

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

In re:	§	CHAPTER 11
	§	
COBALT INTERNATIONAL ENERGY	§	Case No. 17-36709 (MI)
INC, <i>et al</i>	§	(Jointly Administered)
Reorganized Debtors	§	
	§	

To the Honorable Marvin Isgur  
United States Bankruptcy Judge:

**AMENDED SPRING BRANCH INDEPENDENT SCHOOL DISTRICT AND CITY OF  
HOUSTON’S OBJECTION TO MOTION OF NADER TAVAKOLI ACTING SOLELY  
AS PLAN ADMINISTRATOR FOR ENTRY OF AN ORDER DETERMINING 2018 AD  
VALOREM TAX LIABILITIES PURSUANT TO 11 U.S.C. § 505**

(Relates to Doc. No. 1241)

Spring Branch Independent School District and the City of Houston<sup>1</sup> (“Spring Branch  
ISD and Houston”), file this response in objection to the Motion of Nader Tavakoli Acting  
Solely as Plan Administrator for Entry of an Order Determining 2018 Ad Valorem Tax  
Liabilities Pursuant to 11 U.S.C. § 505 (the “Motion”), and respectfully shows as follows:

1. By the Motion, the Plan Administrator seeks the re-valuation by this Court of certain  
tangible personal property generally described by the Harris County Appraisal District (the  
“HCAD”)<sup>2</sup>; as Furniture & Fixtures, Machinery, and Other Equipment that was owned by the  
Debtors or Reorganized Debtors<sup>3</sup> and located at 920 Memorial City Way, Suite 100, Houston,  
Texas 77024 within Spring Branch Independent School District and the City of Houston, Texas,

<sup>1</sup> Taxes assessed by the City of Houston’s are collected by the Harris County Tax Office, but it is a separate entity  
from Harris County. The Memorial City Property was taxed by Spring Branch ISD, Houston, and Harris County.

<sup>2</sup> Under Section 6.01(b) of the Texas Property Tax Code HCAD, is “...responsible for appraising property in the  
district for ad valorem tax purposes of each taxing unit that imposes ad valorem taxes on property in the district.”

<sup>3</sup> The Reorganized Debtors in these Chapter 11 cases are Cobalt International Energy, Inc., Cobalt International  
Energy GP, LLC, Cobalt International Energy, L.P., Cobalt GOM LLC, Cobalt GOM #1 LLC, and Cobalt GOM #2  
LLC..



on January 1, 2018 (the “Memorial City Property”). The Motion is filed as to the post-petition taxes for the 2018 tax year.

2. The Memorial City Property was appraised as required by Texas law, at \$7,904,888, as of January 1, 2018. The appraisal of the Property is consistent with information provided by the Debtors’ agent to the HCAD in the form of rendition filed pursuant to TEX. PROP. TAX CODE SEC. 22.01.

3. Spring Branch ISD and Houston assert that HCAD is at a minimum a necessary, if not the exclusive, party to any action regarding the determination of the valuation of property for ad valorem tax purposes. The School and City have no authority to change the appraisal roll under Texas law. If this matter is to proceed before the Court, the School District asserts that the HCAD, as the entity that appraised the Property has knowledge of the facts material to such determinations, and is the only entity authorized under Texas law to alter the Spring Branch ISD and Houston appraisal rolls and is therefore a necessary and indispensable party to the action under FED. R. CIV. P. 12(b)(7) and 19 and FED. R. BANKR. P. 7012 and 7019. Spring Branch ISD and Houston request that the Court order that HCAD be made a party to the Motion.

4. The Plan Administrator requests relief under 11 U.S.C. § 505 on the grounds that the Memorial City Property was sold for substantially less than the value it was rendered and appraised for. However, no specific information is provided as to the date such sale or sales occurred, the marketing efforts undertaken in conjunction with the sales, descriptions of the property sold or otherwise disposed of, and the amount it was sold for. Spring Branch ISD and Houston respectfully request that the Plan Administrator be required to provide a more definite statement as provided under FED. R. CIV. PROC. R. 12(e)<sup>4</sup>.

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<sup>4</sup> Spring Branch has filed a Motion for More Definite Statement prior to filing of this response as required by FED. R. CIV. PROC. R. 12(e).

5. A careful reading of the Motion reveals that it seeks relief as to Spring Branch ISD and Harris County but not Houston<sup>5</sup>. In an abundance of caution Houston joins in this response as if it had properly been made a party to the Motion, but does waive any rights it has under 11 U.S.C. § 505(a)(2)(C) with respect to the timeliness of the Motion.

6. Spring Branch ISD and Houston further assert that the relief requested in the Motion is not proper and should not be the subject of motion practice. The School District disagrees that the property valuations the Debtors complain of are erroneous. The issues raised in the Motion are significant to Spring Branch ISD and Houston and should not be rushed through without proper discovery and preparation, which will be difficult to accomplish within the usual timeframes of motion practice. In further support of this objection Spring Branch ISD and Houston respectfully show as follows:

**Jurisdiction and Venue**

7. Spring Branch ISD and Houston do not disagree with the statement of jurisdiction in paragraph 1 of the Motion, but request that the Court consider abstention under 28 U.S.C. § 1334(c)(1) from determining the value of the Property as requested by the Plan Administrator under 11 U.S.C. § 505(a). The value of the Debtors' property in Texas is governed by Texas law, and there is a compelling local interest in uniformity of assessment in fairly allocating the local tax burden.

8. Should the Court decide to exercise jurisdiction over issues raised in the Motion under 28 U.S.C. 1334(c)(1), Spring Branch ISD and Houston assert that under FED. R. BANKR. P

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<sup>5</sup> It is assumed that the Plan Administrator intended to include Houston in the Motion, but as noted above, failed to do so.

7001(2)<sup>6</sup> of the Bankruptcy Rules it is an adversary proceeding since it is a proceeding to determine the extent of the tax lien in the Memorial City Property.

9. Should the Court determine that the Motion is properly brought, Spring Branch ISD and Houston request the entry of an appropriate scheduling order that will provide adequate time to prepare for trial of the issues under the Motion.

10. Paragraph 2 of the Motion is not an allegation of fact that Spring Branch ISD and Houston are required to admit or deny.

### **Background**

11. Paragraph 3 of the Motion is admitted.

12. Paragraph 4 of the Motion is admitted as to Spring Branch and Houston.

13. The first sentence of paragraph 5 of the Motion is admitted as to Spring Branch and Houston with respect to the Memorial City Property. However, Spring Branch ISD and Houston do not have knowledge of the facts stated in the remainder of the paragraph and they are denied.

14. Spring Branch ISD and Houston do not have knowledge of the proof of claim filed by Harris County and are therefore unable to admit or deny the matters stated in paragraph 6 of the Motion.

15. Spring Branch and Houston do not dispute the matters stated in paragraph 7 of the Motion.

### **Response to Basis for Relief Requested**

16. Paragraphs 8, 9, and 10 of the Motion include excerpts from 11 U.S.C. § 505 the United States Bankruptcy Code and argument which are not assertions of fact that Spring Branch and Houston are required to admit or deny.

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<sup>6</sup> Rule 7001(2) provides in part that "...The following are adversary proceedings: (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d)..."

17. Paragraph 11 of the Motion includes excerpts from 11 U.S.C. § 505 and the TEX. PROP. TAX CODE SEC. 25.25(d) and are not assertions of fact that Spring Branch and Houston are required to admit or deny. Spring Branch ISD and Houston have informally investigated whether the amount or legality of the 2018 taxes were contested or not before or adjudicated by an administrative tribunal of competent jurisdiction before the commencement of this case, and it does not appear but they were, but this is a question within the jurisdiction of the HCAD, and not a matter that the taxing entities are able to admit or deny. Spring Branch ISD and Houston admit that the 2018 taxes were not paid by the Plan Administrator and the refund request requirement of 11 U.S.C. § 505(a)(2)(B) is not a bar to the Motion.

Spring Branch admits that the Motion was filed on the deadline for requesting correction of the appraisal roll pursuant to Tex. Prop Tax Code Section 25.25, but note that the Plan Administrator has not satisfied the requirements for correction of the appraisal roll as required under TEX. PROP. TAX CODE SEC. 25.25 under Texas law.

Houston denies that the Plan Administrator timely filed the Motion as to its claim for 2018. The Motion makes no reference to the City of Houston which is, as noted above, an entirely separate entity than Harris County, which merely acts as its tax collector. The Plan Administrator plainly acknowledges that the deadline for filing the Motion was January 31, 2019. Houston therefore asserts that while the Plan Administrator timely filed the Correction Motion enabling the HCAD to consider the value of the Memorial City Property for the 2018 tax year, he did not timely file the Motion, and the determination of the 2018 tax due to Houston under 11 U.S.C. § 505 is barred by the provisions of 11 U.S.C. § 505(a)(2)(C).

18. The matters stated in paragraph 12 of the Motion are not assertions of fact that Spring Branch ISD and Houston are required to admit or deny.

19. Spring Branch ISD and Houston agree that the factors listed in paragraph 13 of the Motion include those that are generally considered by courts in the cases in determining whether to exercise authority under section 505(a) of the Bankruptcy Code.

20. In response to paragraph 14 of the Motion, Spring Branch ISD and Houston suggest , that the factors considered in determining whether to exercise jurisdiction, in the context of this case, militate in favor of abstention because the administrative remedies available to the Debtors provide a highly efficient remedy that will be less costly to all parties, and will not burden the Court's docket. Further the HCAD has knowledge and information regarding the valuation of the Memorial City Property, and there is a compelling local interest in uniformity of assessment in fairly allocating the local tax burden. As noted in this response, Spring Branch ISD and Houston are not privy to any details of the Debtors' efforts to market the Property, the amount the Property was sold for, or the date of the sale.

21. Spring Branch and Houston deny any implicit assertion that the Property was assessed for more than its fair market value as alleged in paragraph 15 of the Motion. Other than this assertion, the remainder of paragraph 15 asserts no facts that Spring Branch and Houston are required to admit or deny. As stated in footnote 5 of the Motion, the Plan Administrator filed a Personal Property Correction Request/Motion with the HCAD on January 31, 2019 (the "Correction Motion"). Relief under the Correction Motion would be more efficient than proceeding under this Motion. If the Plan Administrator prevails in this Motion, the Taxing Authorities would have the right to appeal, just as the Plan Administrator would have the right to appeal an adverse decision on the Correction Motion. In either event the parties would have to continue with the litigation for likely an indeterminate time.

22. Spring Branch ISD and Houston do not have knowledge of the level of the Court's familiarity of the Debtors' and Reorganized Debtors' efforts to market and sell the Memorial City Property and are unable to admit or deny the matters stated in paragraph 16 of the Motion. The Court is doubtless able to determine the value of the Memorial City Property, but The Harris County Appraisal District's primary function is the valuation of real and personal property, and Spring Branch ISD and Houston respectfully suggest that it is at least equally qualified to value the Memorial City Property.

23. The matters stated in paragraph 17 of the Motion are not, for the most part, assertions of fact that Spring Branch ISD and Houston are required to admit or deny. Spring Branch and Houston have attempted to locate or obtain information<sup>7</sup> regarding the purported sale or attempted sale of the Property but have been unable to do so. The assertions regarding the proof of claim filed by Harris County are not applicable to Spring Branch ISD and Houston. Spring Branch ISD and Houston reiterate their belief that the determination of the value of the Memorial City Property by the HCAD under the Correction Motion would be the most efficient means of resolving the issues raised in the Motion.

24. The matters asserted in paragraph 18 of the Motion appear to be primarily argument, and Spring Branch ISD and Houston are unable to discern any allegation of fact they are required to admit or deny. In an abundance of caution, however, the matters asserted in this paragraph are denied. Spring Branch ISD and Houston do particularly deny that they filed claims for the 2018 taxes as the Plan Administrator seems to suggest.

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<sup>7</sup> Spring Branch and Houston searched the docket in this case for an order or APA regarding the sale of the Memorial City Property but were unable to find one. Interestingly, paragraphs 24 and 26 of the Motion refers to the particular sale and APA for the Eldridge Personal Property, but do not do as to the sale of the Memorial City Property.

Spring Branch ISD and Houston note that the Debtors appear to have entirely overlooked the fact that there is a highly efficient administrative remedy available to them under the Correction Motion that would be less burdensome to the Court, the estate, and the taxing entities. If the Plan Administrator is successful with the Correction Motion, the benefits would inure to estate just as they would were he to prevail on the Motion.

25. The matters stated in paragraphs 19 and 20 of the Motion are not assertions of fact that Spring Branch ISD and Houston are required to admit or deny. To the extent that implicit in this paragraph is the assertion that the Property was sold for market value as defined under Texas law, it is denied.

26. Spring Branch ISD and Houston disagree that the assertion that “[t]he quintessential determiner of fair cash market value is the consideration received by a buyer (sic) following submission of the property to be sold to the marketplace” as stated in paragraph 21 of the Motion, as it unfairly simplifies the requirements of Texas law in establishing market value.

Spring Branch ISD and Houston do not have knowledge of the bid regarding or disposition of the office furniture from the Memorial City Location and are unable to admit or deny such matters.

Spring Branch ISD and Houston have no knowledge of the efforts made by the Debtors or Reorganized Debtors in selling or attempting to sell the Property, and are therefore unable to admit or deny that such efforts were sufficient to satisfy the requirements of TEX. PROP. TAX CODE SEC. 104(7)(A) that the Property was “...exposed for sale in the open market with a reasonable time for the seller to find a purchaser.”

Spring Branch ISD and Houston deny that the Property was sold for less than market value under Texas law.



Spring Branch ISD and Houston do not have knowledge of the information or authorizations that may have been provided to potential purchasers of the Property and are unable to admit or deny that it was sufficient to satisfy the requirements of TEX. PROP. TAX CODE SEC. 23.01(b).

Spring Branch ISD and Houston deny that the sale of the Property satisfied the requirements of TEX. PROP. TAX CODE SEC. 104(7)(C) that "...both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other." Surely the fact that the Reorganized Debtors were in full liquidation mode would have been known to the market.

Spring Branch ISD and Houston note that while the Debtors assert that the Property was sold for "substantially lower" than the value for which it was appraised by HCAD, they do not state what was sold, how much it was sold for, on what terms, or when.

27. Spring Branch ISD and Houston deny that the value placed on the Property by HCAD was significantly inflated as alleged in paragraph 23 of the Motion. Spring Branch ISD and Houston do not have personal knowledge of how long and when the Property was for sale on the open market, and are unable to admit or deny this assertion. Accordingly, the taxes assessed on the Memorial City Property should not be reduced.

Spring Branch ISD and Houston have no knowledge of the consideration received by the estates in connection with the sale of the Property. As stated above, Spring Branch ISD and Houston have attempted to discover the amount the Property was sold for, but have been unable to find or obtain this information.

Spring Branch ISD and Houston believe that the Property is properly and correctly valued under Texas law, and that the 2018 value established for the Property fairly allocates the local tax burden.

28. Spring Branch ISD and Houston do not have personal knowledge of the matters stated in paragraphs 24, 25, 26, and 27 of the Motion, and are unable to admit or deny any allegations of fact regarding the sale of the Eldridge Personal Property.<sup>8</sup>

29. Spring Branch ISD and Houston disagree with the reservation of rights set forth in paragraphs 28 and 29 of the Motion. With respect to the Reservation of Rights provision, Spring Branch ISD and Houston note that it is neither relevant nor material to the determination of tax on the Memorial City Property under the Motion, and fails to satisfy the requirements of 11 U.S.C. § 505(a)(2)(C) for the filing of a Motion prior to the expiration of the applicable period for contesting or redetermining an *ad valorem* tax under applicable nonbankruptcy law. The blanket reservation of rights “...to contest, at any time and on any ground whatsoever, any and all tax liabilities assessed by all other...state and local taxing authorities that are not the subject of this Motion” is inconsistent with the orderly administration of these estates and the efficient functioning of the taxing authorities generally.

30. Paragraphs 30, and 31 are, notice and no prior relief provisions, and not allegations of fact that Spring Branch ISD or Houston are required to admit or deny.

**The Memorial City Property was Properly Valued at Market Value as Required by Texas Law Based on Information Provided by the Debtors.**

31. The Memorial City Property was fairly and properly appraised at its market value for the 2018 tax year. The Debtor or Reorganized Debtor actively participated in the administrative

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<sup>8</sup> It appears that Cypress-Fairbanks Independent School District and Harris County are the only taxing entities that tax the Eldridge Personal Property.

appraisal process by filing a rendition of the Memorial City Property pursuant to TEX. PROP. TAX CODE SEC. 22.01 on April 9, 2018. The HCAD appraised the Memorial City Property for the value it was rendered.

32. Spring Branch ISD and Houston's 2018 tax claims are based on appraisals of the Debtors' property by the HCAD as of January 1, 2018.

33. TEX. PROP. TAX CODE SEC. 22.01 requires a property owner to render for taxation all tangible personal property that it owns on January 1 of each tax year. The Debtors did in fact render Memorial City Property for the 2018 tax year. The value placed on the Memorial City Property by the HCAD was consistent with the value rendered by the Debtors for the Memorial City Property.

34. The value rendered by the Debtors for the Memorial City Property and placed on it by the HCAD for the 2018 tax year was the basis upon which the Spring Branch ISD and Houston calculated the 2018 taxes.

35. The Debtors actively participated in the administrative process under the Texas Property Tax Code in establishing the valuations of their taxable property for the 2018 tax year.

36. The Plan Administrator now seeks redetermination in the Motion of the values that they rendered to the HCAD under TEX. PROP. TAX CODE SEC. 25.25(d) and 11 U.S.C. § 505, based on the apparent sale of the Memorial City Property by the Debtors or Reorganized Debtors for less than the value it was rendered and appraised for tax year 2018. However, he provides no details or evidence regarding the sale of the Memorial City Property, and Spring Branch ISD and Houston are unable to ascertain the date the Memorial City Property was sold, exactly what property was sold or otherwise disposed of, and the amount for which it was sold.

37. Spring Branch ISD and Houston object to the Motion in that it seeks a redetermination of the value of the Memorial City Property that is inconsistent with value information they provided by to the HCAD in the course of establishing the appraisals that form the basis of the 2018 taxes.

**Debtors are Liable for Penalties, Interest, and Attorney's Fees**

38. Spring Branch ISD and Houston are entitled to recover all penalties and interest that accrue on their post-petition 2018 taxes as provided under TEX. PROP. TAX CODE SEC. 33.01(a) and (c).

39. In the event the Plan Administrator is successful in his efforts to correct the value of the Memorial City Property under the Correction Motion, Spring Branch ISD and Houston are entitled to recover a late-correction penalty equal to 10 percent of the amount of taxes as calculated on the basis of the corrected appraised value under Tex. Prop. Tax Code Section 25.25(d). Spring Branch ISD and Houston assert that they are entitled to recover the 10 percent penalty in the event they obtain relief in this Court under the Motion.

40. Spring Branch ISD and Houston are entitled to and request their reasonable attorney's fees in this case as provided under 11 U.S.C. § 506(b) of the Bankruptcy Code and TEX. PROP. TAX CODE SEC. 33.48(a)(5).

**Request for Adequate Assurance of Payment**

41. The Plan Administrator has not paid any amounts towards the 2018 taxes due to Spring Branch ISD and Houston.

42. Article II.A *Administrative Claims* of the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates confirmed on April 5, 2018 provides in part that: "...Allowed Administrative Claim that arise in the ordinary course of the Debtors' businesses, including Claims held by Governmental Units for taxes incurred by the Debtors following the

Petition Date (in accordance with section 503(b)(1)(D) of the Bankruptcy Code), shall be paid in the ordinary course of business in accordance with applicable law...”

43. 28 U.S.C. 959 provides that:

(a) Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury.

(b) Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

44. Spring Branch ISD and Houston request that the Plan Administrator be required to establish a reserve fund to provide adequate assurance that their 2018 tax claims will be paid. The fund should be sufficient to pay the full amounts due to Spring Branch ISD and Houston together with all additional penalties, interest, and attorney’s fees that may accrue prior to payment under Texas Law, and should be disbursed only by agreement of the parties or by order of the Court.

45. It is further requested that the Plan Administrator be required to establish a similar reserve sufficient to pay all taxes, penalties, and interest assessed on property of the estate that was located at the 10222 Sheldon Road, Houston, Texas 77049 and 13460 Lockwood Road, Houston, Texas 77044 locations for the 2018 tax year.

#### **Reservation of Rights**

46. Spring Branch ISD and Houston expressly reserve the right to relief requested by or granted to other similarly situated ad valorem taxing entities under the Motion.

WHEREFORE, PREMISES CONSIDERED, Spring Branch Independent School District and the City of Houston request that the Court deny the relief requested in the Motion of Nader Tavakoli Acting Solely as Plan Administrator for Entry of an Order Determining 2018 Ad Valorem Tax Liabilities Pursuant to 11 U.S.C. § 505, enter an order requiring him to pay the 2018 taxes in full together with penalties, interest, and attorney's due under Texas law, and for such other and further relief, at law or in equity, as is just.

Respectfully submitted,

**PERDUE, BRANDON, FIELDER,  
COLLINS & MOTT, L.L.P.**

/s/Owen M. Sonik

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 2<sup>nd</sup> day of February, 2019, I sent a true and correct copy of the above and foregoing Amended Spring Branch Independent School District and the City of Houston's Response to Motion of Nader Tavakoli Acting Solely as Plan Administrator for Entry of an Order Determining 2018 Ad Valorem Tax Liabilities Pursuant to 11 U.S.C. § 505 to the following parties by the following means:

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**Any other parties eligible to receive notice through the Court's ECF e-notice**

/s/Owen M. Sonik

Owen M. Sonik