes Secured Claims as the Plan Administrator made disbursements to the Second Lien Indenture Trustee.

4. In furtherance of those rights, benefits, and protections, paragraph 158 of the Confirmation Order provided that, on the first Business Day following the Effective Date, the Plan Administrator would make a partial disbursement to the Second Lien Indenture Trustee with respect to the Second Lien Notes Claims in the amount of \$8,000,000.00 (the "Trustee Reserve"). The purpose of the Trustee Reserve is to pay the Second Lien Indenture Trustee's fees and

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<sup>3</sup> The "Diminution in Value" and "Applicable Premium" claims refer to the Holders' respective claims for diminution in the value of the Collateral securing the Second Lien Notes, pursuant to the Court's *Final Order (I) Authorizing Use of Cash Collateral Pursuant To 11 U.S.C. §363, (II) Granting Adequate Protection To Secured Parties Pursuant To 11 U.S.C. §§ 316, 362, And 363, And (III) Granting Related Relief* [Dkt. No. 301], and the "Applicable Premium" under Section 6.02 of the Second Lien Indenture.

expenses, including the fees and expenses of its attorneys and other advisors or consultants, and to pay any liabilities for which it is entitled to be indemnified under the Second Lien Indenture, including fees, expenses, and liabilities incurred in connection with prosecuting the Second Lien Notes Claims and defending against any Second Lien Claims Objections.

5. In addition to the Trustee Reserve, the Plan Administrator has made four partial distributions<sup>4</sup> under the Plan and Confirmation Order to the Second Lien Indenture Trustee on account of the Allowed Second Lien Notes Secured Claims, and the Second Lien Indenture Trustee has, in turn, made interim distributions in the same aggregate amounts to Holders of the Allowed Second Lien Notes Secured Claims. In addition, pursuant to the *Agreed Order Granting Motion of Nader Tavakoli, Acting Solely As Plan Administrator, for entry of an Order Authorizing Plan Administrator to Transfer and Distribute Funds in Furtherance of the Plan* [Dkt. No. 1219], the Second Lien Indenture Trustee distributed \$6,000,000.00 of the Trustee Reserve on or about December 28, 2018, to Holders of Allowed Second Lien Notes Secured Claims together with the Plan Administrator's third interim distribution.

6. After making the above-referenced \$6,000,000.00 distribution and payment of the Second Lien Indenture Trustee's fees and expenses through December 31, 2019, the Second Lien Indenture Trustee has approximately \$1,600,000.00 remaining in the Trustee Reserve. In light of the resolution of the claims for Diminution in Value and Applicable Premium, the Second Lien Claims

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<sup>4</sup> The partial distributions by the Plan Administrator have been in the amounts of \$297,231,114.38, \$400,000,000.00, \$90,000,000.00, and \$35,000,000.00.

Objections, the Whitton Litigation,<sup>5</sup> the Sonangol Settlement,<sup>6</sup> and the resolution of other issues in the cases, it appears that the only remaining role for the Second Lien Trustee is to act as paying agent with respect to any additional interim and final distributions made by the Plan Administrator to the Second Lien Indenture Trustee for the benefit of the Holders of the Allowed Second Lien Notes Secured Claims.

7. Given the Second Lien Indenture Trustee's reduced role, the Plan Administrator and certain of the Holders have requested that the Second Lien Indenture Trustee make another distribution from the Trustee Reserve. The Second Lien Indenture Trustee is willing to do so provided the Court enters an Order confirming that the Trustee's sole remaining role under the Second Lien Indenture, Plan and Confirmation Order is that of paying agent for any future distributions made by the Plan Administrator for the benefit of the Holders of the Allowed Second Lien Notes Secured Claims; finding that the Second Lien Indenture Trustee has fully and properly fulfilled its duties and obligations to date under the Second Lien Indenture, Plan, Confirmation Order, and other documents and orders relating to same; and releasing and discharging the Second Lien Indenture Trustee from any remaining duties and obligations under the Second Lien Indenture, Plan, Confirmation Order, and other documents and orders relating to same except for its role as paying agent for any future distributions by the Plan Administrator for the benefit of the Holders of the Allowed Second Lien Notes Secured Claims.

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<sup>5</sup> The "Whitton Litigation" refers that Adversary Proceeding No. 18-03172 between Whitton Petroleum Services Limited ("Whitton") and the Plan Administrator regarding the allowance of Whitton's claim.

<sup>6</sup> The "Sonangol Settlement" refers to the settlement between the Debtors and Sociedade Nacional de Combustíveis de Angola—Empresa Pública as well as Sonangol Pesquisa e Produção, S.A. outlined in the *Order Approving Debtors' Motion for Entry of an Order (I) Authorizing Performance under Settlement Agreement, (II) Approving Settlement Agreement, and (III) Granting Related Relief* [Dkt. No. 300].

8. Upon entry of such an Order, the Second Lien Trustee is willing to distribute to the Holders, after paying its outstanding fees and expenses, which it anticipates will be no more than \$10,000, the balance of the Trustee Reserve, less the amount of \$100,000 that the Second Lien Indenture Trustee will retain in the Trustee Reserve as security for its future fees and expenses and other indemnifiable liabilities, that may be incurred by the Second Lien Indenture Trustee in acting as paying agent; provided, however, nothing shall limit the Second Indenture Trustee's right to exercise its charging Lien for the payment of its fees, expenses, and other charges to which it is entitled and for indemnification as provided in the Second Lien Indenture.

#### **JURISDICTION AND VENUE**

9. The Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1334; *see also* Dkt. No. 784, ¶ 121. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

#### **RELIEF REQUESTED**

10. The Second Lien Indenture Trustee hereby seeks entry of an order pursuant to sections 105(a) and 1142(b) of the Bankruptcy Code (a) authorizing the Second Lien Indenture Trustee to distribute to the Holders of Allowed Second Lien Notes Secured Claims the balance of the Trustee Reserve, less the Second Lien Indenture Trustee's outstanding fees and expenses and the sum of \$100,000, which it will retain in the Trustee Reserve as security for its future fees and expenses, and other indemnifiable liabilities, without limiting its right to exercise its charging Lien for the payment of its fees, expenses, and other charges to which it is entitled and for indemnification as provided in the Second Lien Indenture; (b) confirming that the Trustee's sole remaining role under the Second Lien Indenture, Plan and Confirmation Order is that of paying agent for any future distributions made by the Plan Administrator for the benefit of the Holders of the Allowed Second Lien Notes Secured Claims; (c) finding that the Second Lien Indenture

Trustee has fully and properly fulfilled its duties and obligations to date under the Second Lien Indenture, Plan, Confirmation Order, and other documents and orders relating to same; and (d) releasing and discharging the Second Lien Indenture Trustee from any remaining duties and obligations under the Second Lien Indenture, Plan, Confirmation Order, and other documents and orders relating to same except for its role as paying agent for any future distributions by the Plan Administrator for the benefit of the Holders of the Allowed Second Lien Notes Secured Claims.

### **ARGUMENT**

11. The relief requested in this Motion is authorized by sections 105(a) and 1142(b) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code grants bankruptcy courts broad authority and discretion to take actions necessary to enforce the provisions of the Bankruptcy Code and this Court's general equitable powers. *See* 11 U.S.C. § 105(a). Section 1142(b) of the Bankruptcy Code, meanwhile, provides, in pertinent part, that:

The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act . . . that is necessary for the consummation of the plan.

11 U.S.C. § 1142(b).

12. The Confirmation Order and Plan provide that this Court shall retain jurisdiction to, among other things, interpret the terms of the Confirmation Order. *See* Conf. Ord., ¶ 121 (“This Court retains jurisdiction over the Chapter 11 Cases, all matters arising out of or related to the Chapter 11 Cases and the Plan, the matters set forth in Article XI of the Plan, and other applicable provisions of the Plan.”); Plan, Art. IX (“Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on or after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to...hear and determine disputes arising in

connection with the interpretation, implementation, modification, or enforcement of the Plan, or the Confirmation Order ....”). The Second Lien Indenture Trustee is not seeking to modify, alter, amend or otherwise affect the Plan or the Confirmation Order.

13. The Second Lien Indenture Trustee seeks to further the distribution scheme outlined in the Plan and Confirmation Order. Without the relief requested herein, the Second Lien Indenture Trustee may retain the Trustee Reserve for a significant period of time, notwithstanding the fact that the matters in the Chapter 11 Cases in which the Second Lien Indenture Trustee may be involved have concluded. Furthermore, the Second Lien Indenture Trustee has discussed the relief requested herein with certain Holders of Allowed Second Lien Notes Secured Claims and has agreed to serve as paying agent for such Holders so that the such Allowed Second Lien Notes Secured Claims can still be transferred or traded pending a final distribution by the Plan Administrator. Thus, the Holders of Allowed Second Lien Notes Secured Claims, who are the ultimate beneficiaries of the remaining distributions under the Plan, will benefit twofold by virtue of the expedited release of the bulk of the Trustee Reserve and the continued service by the Second Lien Indenture Trustee as paying agent. Accordingly, the Second Lien Indenture Trustee requests that the Court grant the relief requested herein.

**NOTICE**

14. The Second Lien Indenture Trustee will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of Texas; and (b) any party that has requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Second Lien Indenture Trustee submits that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of Page Intentionally Left Blank]*



WHEREFORE, for the reasons stated herein, the Second Lien Indenture Trustee requests this Court enter the proposed order submitted contemporaneously herewith and grant such other and further relief as it deems appropriate.

Dated: February 27, 2020  
Nashville, Tennessee

Respectfully submitted,

WALLER LANSDEN DORTCH  
& DAVIS, LLP

/s/ Tyler N. Layne

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*Attorneys for U.S. Bank National Association,  
as Second Lien Indenture Trustee*

**CERTIFICATE OF SERVICE**

I hereby certify that, on February 27, 2020, a true and correct copy of the foregoing document was served via email through the Bankruptcy Court's Electronic Case Filing System to all registered ECF users appearing in these cases and via First Class U.S. mail, postage prepaid, to the parties listed below.

/s/ Tyler N. Layne

Tyler N. Layne

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

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In re:	)	
	)	Chapter 11
	)	
COBALT INTERNATIONAL ENERGY, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 17-36709 (MI)
	)	
Reorganized Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. _____</b>

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**ORDER (I) AUTHORIZING THE DISTRIBUTION TO HOLDERS OF  
ALLOWED SECOND LIEN NOTES SECURED CLAIMS OF SUBSTANTIALLY  
ALL OF THE TRUSTEE RESERVE HELD BY THE  
SECOND LIEN INDENTURE TRUSTEE, AND (II) DISCHARGING  
THE SECOND LIEN INDENTURE TRUSTEE FROM ITS DUTIES  
UNDER THE CONFIRMATION ORDER, PLAN, AND RELATED DOCUMENTS**

Upon consideration of the *Motion of the Second Lien Indenture Trustee for Entry of an Order (I) Authorizing the Distribution to Holders of Allowed Second Lien Notes Secured Claims of Substantially All of the Trustee Reserve Held by the Second Lien Indenture Trustee, and (II) Discharging the Second Lien Indenture Trustee from its Duties under the Confirmation Order, Plan, and Related Documents* (the “Motion”) filed by the Second Lien Indenture Trustee;<sup>2</sup> and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that it has exclusive jurisdiction to over the relief requested in the Motion; and the Court having found that proper and adequate notice of the Motion and any hearing thereon has been given and

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<sup>1</sup> The Reorganized Debtors in the Chapter 11 Cases, along with the last four digits of each Reorganized Debtor’s federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Reorganized Debtors’ service address is: 920 Memorial City Way, Suite 100, Houston, Texas 77024.

<sup>2</sup> Unless otherwise indicated, all capitalized terms in this Order shall have the same meaning as ascribed to them in the Motion, the Plan, or the Confirmation Order, as applicable.

that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion in all matters after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion,

ACCORDINGLY, it is hereby FOUND, DETERMINED AND ORDERED that:

1. The Motion is GRANTED as set forth herein.
2. The Second Lien Indenture Trustee is hereby authorized to distribute to the Holders of Allowed Second Lien Notes Secured Claims the balance of the Trustee Reserve, less the Second Lien Indenture Trustee's outstanding fees and expenses and the sum of \$100,000, which the Second Lien Indenture Trustee shall retain in the Trustee Reserve as security for its future fees and expenses, and other indemnifiable liabilities; provided, however, nothing herein shall limit the Second Indenture Trustee's right to exercise its charging Lien for the payment of its fees, expenses, and other charges to which it is entitled and for indemnification as provided in the Second Lien Indenture.
3. Following entry of this Order, the Trustee's sole remaining role under the Second Lien Indenture, Plan and Confirmation Order is that of paying agent for any future distributions made by the Plan Administrator for the benefit of the Holders of the Allowed Second Lien Notes Secured Claims, and the Second Lien Indenture Trustee shall not owe any duty or have any liability to any person, including, without limitation, any Holder of the Allowed Second Lien Notes Secured Claims, except as paying agent; the Second Lien Indenture Trustee has fully and properly fulfilled its duties and obligations to date under the Second Lien Indenture, Plan, Confirmation Order, and other documents and orders relating to same giving rise to a duty or obligation on the part of the Second Lien Indenture Trustee; and the Second Lien Indenture Trustee is hereby

released and discharged from any remaining duties and obligations under the Second Lien Indenture, Plan, Confirmation Order, and other documents and orders relating to same except for its role as paying agent for any future distributions by the Plan Administrator for the benefit of the Holders of the Allowed Second Lien Notes Secured Claims.

4. Without limiting the foregoing, the Second Lien Indenture and all related documents are hereby fully and finally cancelled in all respects.

5. Notwithstanding the foregoing, this Order shall not alter, amend, modify, or otherwise affect the rights and obligations of the Debtors or the Plan Administrator under the Plan with respect to the Second Lien Notes Secured Claims, nor any distributions made to or on behalf of the Holders of Allowed Second Lien Notes Secured Claims with respect to the Second Lien Notes Secured Claims between the Effective Date of the Plan and entry of this Order.

6. This Order does not modify the Confirmation Order, which remains in full force and effect as originally entered.

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

8. The Second Lien Indenture Trustee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

9. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation, implementation, and enforcement of this Order.