

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

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

**AMENDED MOTION OF NADER TAVAKOLI, ACTING SOLELY AS
PLAN ADMINISTRATOR, (I) FOR ENTRY OF AN ORDER
DETERMINING 2018 AD VALOREM TAX LIABILITIES PURSUANT TO
11 U.S.C. § 505; AND (II) OBJECTING TO THE TAXING
AUTHORITIES’ PROOFS OF CLAIM**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON MARCH 29, 2019, AT 10:15 A.M. PREVAILING CENTRAL TIME IN COURTROOM 404, 4th FLOOR, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK STREET, HOUSTON, TEXAS 77002. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE (21) DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.

Nader Tavakoli, solely in his capacity as the Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., *et al.* (the “Plan Administrator”)

¹ The Reorganized Debtors in these 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).

appointed under the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates, confirmed on April 5, 2018 (the “Plan”)², respectfully submits this amended motion (the “Amended Motion”) determining the amount of ad valorem taxes due to certain local taxing authorities for the tax year 2018 (collectively, the “2018 Taxes”), pursuant to section 505 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and sustaining the objections to all proofs of claim filed by the Taxing Authorities (defined below). In support of this Amended Motion, the Plan Administrator respectfully moves as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (B), and (O). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 502 and 505. Pursuant to the Confirmation Order, this Court retained jurisdiction to hear and determine matters concerning state, local and federal taxes under section 505 of the Bankruptcy Code. *See* Confirmation Order, Docket No. 784-1, Article XI, the Taxing Authorities received notice of the Plan and Confirmation Order and did not object to this Court’s retention of jurisdiction over this contested matter.

PRELIMINARY STATEMENT³

2. The valuations of the Personal Property appraised by HCAD far exceed the cash consideration received by the Reorganized Debtors for the sale of such property following an orderly marketing process. These overstated valuations result in a gross overpayment of ad

² Capitalized but undefined terms used herein shall have the meanings given to such terms in the Plan.

³ Capitalized but undefined terms used in this Preliminary Statement shall have the same meanings ascribed to them in this Amended Motion.

valorem taxes to the Taxing Authorities, thereby prejudicing the other creditors of the Debtors' estates, who would necessarily receive less recoveries as a result thereof. As set forth in the Confirmation Order, the Court should exercise its jurisdiction under section 505 of the Bankruptcy Code to determine the fair cash market value of the Personal Property to prevent the Taxing Authorities from securing a windfall at the expense of other creditors.

3. For the reasons set forth herein, the Plan Administrator objects to the Taxing Authorities' claims for 2018 ad valorem taxes. The Court should order these claims reduced in amounts consistent with the actual fair cash market valuations set forth herein.

BACKGROUND

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

5. In the ordinary course of business, the Debtors (and, after the Effective Date of the Plan, the "Reorganized Debtors") owned certain inventory, equipment and furniture stored at various locations owned or leased by the Debtors (and now the Reorganized Debtors) within the following taxing jurisdictions, including without limitation (collectively, the "Taxing Authorities"):

- a. Harris County, Texas ("Harris County");
- b. Spring Branch Independent School District ("Spring ISD");
- c. Cypress Fairbanks Independent School District ("Cy-Fair ISD"); and
- d. Sheldon Independent School District ("Sheldon ISD").

6. At all relevant times, Harris County Appraisal District ("HCAD") appraised the Debtors' personal property for *ad valorem* tax purposes for each of the Taxing Authorities. The Taxing Authorities levied and collected *ad valorem* taxes from the Debtors and the Reorganized

Debtors, as applicable, which tax amounts were based on the value appraised by HCAD for personal property located at 920 Memorial City Way, Suite 100, Houston, Texas 77024 (the “Memorial City Location”); 6401 North Eldridge Parkway, Houston, Texas 77041 (the “Eldridge Location”); 9518 East Mount Houston Road, Houston, Texas 77050 (the “East Mount Location”); and 10222 Sheldon Road, Houston, Texas 77049 (the “Sheldon Location”) (collectively, the “Locations”).

7. Before its contract was rejected, J. Joseph Consulting, Inc. (“J. Joseph”) historically provided business personal property tax consulting and protest services for the Debtors with respect to the Locations, among others, pursuant to that certain pre-petition Ad Valorem Tax Services Agreement, dated April 15, 2016 (the “Tax Services Agreement”).

8. On April 5, 2018, the Court entered its Order (I) Confirming the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates, and (II) Approving the Sale Transaction [Docket No. 784] (the “Confirmation Order”). Pursuant to the Plan and Confirmation Order, the Plan Administrator was charged with acting for the Debtors (and now the Reorganized Debtors) in the same fiduciary capacity as applicable to a board of directors and officers and appointed to, *inter alia*, resolve Disputed Claims, make all distributions pursuant to the Plan, and administer the estates in an efficacious manner consistent with the terms of the confirmed Plan.

9. Under the Plan and Confirmation Order, the Tax Services Agreement was rejected on the Effective Date,⁴ and any agency relationship between the Debtors and J. Joseph was

⁴ Under Article V of the Plan, “[o]n the Effective Date, . . . each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned . . . shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code,” subject to certain exceptions not applicable here. *See also* Confirmation Order, at ¶ 31. The Effective Date occurred on April 10, 2018. The Tax Services Agreement was never assumed or assumed and assigned and therefore was deemed automatically rejected on the Effective Date by operation of the Plan.

terminated. J. Joseph had actual notice of the Debtors' rejection of the Tax Services Agreement.⁵ Nevertheless, J. Joseph continued to submit renditions to and enter into settlement agreements with HCAD with respect to the 2018 Taxes without any notice to, or authorization from, the Plan Administrator or anyone at the Reorganized Debtors with proper authority. In fact, the Plan Administrator had no knowledge of J. Joseph's unauthorized tax protest activities until it received an invoice from J. Joseph for its unsanctioned services in late October 2018.⁶

10. Pursuant to the Confirmation Order, the Reorganized Debtors sold personal property located at the Memorial City Location (the "Memorial City Personal Property"), the Eldridge Location (the "Eldridge Personal Property"), the East Mount Location (the "East Mount Personal Property"); and the Sheldon Location (the "Sheldon Personal Property") (collectively, the "Personal Property").

11. On January 31, 2019, the Plan Administrator timely filed its original Motion for Entry of an Order Determining 2018 Ad Valorem Tax Liabilities Pursuant to 11 U.S.C. § 505 [Docket No. 1241] (the "Original 505 Motion") with this Court, *i.e.*, prior to any 2018 *ad valorem* taxes becoming delinquent on February 1, 2019. That same day, the Plan Administrator submitted Personal Property Correction Requests/Motions (collectively, the "Correction Motions") with HCAD as to the Memorial City, Eldridge and East Mount Locations.

12. On February 19, 2019, Cy-Fair ISD filed an amended proof of claim [Claim No. 454] (the "Cy-Fair ISD Amended POC"), which replaced its proof of claim [Claim No. 417] previously filed on March 28, 2018. In the Cy-Fair ISD Amended POC, Cy-Fair ISD asserts a

⁵ J. Joseph received the Notice of Chapter 11 Bankruptcy Case, the Plan and the Confirmation Order, among other filings in these chapter 11 cases, and filed a proof of claim [Claim No. 3] for services rendered pre-petition pursuant to the Tax Services Agreement.

⁶ The Plan Administrator also reserves and preserves all claims and causes of action it has or may have against J. Joseph in connection with their unauthorized actions and further reserves and preserves the right to pursue all rights and remedies at law or in equity that it has against J. Joseph.

secured claim in the amount of \$80,820.43, which amount is an estimate of the Reorganized Debtors' 2018 base taxes on the Eldridge Personal Property, plus interest and fees.

13. On February 20, 2019, Harris County filed an amended proof of claim [Claim No. 455] (the "Harris County Amended POC"), which replaced its proof of claim [Claim No. 416] previously filed on March 28, 2018. In the Harris County Amended POC, Harris County asserts a secured claim in the amount of \$221,134.09, which amount is an estimate of the Reorganized Debtors' 2018 base taxes on the Personal Property, plus interest and fees.⁷

14. The Plan Administrator submits this Amended Motion pursuant to the Court's direction at the status conference on the Original 505 Motion held on March 18, 2019. The Court invoked the adversary rules as to this contested matter. A hearing on the abstention issue is scheduled for March 29, 2019, at 10:15 a.m. prevailing Central Time, with a scheduling conference to follow thereafter.

BASIS FOR RELIEF REQUESTED

A. The Taxing Authorities Agree That the Court Should Add HCAD as a Necessary Party to this Contested Matter

15. As directed by the Court, the adversary rules govern this contested matter. Rule 21 of the Federal Rules of Civil Procedure, made applicable to this contested matter pursuant to Rules 7021 and 9014(c) of the Federal Rules of Bankruptcy Procedure, provides that "[o]n motion or on its own, the court may at any time, on just terms, add or drop a party." FED. R. CIV. P. 21; FED. R. BANKR. P. 7021.

16. As stated by Cy-Fair ISD and Harris County, HCAD "is a separately established governmental agency under the laws of the State of Texas that possesses the authority to assess

⁷ The total amount of the claim asserted in the Harris County Amended POC is \$237,805.72, which includes 2018 base taxes on personal property at other locations that are not the subject of this Amended Motion. The Plan Administrator, however, reserves all rights to contest the full amount of the Harris County Amended POC.

the value of real and personal property as well as grant any exemptions related to such property. HCAD is a separate and distinct governmental entity that is unrelated to Harris County.” Cy-Fair ISD and Harris County Response [Docket No. 1250] ¶ 4. Cy-Fair ISD and Harris County further assert that HCAD is “the party responsible for determining and defending values pursuant to state law.” *Id.* Similarly, Spring Branch ISD and the City of Houston have asserted that “[u]nder 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.’” Amended Spring Branch ISD and City of Houston Objection [Docket No. 1254], at ¶ 1 n.2.

17. Accordingly, the Taxing Authorities unanimously agree that HCAD is a necessary party to this contested matter. *See* Cy-Fair ISD and Harris County Response ¶ 23; Amended Spring Branch ISD and City of Houston Objection ¶ 3. By this Amended Motion, the Plan Administrator seeks to add HCAD as a party to this contested matter. Counsel for the various Taxing Authorities have informed counsel for the Plan Administrator that the Taxing Authorities support the addition of HCAD as a party to this contested matter.

B. Section 505 of the Bankruptcy Code Authorizes the Court to Determine the Reorganized Debtors’ Tax Liabilities

18. Section 505(a)(1) of the Bankruptcy Code specifically provides this Court with remedial power over tax liabilities and penalties, as follows:

Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

11 U.S.C. § 505(a)(1). The plain language of section 505(a)(1) provides this Court with the power to determine the legality of taxes and tax penalties. In fact, the Fifth Circuit definitively ruled that

section 505 grants a bankruptcy court “broad” jurisdiction to determine the legality of any tax liability of the debtor, limited only by the section’s express limitations and the bankruptcy court’s discretion to abstain. *See In re Luongo*, 259 F.3d 323, 328-29 (5th Cir. 2001).

19. In addition, a significant number of courts outside of the Fifth Circuit have ruled in support of a bankruptcy court’s authority to determine and remedy a debtor’s tax liability under section 505(a)(1). *See In re Venture Stores, Inc.*, 54 F. App’x 721, 723 (3d Cir. 2002) (“11 U.S.C. § 505(a) of the Bankruptcy Code grants broad jurisdiction to determine the amount or legality of a debtor’s tax liability.”); *In re Custom Distrib. Servs., Inc.*, 224 F.3d 235, 239-40 (3d Cir. 2000) (noting that the Third Circuit has “consistently interpreted § 505(a) as a jurisdictional statute that confers on the bankruptcy court authority to determine certain tax claims”); *In re D’Alessio*, 181 B.R. 756, 759 (Bankr. S.D.N.Y. 1995) (stating that “bankruptcy courts have broad authority to review any kind of tax attributable to the estate, both federal and state”).

20. Moreover, the legislative history of section 505 indicates that Congress intended bankruptcy courts to have jurisdiction to determine certain tax issues for the benefit of the estate. 124 CONG. REC. H. 11110 (daily ed. Sept. 28, 1978) (remarks of Rep. Edwards), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6436, 6490 (Section 505(a)(1) “[a]uthorizes the bankruptcy court to rule on the merits of any tax claim involving an unpaid tax, fine, or penalty relating to a tax . . . of the debtor or the estate”); 124 CONG. REC. 32414 (1978) (statement of Rep. Edwards), *reprinted in* 1978 U.S.C.C.A.N. 6436, 6492-93 (“The bankruptcy judge will have authority to determine which court will determine the merits of the tax claim both as to claims against the estate and claims against the debtor concerning his personal liability for nondischargeable taxes.”); 124 CONG. REC. 34014 (1978) (statement of Sen. DeConcini), *reprinted in* 1978 U.S.C.C.A.N. 6505, 6562. The legislative history also demonstrates that Congress drafted section 505 to provide a forum for the

swift determination of claims, including tax claims, so that those claims would not delay the administration of a bankruptcy estate. 124 CONG. REC. H11095; *see also* Memorandum Opinion, at 8 [Docket No. 13], *In re Pendergraft*, Case No. 16-03246 (Bankr. S.D. Tex. Mar. 22, 2017) (Isgur, J.) (noting that there is a “plethora of legislative history supporting bankruptcy courts’ jurisdiction over tax claims”).

1. The Statutory Limitations Set Forth in Section 505 of Bankruptcy Code Do Not Preclude this Court from Exercising Jurisdiction to Determine Tax Liabilities

21. There are three statutory limitations to section 505(a)(1)’s broad grant of authority to determine tax liabilities set forth in section 505(a)(2) of the Bankruptcy Code—none of which apply in these chapter 11 cases:

- **First**, section 505(a)(2)(A) of the Bankruptcy Code prevents the Court from adjudicating the amount or legality of taxes “if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title[.]” 11 U.S.C. § 505(a)(2)(A). This limitation is wholly inapplicable because the 2018 Taxes for the Personal Property have never been fully adjudicated.
- **Second**, section 505(a)(2)(B) of the Bankruptcy Code provides that where a trustee or debtor in possession seeks a tax refund, the debtor must first request the refund from the taxing authority and grant them up to 120 days to review the request. 11 U.S.C. § 505(a)(2)(B). The Plan Administrator is not seeking tax refunds herein, and therefore, this limitation does not apply.
- **Third**, section 505(a)(2)(C) prevents a bankruptcy court from determining “the amount or legality of any amount arising in connection with an *ad valorem* tax on . . . personal property of the estate, if the applicable period for contesting or redetermining that amount under applicable nonbankruptcy law has expired.” 11 U.S.C. § 505(a)(2)(C). In this instance, the Plan Administrator invokes section 25.25(d) of the Texas Property Tax Code, which provides, in relevant part, that: “[a]t any time prior to the date that taxes become delinquent, a property owner or the chief appraiser may file a motion with the appraisal review board to change the appraisal roll to correct an error that resulted in an incorrect appraised value of the owner’s property.” TEX. PROP. TAX CODE § 25.25(d). The 2018 Taxes on the Personal Property were not delinquent until February 1, 2019. *See* TEX. PROP. TAX. CODE 31.02(a). Therefore, because the Plan Administrator filed the Original 505 Motion prior to February 1, 2019, the limitation set forth in section 505(a)(2)(C)

is inapplicable. *See In re Breakwater Shores Partners, L.P.*, No. 10-61254, 2012 Bankr. LEXIS 1454 (E.D. Tex. Apr. 5, 2012) (holding that section 505(a)(2)(C) “is properly construed as requiring that a determination request must be prior to the expiration of the deadline established for review under state law”);⁸ *see also In re Read*, 692 F.3d 1185, 1191 (11th Cir. 2012) (finding that section 505(a)(2)(C) does not preclude bankruptcy court from determining debtor’s *ad valorem* tax liability when determination motion is filed before the applicable period to contest or seek redetermination of such taxes expires). Additionally, with respect to the East Mount and Sheldon Locations, any written agreement that J. Joseph entered into with HCAD with respect to the gross overvaluation of the East Mount and Sheldon Personal Property is null and void because J. Joseph did not have authority to act on behalf of the Reorganized Debtors. The Tax Services Agreement was rejected on April 10, 2018, and no subsequent agreement was entered into. Neither the Plan Administrator nor anyone with proper authority at the Reorganized Debtors authorized J. Joseph to act as their agent with HCAD. Because J. Joseph acted without proper authority, the preclusion under section 25.25(d)(2) of the Texas Property Tax Code⁹ is wholly inapplicable.

22. Accordingly, this Court is not statutorily precluded from determining the 2018 Taxes on the Personal Property, and this Court should exercise its jurisdiction to hear and determine such taxes under section 505 of the Bankruptcy Code because of the potential prejudice to the estates and creditors if it were to decline jurisdiction.

2. This Court Should Exercise Its Discretion and Determine the 2018 Taxes on the Personal Property

23. This Court should exercise its discretion and determine the 2018 Taxes on the Personal Property. The Fifth Circuit has recognized six (6) factors to be considered by a bankruptcy court in determining whether it should exercise its discretion to determine tax liabilities under section 505:

- i. the complexity of the tax issues to be decided;

⁸ In *Breakwater*, the court exercised jurisdiction under section 505(a)(1) to determine the debtor’s tax liability for tax years 2010 and 2011. It was undisputed that the debtor filed its determination motion with the Court prior to the time that any tax arising from tax years 2010 and 2011 became delinquent. As here, the debtor in *Breakwater* invoked section 25.25(d) of the Texas Property Tax Code to correct the purported valuation errors made by the taxing authority.

⁹ Section 25.25(d) provides that the appraisal roll “may not be changed under this subsection if . . . the appraised value of the property was established as a result of a written agreement between the property owner or the owner’s agent and the appraisal district.” TEX. PROP. TAX CODE § 25.25(d)(2).

- ii. the need to administer the bankruptcy case in an orderly and efficient manner;
- iii. the burden on the bankruptcy court's docket;
- iv. the length of time required for trial and decision;
- v. the asset and liability structure of the debtor; and
- vi. the potential to prejudice the parties.

In re Breakwater Shores Partners, L.P., 2012 Bankr. LEXIS 1454, at *16 n.9 (citing *In re Luongo*, 259 F.3d 323, 330 (5th Cir. 2001)).

24. These factors weigh in favor of the Court exercising jurisdiction over this contested matter pursuant to section 505 of the Bankruptcy Code. The Plan Administrator seeks the efficient and expeditious determination of the true fair cash market value of the Personal Property, which is readily and plainly evidenced by the consideration received for the Personal Property after robust pre- and post-confirmation marketing efforts.

25. This Amended Motion merely seeks a valuation determination based on the plain language of the Texas Constitution and applicable provisions of the Texas Property Tax Code, which prohibit the assessment of *ad valorem* taxes on personal property at a greater value than its fair cash market value. It is thus a straight-forward issue that is not overly complex and would not burden the Court's docket or require extended or extensive litigation. Indeed, this Court is routinely called upon to value real and personal property in many different contexts. *See, e.g.*, 11 U.S.C. §§ 362(d), 506(a), 1129 and 1325.

26. This Court provides the most judicious and knowledgeable forum to determine the fair cash market value of the Personal Property, as the Court has presided over these chapter 11 cases since December 2017, including the sale processes concerning the Personal Property as well as other personal property sold by the Debtors and the Reorganized Debtors, as the case may

be. As such, this Court has a good working knowledge of efforts undertaken by the Debtors and the Reorganized Debtors, as applicable, to market and sell the Personal Property. Moreover, pursuant to Article 11 of the confirmed Plan, the Court retained jurisdiction to “hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.”

27. A determination of the 2018 Taxes on the Personal Property under section 505 directly affects the administration of the Debtors’ estates because the Personal Property is property of the estates that was sold, or attempted to be sold, in furtherance of the Plan and to fund recoveries for creditors consistent therewith. Any amount that is saved by the determination of a lower tax liability would be distributed to the Debtors’ creditors in accordance with the Plan. *See In re Davidson*, No. 98-42080, 2002 Bankr. LEXIS 1984, at *15 (Bankr. N.D. Tex. Oct. 21, 2002) (“[Section] 505 determinations have been held appropriate where other creditors are benefited.”) (collecting cases). Moreover, Harris County and Cy-Fair ISD filed proofs of claim for 2018 Taxes on the Personal Property, thereby voluntarily subjecting themselves to the jurisdiction of this Court and invoking the administration of these chapter 11 cases through the claims reconciliation process. *See Memorandum Opinion*, at 8, 11 [Docket No. 13], *In re Pendergraft*, Case No. 16-03246 (Bankr. S.D. Tex. Mar. 22, 2017) (Isgur, J.) (exercising jurisdiction under section 505 to determine tax liability amount where IRS filed a proof of claim because the determination of such tax liability “directly affect[ed] the administration of [the] bankruptcy estate”).

28. Significantly, the prejudice to the other creditors of the Debtors’ estates if the Court abstains from deciding this Amended Motion outweighs the prejudice, if any, to HCAD or the Taxing Authorities (who, as previously stated, filed proofs of claim in these chapter 11 cases, thereby submitting to the jurisdiction of this Court to hear and determine their claims) by having

to litigate this matter in this Court. Failure to exercise discretion and determine the proper amount of the 2018 Taxes on the Personal Property would, to the detriment of the Debtors' estates and their creditors, result in a gross tax overpayment to the Taxing Authorities based on HCAD's overstated assessed market valuation of the Personal Property. Consequently, the Taxing Authorities would receive distributions on account of their claims in excess of the amounts to which they are statutorily entitled to under the Texas Constitution and the Texas Property Tax Code—all at the expense of other creditors, whose claims are statutorily subordinated to allowed administrative and secured tax claims. *Contrast In re Breakwater Shores Partners, L.P.*, 2012 Bankr. LEXIS 1454, at *16 (exercising jurisdiction to determine tax liability under section 505 because of “the potential for prejudice—not to the taxing authority but to the estate”), *with In re Johnston*, 484 B.R. 698, 719 (Bankr. S. Ohio 2012) (abstaining in no-asset chapter 7 case because creditors would receive no distributions from estate and thus no benefit to creditors from § 505 determination), *and Marcellus Wood & Trucking v. Mich. Emp't Sec. Comm'n (In re Marcellus Wood & Trucking)*, 158 B.R. 650, 654 (Bankr. W.D. Mich. 1993) (abstaining in chapter 11 case where confirmed plan did not provide for additional payments to any creditor if debtor was successful in its challenge to tax claims). *See In re Davidson*, 2002 Bankr. LEXIS 1984, at *12-13 (“Many court have held that abstention is appropriate where *only* the debtor will benefit from a § 505 determination.”) (emphasis added) (collecting cases); *see also In re Altegrity, Inc.*, 544 B.R. 772, 777-78 (Bankr. Del. 2016) (“[A] bankruptcy court should exercise its discretionary authority to abstain sparingly.”).

C. The Assessed Market Value for the Personal Property Should Be Reduced to Reflect Fair Cash Market Value of the Personal Property After Sufficient Exposure to Market

29. Under the Texas Constitution, “[n]o property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its fair cash market value.” TEX. CONST. art. VIII, §§ 2, 20. To ensure that personal property is properly taxed, the Texas Property Tax Code requires the taxing authority’s chief appraiser to determine the appraised value of all personal property prior to levying *ad valorem* taxes. Specifically, “all taxable property is appraised at its market value as of January 1 [of the applicable tax year].” TEX. PROP. TAX. CODE § 23.01(a).

30. The Texas Property Tax Code defines “market value” as follows:

“Market value” means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if:

(A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;

(B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

(C) 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.

TEX. PROP. TAX CODE § 1.04(7); *see also* *Key Energy Servs., LLC*, 428 S.W.3d 133, 147 (Tex. App.—Tyler 2014). Texas courts have interpreted market value as “the price which the property would bring when it is offered for sale” and “is bought by one who is under no necessity of buying it.” *Bailey Cty. Appraisal Dist. v. Smallwood*, 848 S.W.2d 822, 824 (Tex. App.—Amarillo 1993) (quoting *City of Austin v. Cannizzo*, 267 S.W.2d 808, 815 (Tex. 1954)); *see also* TEX. PROP. TAX CODE § 23.01(b) (requiring that, regardless of what appraisal technique is utilized, “each property shall be appraised based upon the individual characteristics that affect

the property's market value, and all available evidence that is specific to the value of the property shall be taken into account in determining the property's market value").

31. Based on the plain language of the Texas Property Tax Code and Texas caselaw interpreting it, HCAD's appraisals of the Personal Property are significantly inflated.

- *First*, as detailed below, the Personal Property has been for sale on the open market for more than sufficient time to locate a purchaser.
- *Second*, the Debtors and the Reorganized Debtors and their respective professionals provided all relevant information to potential purchasers about the Personal Property and discussed with potentially interested parties the intricacies of the Personal Property.
- *Third*, the Debtors and the Reorganized Debtors, on the one hand, and any willing purchaser, on the other hand, would seek to maximize their gains in any sale transaction consistent with any arms' length sale transaction and especially where, as here, the sale transaction would be subject to scrutiny by this Court and the Debtors' creditors and other parties in interest in connection with the approval of the sale by the Court.

1. The \$7,904,885.00 Valuation of the Memorial City Personal Property Assessed by HCAD Grossly Overstates the Property's Fair Cash Market Value

32. The quintessential determiner of fair cash market value is the consideration received by a buyer following submission of the property to be sold to the marketplace. Here, pursuant to the Plan and Confirmation Order, the Reorganized Debtors made the Memorial City Personal Property¹⁰ available for sale. On June 5, 2018, the Reorganized Debtors solicited bids from approximately seven potential purchasers¹¹ of the IT equipment and subsequently contacted an additional four prospective bidders.¹² Despite extensive marketing efforts, the Reorganized Debtors sold certain IT equipment for \$52,600.00 pursuant to that certain Bill of Sale and

¹⁰ The Memorial City Personal Property predominantly consisted of (i) IT equipment and (ii) office furniture.

¹¹ The potential buyers contacted include: Liquid Technology; Tech Trading Partners; Capitol Asset; TeleTraders; Network International; Heritage Global Energy & Construction; and Equify LLC.

¹² The additional potential purchasers contacted include: Ather Sheik; Wisetek; Magnolia Oil & Gas; and Insight.

Agreement, IT-1241178, dated June 22, 2018, with Covenco UK Ltd. (“Covenco”), as buyer. A de minimis amount of IT equipment remains with the Reorganized Debtors.

33. Further, the Reorganized Debtors realized no monetary value for the office furniture. The Reorganized Debtors reached out to five potential buyers, yet the Reorganized Debtors received only three bids for the office furniture and none of them would have resulted in a single dollar to the estates. In fact, one bid would have required the Reorganized Debtors to pay approximately \$46,425.00 for the removal of the office furniture. The other two bids simply saved the Reorganized Debtors from spending funds to remove the office furniture from the Memorial City Location. Those bidders offered to haul the office furniture free of charge, however, they would not pay any consideration for the actual assets hauled away due to the oversaturation of used office furniture in the market. Based on discussions with multiple companies in the used office furniture market, the Reorganized Debtors determined that the office furniture had no value and ultimately abandoned the office furniture at the Memorial City Location.

34. For the reasons set forth herein, the \$7,904,885.00 valuation of the Memorial City Personal Property assessed by HCAD for tax year 2018 grossly overstates the consideration received from the sale of such property after submission to the marketplace for a sufficient period to locate a purchaser. Accordingly, the Plan Administrator requests that the Court determine that the actual fair cash market value of the Memorial City Personal Property is significantly lower than the amount assessed by HCAD for tax year 2018. Thus, using the actual fair cash market valuation of the Memorial City Personal Property (based on the cash consideration received in connection with the sale of the Memorial City Personal Property on the open market) and the applicable tax rates, the Reorganized Debtors’ 2018 tax liability for the Memorial City Personal Property would be significantly lower than the 2018 tax invoice, as set forth in more detail on Exhibit B.

2. The \$5,245,355.00 Valuation of the Eldridge Personal Property Assessed by HCAD Grossly Overstates the Property's Fair Cash Market Value

35. The best indicator of market value is the fair cash value received by the estates after submitting the Eldridge Personal Property to the marketplace. The Debtors sold their North Platte assets to TOTAL E&P USA, Inc. and Statoil Gulf of Mexico, LLC (collectively, the "North Platte Buyers") pursuant to that certain Asset Purchase Agreement, dated March 12, 2018 (the "North Platte APA"), which sale was approved by this Court on April 5, 2018. Pursuant to the North Platte APA, the North Platte Buyers acquired certain Eldridge Personal Property. Thereafter, from May through and including July 2018, the Reorganized Debtors solicited bids from an oil and gas industry group comprised of 38 supply chain companies¹³ for certain remaining Eldridge Personal Property, among other inventory. The Eldridge Personal Property consists of unique pieces of inventory used in oil and gas operations. The Plan Administrator ultimately sold the remaining Eldridge Personal Property, except for two 20K well head systems (the "Well Heads"), for \$363,900.00 pursuant to that certain Bill of Sale and Agreement, OPS-1241348, dated July 13, 2018, with Enven, as buyer (the "Enven Bill of Sale"). To date, the Well Heads remain unsold.

36. The \$5,245,355.00 valuation of the Eldridge Personal Property assessed by HCAD grossly overstates the actual amount received for such property after its submission to the marketplace. Accordingly, the Plan Administrator requests that the Court determine that the fair cash market value of the Eldridge Personal Property is significantly lower than the \$5,245,355.00

¹³ The potential buyers contacted include: 51 Oil; Oil Country Tubular Limited; Assi Oil Gas and Energy Services; Petro-Amigos Supply, Inc.; Pipe Market; Petroleum Pipe Middle East; Salvex, Inc.; Sooner Pipe, LLC ("Sooner Pipe"); Vala-Cerc Company, Inc. ("Vala-Cerc"); Heritage Global Energy; Network International; Sumitomo Corporation of Americas; Trading Heritage International, LLC ("Trading Heritage"); Petroleum Pipe Americas; Eni S.p.A.; Enven Energy Corporation ("Enven"); the North Platte Buyers; Cabot Oil & Gas; BHP; SM-Energy Company; Repsol S.A.; Apache Corporation; Linn Energy, Inc.; Bechtel Corporation; Murphy Oil Corporation; Kosmos Energy; Encana Corporation; M3 Midstream, LLC; Noble Energy, Inc.; ConocoPhillips; Exxon Mobil Corporation; Petróleo Brasileiro S.A. — Petrobras; Camino Resources; Sequitur Energy Resources; Hess Corporation; Newfield Exploration Company; and Fieldwood Energy LLC.

valuation assessed by HCAD for tax year 2018. Thus, using the actual fair cash market valuation of the Eldridge Personal Property (based on the cash consideration received in connection with the sale of such property on the open market) and the applicable tax rates, the Reorganized Debtors' 2018 tax liability for the Eldridge Personal Property would be substantially lower than the 2018 tax invoice, as set forth in more detail in Exhibit B.

3. The \$5,565,975.00 Valuation of the East Mount Personal Property Assessed by HCAD Grossly Overstates the Property's Fair Cash Market Value

37. The consideration received after submission to the marketplace best exemplifies the East Mount Personal Property's fair cash market value. From May through and including July 2018, the Reorganized Debtors solicited bids from an oil and gas industry group comprised of 38 supply chain companies¹⁴ for the East Mount Personal Property, among other inventory. As with the Eldridge Personal Property, these potentially interested parties formed the most likely universe of potential buyers of the East Mount Personal Property, which consists of a range of oilfield equipment. Between July 13 and 31, 2018, the Plan Administrator sold the East Mount Personal Property to four separate buyers for an aggregate \$393,826.00, which is significantly less than the grossly overstated value allegedly agreed to by J. Joseph on or about August 17, 2018, whose agency relationship with the Reorganized Debtors had already terminated on April 10, 2018, pursuant to this Court's order. J. Joseph did not have proper authority to enter into any settlement agreement with HCAD on behalf of the Reorganized Debtors.

38. For the reasons set forth herein, the valuation of the East Mount Personal Property for tax year 2018 is vastly inflated when compared to the actual amount received for such property after its submission to the marketplace. Accordingly, the Plan Administrator requests that the Court

¹⁴ These 38 potential purchasers are the same potentially interested parties that the Reorganized Debtors contacted with respect to the sale of the Eldridge Personal Property.

determine that the actual fair cash market value of the East Mount Personal Property for tax year 2018 is significantly lower than the valuation in the void settlement agreement entered into by and between J. Joseph and HCAD. Thus, using the actual fair cash market valuation of the East Mount Personal Property (based on the cash consideration received in connection with the sale of the East Mount Personal Property on the open market) and the applicable tax rates, the Reorganized Debtors' 2018 tax liability for the East Mount Personal property would be significantly lower than the 2018 tax invoice levied by Harris County, as set forth in more detail in Exhibit B.

4. The \$2,481,910.00 Valuation of the Sheldon Personal Property Assessed by HCAD Grossly Overstates the Property's Fair Cash Market Value

39. The amount received for personal property following submission to the marketplace most accurately represents its fair cash market value. From May through and including July 2018, the Reorganized Debtors solicited bids from an oil and gas industry group comprised of 38 supply chain companies¹⁵ for the Sheldon Personal Property, among other inventory. As with the Eldridge and East Mount Personal Property, these potentially interested parties formed the most likely universe of potential buyers of the Sheldon Personal Property, which consists of a range of oilfield equipment. Between July 13 and 31, 2018, the Plan Administrator sold the Sheldon Personal Property to three separate buyers for an aggregate \$393,826.00, which is significantly less than the grossly overstated value allegedly agreed to by J. Joseph on or about August 17, 2018, whose agency relationship with the Reorganized Debtors had already terminated on April 10, 2018, pursuant to this Court's order. J. Joseph did not have proper authority to enter into any settlement agreement with HCAD on behalf of the Reorganized Debtors.

¹⁵ These 38 potential purchasers are the same potentially interested parties that the Reorganized Debtors contacted with respect to the sale of the Eldridge and East Mount Personal Property.

40. For the reasons set forth herein, the valuation of the Sheldon Personal Property for tax year 2018 is vastly inflated when compared to the actual amount received for such property after its submission to the marketplace. Accordingly, the Plan Administrator requests that the Court determine that the actual fair cash market value of the Sheldon Personal Property for tax year 2018 is significantly lower than the valuation in the void settlement agreement entered into by and between J. Joseph and HCAD. Thus, using the actual fair cash market valuation of the Sheldon Personal Property (based on the cash consideration received in connection with the sale of the Sheldon Personal Property on the open market) and the applicable tax rates, the Reorganized Debtors' 2018 tax liability for the Sheldon Personal property would be significantly lower than the 2018 tax invoice levied by Harris County, as set forth in more detail in Exhibit B.

D. Objection to the Proofs of Claim Filed by the Taxing Authorities

41. For the reasons set forth herein, the Plan Administrator objects to all claims, whether asserted or unasserted, of the Taxing Authorities for 2018 ad valorem taxes, including without limitation, the Harris County Amended POC and the Cy-Fair Amended POC.¹⁶ The 2018 Taxes are significantly overstated because of the improper valuation of the Personal Property, and the amount of any proof of claim filed by the Taxing Authorities should be adjusted to reflect the actual fair cash market value of the Personal Property. Further, the Plan Administrator reserves all rights to contest all claims, whether asserted or unasserted, of the Taxing Authorities, in whole or in part, at any time and on any other basis whatsoever.

RESERVATION OF RIGHTS

42. The Plan Administrator expressly reserves and preserves all rights to supplement, modify or amend this Amended Motion at any time and for any reason. The Plan Administrator

¹⁶ Spring Branch ISD did not file a proof of claim in these chapter 11 cases.

also expressly reserves and preserves all rights to make any additional arguments at or prior to any hearings on the Amended Motion.

NOTICE

43. The Plan Administrator will provide notice of this Amended Motion to: (a) Office of the United States Trustee for the Southern District of Texas; (b) HCAD; (c) Harris County; (d) Spring Branch ISD; (e) Cy-Fair ISD; (f) Sheldon ISD; and (g) any party that has requested post-Effective Date notice pursuant to Bankruptcy Rule 2002. The Plan Administrator submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, Cobalt respectfully requests that the Court enter an order substantially in the form attached hereto (i) granting the Amended Motion; (ii) determining the 2018 Taxes for the Personal Property; (iii) directing HCAD to correct the personal property tax rolls to reflect the actual fair cash market value of the Personal Property; (iv) reducing the Harris County Amended POC and the Cy-Fair ISD Amended POC in amounts to reflect the tax determinations set by this Court with respect to the Locations; and (v) granting such other and further relief as is just and equitable.

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GREENBERG TRAURIG, LLP

/s/ Shari L. Heyen

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*Counsel for Nader Tavakoli, solely in his
capacity as Lead Member and Chairman of
the Plan Administrator Committee of Cobalt
International Energy, Inc., et al.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Amended Motion has been served upon the parties eligible to receive notice through the Court's ECF facilities by electronic mail on March 26, 2019.

/s/ Shari L. Heyen

Shari L. Heyen

EXHIBIT A

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

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

**DECLARATION OF RICHARD ANTHONY SMITH IN SUPPORT OF
AMENDED MOTION OF NADER TAVAKOLI, ACTING SOLELY AS PLAN
ADMINISTRATOR, (I) FOR ENTRY OF AN ORDER DETERMINING 2018
AD VALOREM TAX LIABILITIES PURSUANT TO 11 U.S.C. § 505; AND
(II) OBJECTING TO THE TAXING AUTHORITIES’ PROOFS OF CLAIM**

I, Richard Anthony Smith, hereby declare under penalty of perjury:

1. Under the Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates, confirmed on April 5, 2018 (the “Plan”), Nader Tavakoli was appointed as the Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., *et al.* (the “Plan Administrator”). The Plan Administrator has been utilizing certain employees of the Reorganized Debtors to assist him in reconciling and, if necessary, objecting to claims filed against the Debtors, consistent with the duties assigned to the Plan Administrator under the confirmed Plan. I am the current Chief Operating Officer of Cobalt International Energy, L.P., and I have assisted the Plan Administrator in this capacity.

2. I am generally familiar with the Debtors’ operations, sale transactions, marketing efforts, and business affairs that reflect, among other things, the Debtors’ liabilities and the amount

¹ The Reorganized Debtors in these 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).

thereof owed to their creditors as of the Petition Date. I have read the Amended Motion of Nader Tavakoli, Acting Solely as Plan Administrator, (I) For Entry of an Order Determining 2018 Ad Valorem Tax Liabilities Pursuant to 11 U.S.C. § 505; and (II) Objecting to the Taxing Authorities' Proofs of Claim (the "Amended Motion") filed contemporaneously herewith.²

3. To the best of my knowledge, information and belief, the assertions made in the Amended Motion are accurate. For the reasons set forth in the Amended Motion, the Reorganized Debtors have determined that the 2018 Taxes are grossly inflated because of the significant overvaluation of the Personal Property, and the amount of any claim for 2018 ad valorem taxes by the Taxing Authorities should be adjusted to reflect the actual fair cash market value of the Personal Property. I believe if the Taxing Authorities' claims are not adjusted in such manner, the Taxing Authorities would receive an unwarranted recovery to the detriment of other creditors.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in the foregoing declaration are true and correct to the best of my knowledge, information and belief.

Dated: March 26, 2019

/s/ Richard Anthony Smith
Richard Anthony Smith
Chief Operating Officer
Cobalt International Energy, L.P.

² Capitalized but undefined terms herein shall have the same meaning ascribed to them in the Amended Motion.

EXHIBIT B

Property	Assessed Value	Fair Cash Market Value (based on actual market sale)	Assets Sold - Purchase Price	Date of Asset Sale	Buyer
Eldridge Personal Property	\$ 5,245,355	\$ 2,213,900	\$ 363,900	07/13/18	Enven
			\$ 350,000 ¹	01/01/18	North Platte Buyers
			\$ 1,500,000	N/A	Unsold
			\$ 2,213,900		
East Mount Personal Property	\$ 5,565,975	\$ 2,833,846	\$ 689,641	07/13/18	Vala-Cerc
			\$ 1,662,854	07/13/18	Enven
			\$ 474,740	07/13/18	Sooner
			\$ 6,611	07/31/18	Trading Heritage
			\$ 2,833,846		
Memorial City Personal Property	\$ 7,904,885	\$ 60,600	\$ 52,600	06/22/18	Convenco
			\$ 8,000	N/A	Unsold
			\$ 60,600		
Sheldon Personal Property	\$ 2,481,910	\$ 393,825	\$ 189,912	07/13/18	Vala-Cerc
			\$ 59,253	07/23/18	Petro-Amigos
			\$ 144,660	07/31/18	Trading Heritage
			\$ 393,825		

¹ The North Platte Buyers acquired certain Eldridge Personal Property with an estimated value of \$350,000. This sale was part of a larger transaction.

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

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

**ORDER GRANTING AMENDED MOTION OF NADER TAVAKOLI,
ACTING SOLELY AS PLAN ADMINISTRATOR, (I) FOR ENTRY OF AN
ORDER DETERMINING AD VALOREM TAX LIABILITIES PURSUANT
TO 11 U.S.C. § 505; AND (II) OBJECTING TO THE TAXING
AUTHORITIES’ PROOFS OF CLAIM**

Upon consideration of the Amended Motion of Nader Tavakoli, Acting Solely as Plan Administrator, for Entry of an Order Determining Ad Valorem Tax Liabilities Pursuant to 11 U.S.C. § 505 (the “Amended Motion”);² and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Amended Motion having been given; and that no other or further notice is required under the circumstances; and after due deliberation and it appearing that sufficient cause exists for granting the requested relief; and it appearing that the relief requested under the Amended Motion is in the best interests of the Debtors’ estates and creditors:

¹ The Reorganized Debtors in these 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).

² Capitalized but undefined terms shall have the meaning ascribed to them in the Amended Motion.

IT IS HEREBY ORDERED THAT:

1. The Amended Motion is GRANTED as set forth herein.
2. The fair cash market value of the Memorial City Personal Property for the 2018 tax year is hereby set at \$_____. The fair cash market value of the Eldridge Personal Property for the 2018 tax year is hereby set at \$_____. The fair cash market value of the East Mount Personal Property for the 2018 tax year is hereby set at \$_____. The fair cash market value of the Sheldon Personal Property for the 2018 tax year is hereby set at \$_____.
3. The Reorganized Debtors' liability for the 2018 Taxes on the Memorial City Personal Property is \$_____. The Reorganized Debtors' liability for the 2018 Taxes on the Eldridge Personal Property is \$_____. The Reorganized Debtors' liability for the 2018 Taxes on the East Mount Personal Property is \$_____. The Reorganized Debtors' liability for the 2018 Taxes on the Sheldon Personal Property is \$_____.
4. The Harris County Amended POC is hereby reduced in amount to \$_____ consistent with this Order and the tax determinations set forth herein.
5. The Cy-Fair ISD Amended POC is hereby reduced in amount to \$_____ consistent with this Order and the tax determinations set forth herein.
6. This Order is effective and enforceable immediately upon entry hereof.
7. The Plan Administrator and the Claims and Noticing Agent are authorized to take all steps necessary to effectuate this Order.
8. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to this Order.

HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE