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Investors Get First OK On \$23M Deal With Cobalt Underwriters

By **Dean Seal**

Law360 (November 29, 2018, 9:03 PM EST) -- A Texas federal judge granted preliminary approval on Thursday for a nearly \$23 million settlement with Morgan Stanley, Credit Suisse and a host of other investment banks that served as underwriters for the now-bankrupt Cobalt International Energy Inc.

The Cobalt investors have **already secured** a \$146.9 million settlement with the company over claims that it bribed Angolan officials for access to wells that were later misrepresented as having substantially more value than they did, but they continued to pursue claims against the investment banks that underwrote the company's multiple stock and note offerings, leading to Thursday's settlement.

A preliminary settlement motion filed Wednesday said the \$22.75 million deal was reached on the same day the motion was entered — Nov. 28 — following several months of mediator-facilitated negotiations and a thorough investigation of the underlying facts by the investors' counsel. U.S. District Judge Nancy F. Atlas signed off on the deal one day later.

"The court hereby preliminarily approves the settlement, as embodied in the stipulation, as being fair, reasonable and adequate to the settlement class," the judge said.

Judge Atlas' order also certified a settlement class of investors who purchased or otherwise acquired Cobalt securities between March 1, 2011, and Nov. 3, 2014, and set a final settlement hearing for Feb. 13.

The complaint against the company, which filed for bankruptcy **last December**, and its underwriters was first filed in November 2014, alleging that Cobalt obtained access to its Angolan wells by partnering with shell companies that were owned by Angolan officials, putting the company at risk of enforcement action by the U.S. Securities and Exchange Commission and the U.S. Department of Justice.

The investors further claimed that Cobalt lied to investors about the value of the wells after discovering that they contained little or no oil. When the company came clean about the wells, \$3.2 billion in market capitalization vanished, they said.

Goldman Sachs & Co., Morgan Stanley & Co., Credit Suisse Securities, Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Tudor Pickering Holt & Co., Deutsche Bank Securities Inc., RBC Capital Markets, UBS Securities LLC, Howard Weil Inc., Stifel Nicolaus & Co., Capital One Southcoast Inc. and Lazard Capital Markets LLC were named as defendants in the case for having underwritten three of Cobalt's common stock offerings and two of its convertible senior note offerings.

In **June 2017**, Judge Atlas granted class certification to the hundreds of investors, noting that the "defendants admit that there are common issues of law and fact, such as whether the defendants made misrepresentations [and] whether those misrepresentations were material."

Although the defendants all appealed the certification, investors received preliminary approval for a settlement with the company — and a separate \$11.5 million settlement with Goldman Sachs, according to Wednesday's motion — in early November.

The investors said Wednesday that even though they were confident in their claims, they faced the substantial risk that those claims would be undermined should the underwriters prevail on the affirmative defense that, after performing adequate due diligence, they reasonably believed in the accuracy of Cobalt's statements regarding its Angolan partners and the oil wells.

The settlement, which clears claims against every underwriter defendant except the already-cleared Goldman Sachs, was thus an appropriate remedy against such uncertainty and guarantees an "outstanding recovery," the investors said. Lead counsel in the case said they would not seek more than 25 percent of the settlement fund.

The underwriter settlement extinguishes the last of the remaining claims in the Cobalt case.

Counsel for the parties did not immediately respond to requests for comment Thursday.

The class is represented by lead counsel David R. Stickney, Brandon Marsh and Jonathan D. Uslaner of Bernstein Litowitz Berger & Grossmann LLP and Andrew J. Entwistle, Vincent R. Cappucci and Jonathan H. Beemer of Entwistle & Cappucci LLP, along with liaison counsel Thomas R. Ajamie of Ajamie LLP. Johnston de Forest Whitman Jr. and Naumon A. Amjed of Kessler Topaz Meltzer & Check LLP and Christopher Moriarty of Motley Rice LLC represented individual plaintiff investors and undersigned the motion.

The underwriter defendants are represented by Jennifer L. Spaziano, Noelle Reed, Jay Kasner and Scott Musoff of Skadden Arps Slate Meagher & Flom LLP.

The case is In re: Cobalt International Energy Inc. Securities Litigation, case number 4:14-cv-03428, in the U.S. District Court for the Southern District of Texas.

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