

ORAL ARGUMENT – 12/01/04
03-1200
MATAGORDA CAD V. COASTAL LIQUIDS

LOW: This property tax case involves the construction of various statutes found in the Texas Property Tax Code. From the appraisal district's perspective, it is difficult to conceive of a case in which the Code Construction Act ____ to be more applicable. In fact the code construction act is explicitly made applicable to the property tax code in §1.03 of that code.

The appraisal district should prevail in this case because the descriptive listing of separate interest in real property should not control whether those separate interests are taxable or not. The court should render judgment that the subject property in this suit, the salt dome storage caverns, are real property that is taxable as a matter of law.

The issue in this property tax case is whether again a descriptive listing of an interest in real property can destroy the taxable nature of the property?

One of the questions in the case is whether it is right to correct an alleged multiple appraisal by simply deleting one of the accounts, which is clearly separate from the other property, which is subject to the multiple appraisal. The listing and the description of property cannot and should not under Texas law serve as a basis for resolving taxation without a showing of the same property. The same property, the same interest was appraised and taxed more than once.

In this case, two portions of the property were simply listed in separate accounts. They are not the same property. There was never any multiple appraisal. There is nothing in this record that suggests that the underground salt dome storage caverns were subjected to a tax, and the surface land was subjected to the same tax.

It's clear from this record that the taxation of these interests were separate. At most if the appraisal district did anything wrong in this case, they misdescribed taxable property. I don't think they did that. In this case, I think it's important to point out that the description of the property, which was underground storage caverns, enhancement to the land, is the correct way to describe it. It gives the property owner total information about what is being taxed. If we had just thrown all these matters together in a single category of land, I think we would be in clear violation of §25.03 of the tax code, which provides that property will be listed with sufficient certainty to describe it. And that's what we did in this case.

The CA's opinion, the relevant point of error which is...

HECHT: I'm not sure I followed that last part. You don't think you can characterize both as land?

LOW: I think you could. There are two things to be accomplished by the description of the property. First, is to let the property owner know what it is we're taxing for appraising in this case. The second, is to let the appraisal district know in-house why there is a different value on this property. One of the things the appraisal district is required to do is keep track of what it's doing. And if you have land accounts that are supposedly equal as the constitution requires, and you've got 100 acres of land at \$1 million, and 100 acres at \$10 million, you want to know why is this \$10 million and not \$1 million?

I think a perfectly logical description would have been land-surface, land-storage caverns. And that would have told the district and the property owner exactly what was being appraised for taxation.

HECHT: I thought I heard you say that you couldn't call them both lands. But you could call them both land and something?

LOW: I think you could. But I think we owe it both to the in-house record-keeping and to the property owner to let them know what it is we're taxing.

The relevant point of error which was sustained by the CA was in CAD's listing and appraisal of the natural underground storage caverns separately from the land constitute multiple appraisal of the land? There has been some confusion both in this case and in the Harris County CAD v. Coastal, which came before this court sometime ago, about the difference between salt domes and storage caverns. Salt domes are naturally incurring in the land. They are part of the land. I'm not aware of any appraisal district, which if the ownership is the same, would separate those two interests. But when the storage caverns are leased out, in this case it creates a separate interest in the land, and that separate interest is separately taxable.

The CA had at least three conclusions that I would argue to the court are not supported by the record. The first was that the property was listed under the category of Other and Improvement. I don't think it's critical to the case, but it wasn't. The property was actually listed as enhancement to the land (storage caverns). And that's clear from the record. It's in there repeatedly. Copies of the appraisal roll are in the record.

One critical mistake by the CA's opinion is it stated that one of the caverns was leased from Mr. Peterson. In fact it wasn't. Mr. Peterson doesn't own a storage cavern. Mr. Peterson owns one of the surface areas above - there are two salt dome storage caverns in this case. Mr. Peterson owns the land above one of them. The third mistake is that the definition used by the Houston court in the Harris County CAD v. Coastal convinced the court, they went through some discussion about whether - we brought on motion for rehearing, whether the salt domes constituted part of the mistake in saying that the salt domes were what was at stake here. And the Houston CA clearly made that error. They came back and the CA said we're not necessarily persuaded that salt dome storage caverns are necessarily natural. I guess it's possible. I'm certainly no engineer. I guess it's possible you could have a salt dome storage cavern that wasn't natural. But it would be

very unusual.

BRISTER: Carlsbad Caverns. You walk down into that. Would that be a improvement?

LOW: No.

BRISTER: That's because it's natural.

LOW: Right. I think that's a good point. We're arguing that the action of the property owner in - as I understand it. The way this works is the drill goes in, and the casing goes in, and then the tube is put in, which is more flexible than the drill; out comes the casing and this flexible tube can control how much you can take out, how much you can leach out. And that is why if you note in the agreement between Coastal and Texas Brine, one of the things they did was negotiate how much space Coastal was going to need.

MEDINA: What if that natural cavern was enhanced so that it gives the public an opportunity to go view that. And the owner of that property is charging a fee. Wouldn't that be taxable?

LOW: I believe it would. I would want to know the nature of the enhancement and was admission charged. Quite frequently most of those are owned by the government.

MEDINA: What if there is a natural occurring salt dome in an area of Texas where the owner of that property is storing anything and charging a fee. Does that enhance the property by the fact that he is receiving a benefit?

LOW: Let me make it very clear. That would be a salt dome storage cavern, not a salt dome. A salt dome is typically not taxed unless it's in use. One of the things again that I think is important to the case is the fact that we have split ownership on one of these caverns. There are two caverns involved in this case. I believe they are called Hilco 1 and the Hudson 3. The Hilco 1 is owned by Texas Brine, which also owns the storage cavern beneath it, which leases some of the storage space to Coastal. The other storage cavern is also owned by Texas Brine, but the surface acreage is owned by Lawrence Peterson who is not a party to this lawsuit.

If the CA's holding, as I submit to the court they are, everything has to be called land. The value of these extremely valuable salt dome storage caverns are going to be attributable to the landowner. They have to be according to the CA, otherwise it's multiple appraisal. And now we have the incredibly unfair result and it just happens to be Mr. Peterson in this case. I'm confident that there are other situations throughout Texas where the surface and the subterranean interests are in separate hands. Now the tax bill supposedly is going to have to go to Mr. Peterson.

HECHT: Why is that true under §25.04? Can't you send different tax bills of the land to different people?

LOW: We would be accused of multiple appraisals.

HECHT: I don't know if you are going to get accused or not. I'm just wondering whether under the statute when different persons own land and improvements in separate estates or interests, each separately owned estate or interest shall be listed separately in the name of the owner.

LOW: As I understand the CA, these aren't separate interests. They can only be land. I think you are right on target. That's how we should be doing it. That's how we are doing it. But if there is only one account and it can only be land, then we can only send one appraisal notice and one tax bill.

WAINWRIGHT: If there is realty that's owned by one person and a building on the realty that's owned by a different person how do you bill that?

LOW: Separate accounts.

WAINWRIGHT: What would the description say?

LOW: Improvement probably. It depends on the type of structure, but it would be improvement, a value to X property owner. The appraisal districts are heavily computerized so they would have codes showing the land on it. And again, that comes up all the time.

These storage caverns, Mr. Bolton the appraiser for Coastal testified that the ir life span is 45 to 50 years, and there are approximately 500 of these in Texas. If the opinion of the CA is correct that this a multiple appraisal, it requires that a property owner can sue - go back 5 years for all the taxes that have been paid. And we submit that that is going to be a significant blow to all the taxing units that are affected by this case. These storage caverns have been on the roll for decades. The very least they've been on from the testimony of Sam Harris for our side that they've been on since the _____ property tax code, which became effective in 1982.

BRISTER: They presented what they purport to be undisputed testimony that Texas Brine was not contesting anything about these two storage facilities.

LOW: That's absolutely incorrect.

BRISTER: What evidence in the record?

LOW: Texas Brine filed a notice of protest every year. They are protecting their own interests as sound businessmen will. They came up with this theory that that was some kind of a global protest. They protested everything but as soon as they were satisfied - the owner was satisfied that the valuation of the subject property, then Coastal came in and was dissatisfied with the valuation of the subject property.

BRISTER: When you say the subject property, you are not talking about just these two facilities?

LOW: For the purpose of this - Texas Brine filed on \$13 million worth of storage caverns. These are about...

BRISTER: How many is that?

LOW: I believe the testimony is 14 from Mr. Sneed, who was their expert.

BRISTER: So it included a lot more than just these two.

LOW: That's correct.

BRISTER: And how do we know that it included these two?

LOW: The notice of protest is for the - the account numbers which are in the record include the account numbers which are in this lawsuit. And 12 others. I don't know that there are 14 separate account numbers. I can't remember for sure.

WAINWRIGHT: In J. Medina's example about a naturally occurring salt dome under your property, and that's used for storage and a fee is charged. What if it's used for storage and no fee is charged. Is it still taxable? Is the key whether the property has been improved, or is the key whether it's been improved such that there's additional value or revenue coming in?

LOW: Improved. I will submit to you again it's not a salt dome. If it were improved to where it could hold something, even if you weren't charging for it, now it gets value. And the appraisal district was in charge of appraising that property at market value and putting it on the tax rolls.

WAINWRIGHT: If it were a naturally occurring salt dome under the property, no one knew about it for years, then it was discovered would it also increase the taxation?

LOW: The AG use exemption is critical to this sort of analysis. The surface land - this stuff is always going to be in rural areas. The value of the surface land is not going to change. The market value of that property can be \$10 million per acre, but the valuation on the open space never changes. It could be \$50 an acre.

If there is a salt dome underneath and somebody finds out it's down there, the market value of the property could quadruple but as long as they are still qualifying for AG use, the primary use of that land is still going to be agricultural. There will be no change to the surface value. So the taxes will not change even when the market value changes dramatically.

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RESPONDENT

PORTER: Coastal is asking this court to continue to require the strict adherence to the real property categories of Tax Code §104.2, and not allow the appraisal districts to create new categories of real property.

This is important for three reasons. First...

O'NEILL: Is there a difference between multiple appraisal and double taxation or is it the same thing?

PORTER: It's one in the same.

O'NEILL: How was what the county did here, how did that result in a double taxation?

PORTER: It resulted in multiple appraisal, which then...

O'NEILL: What you've said is the same thing as double taxation. So how did it result in a double taxation here?

PORTER: The owner of the surface was taxed on the property, Mr. Peterson. The owner of Texas Brine was taxed on everything else, or it could include part of the surface. That's the problem with a multiple appraisal. And why the categories themselves have to be enforced because you don't know where the appraisal relating to the land stops, the surface land stops, and the appraisal relating to the subsurface starts.

MEDINA: How is that different if the improvement is above the ground and you have a building that's owned by a corporation and the land is owned by somebody else? How is that different from improvements below the ground?

PORTER: Improvement above the ground, a building, is indeed an improvement under §104.2 of the Tax Code. And it's value would be listed on the appraisal roll separately from the land. The improvement below the ground, if it were indeed an improvement, that would then be listed as improvements. So you would have an appraisal on the roll for land, and appraisal on the roll for improvement.

BRISTER: And is that what was done here?

PORTER: No. That's not what was done here. In fact the appraisal district has specifically stayed away from calling this an improvement and calling this a mineral, and calling this land...

BRISTER: Well they are calling it an improvement now.

PORTER: They are not calling it improvement. They may have used the word improvement this morning, but in his brief he specifically has not called it an improvement. He says that they should be entitled to describe it descriptively as an enhancement to land storage cavern. And they do that in order to avoid direct conflict with this court's opinion in Gifford Hill and also with the Coastal v. Harris CAD, which found these caverns not to be improvement.

O'NEILL: I'm a little confused on the status of the case. They reversed on other grounds.

PORTER: They reversed on jurisdictional grounds.

O'NEILL: Do we need to overrule that case or if there is no capacity is it just advisory and not any - we aren't bound by it anyway. It seems to me like it would be more advisory.

PORTER: I think you would have to overrule that. I think you would have to overrule Gifford Hill perhaps more important and more important to your question in order to find that these storage caverns are something other than land.

I was in the middle of stating three points why I think it's important that this court strictly adhere to those categories of real property under §104. And the first is, because it avoids multiple appraisal. It avoids this very question of which land is included in this category, which land is included in that category. It's a hilltop view. Is that something that's listed as land, or is that something that we go down and describe descriptively as an attribute to the land, and value that separately.

BRISTER: So under that theory. If they assess a skyscraper as skyscraper rather than improvement, that's a multiple appraisal?

PORTER: If they described it -

BRISTER: No. That's real clear. If they said the building - instead of saying improvement they said house. Your theory is that's a multiple appraisal because they didn't use the word improvement? Nobody is confused about what house is. It's your house. But you say you can't do it. Multiple appraisal.

PORTER: No. I am not saying that. If there are two buildings on the property, they list one as improvement, they list one as house. And there are actually two houses on that property. That raises the question of whether there's a multiple appraisal. What's included in the improvement value? what's included in the house value? And that's what's to be avoided by the strict categorization of the properties.

BRISTER: But my hypothetical had one building on the property. And that building was

listed, not as improvement, but as a house. No problem there right?

PORTER: And there's nothing listed as improvement on the appraisal?

BRISTER: There is land and one for house. No problem there.

PORTER: I think the taxpayer has a very difficult time disputing that appraisal as a multiple appraisal. Yes.

HECHT: It seems two arguments could be made here, and I'm not clear whether both are or one of them. You could take the position that because the appraisal district didn't follow the statutory categorization, therefore, the appraisal is flawed. Or, in addition, you could take the position it doesn't make any difference how you categorize it. You can't tax this salt dome storage cavern separately from the surface of the land. Are you just making the first argument or are you also making the second argument? In other words, could the appraiser do this right in your view?

PORTER: Yes they could.

HECHT: And how would they do that?

PORTER: They include the value and the land value.

HECHT: They include the value of the storage cavern in the land value but petitioner says they can't do that because of open space _____.

PORTER: That was the same argument that faced this court in the Gifford Hill case. In that case the situation was, there was an area of Wise County, part of which was a actual limestone quarry, part of which was where the mining company, Gifford Hill, had bought the rights to limestone, or actually bought property in fee outside of the quarry. With respect to that property that was outside the quarry, the Wise CAD attempted to put it on the appraisal roll as rock reserve. They had an appraisal for land, they had an appraisal for rock reserve. And they did that in order to attempt to avoid the agricultural use reduction in value would occur.

But what this court found in that case is that you cannot create a new category of rock reserve and describe it descriptively on the appraisal roll.

HECHT: But we weren't really thinking about the technicality of category. We were thinking that limestone - well goodness knows whether it's down there or not. And how can you increase the appraisal separately because somebody has a particular kind of rock. So it was kind of a concern about - of course limestone was argued to be a mineral, argued to be a quarry. There were several arguments in the case. Is a salt dome storage cavern different? And I think your argument is that if somebody owns this property, the fee simple interest in a tract of land under which is a salt storage cavern, the most that taxpayer is going to have to pay taxes on or any taxpayer is the - if it

qualifies for open space exemption, is the open space value of the property or not?

PORTER: Frankly, I have a hard time believing that the space directly above the cavern would qualify for an open space exemption. And so therefore there is going to be some area that's attributable to getting that product out of the ground and putting it into the ground. So I think that that's really a fallacy to be concerned about.

HECHT: So you think the taxing unit is going to get the taxes somehow if they do it right?

PORTER: Correct. And I think there is a way to do it right. And the way that they do it right is to follow what this court's decision was in Gifford Hill. And I think strict adherence to §104.2 and those categories is critical to maintaining a clear and equitable tax system. Because of it avoids the multiple appraisal issue. It also...

BRISTER: You're saying where the hole comes out of the ground, we've got 10 acres and we've got 25 square feet where the hole comes out of the ground. You're saying they should appraise one to the 25 acres, and a different appraisal for the 25 square feet, which is going to reflect the value of the cavern. Why isn't that a multiple appraisal under your theory?

PORTER: It wouldn't be a multiple appraisal under my theory. You would have two separate tracts that are taxed differently.

BRISTER: And Mr. Peterson. What is he going to say about this when he gets the bill?

PORTER: What's not in the record here...

BRISTER: Assume there is a Mr. Peterson somewhere. Mr. X. He sold these rights. He has no interest in it. He's going to be the surface owner and he's going to get a surprise with regard to 25 square feet that its value is \$1 million. What does he do?

PORTER: The conveyance documents, had he gone to a lawyer. I would assume the conveyance documents would have taken care of that increase in value giving different use of the property.

BRISTER: You should have put that into your contract Mr. X.

PORTER: Yes. He should have put it into the contract. And this court in Gifford Hill again there was stated in the opinion that there was property in Gifford Hill where the mining company leased the property and the rock from other landowners. This court did not concern itself with what happens to the surface owner in that case nor should it.

Just like in the last argument where J. Owen asked a question, Do we have

one rule for lien holders with greater than \$1 million in net worth, and one rule for lien holders without? Do we have one rule for taxpayers that have greater than \$1 million in net worth, and another for those without? But getting back to my points on why I think it's important to maintain the integrity of §104.2. Again, it avoids the multiple appraisals. Second, it provides a quick and easy method for determining if there is omitted property on the appraisal roll. And to keep property from estate and taxation.

In J. Brister's case it is very closely analogous, the credit bank cases cited in the brief, wherein an apartment building was left off the appraisal roll. And the appraisal district came in and used as proof the fact that on their appraisal roll, the only value given was land. There was zero for the improvement. And that was held by the court to be sufficient to establish that the apartment building had been omitted from the appraisal roll, and the appraisal district was allowed to go back 5 years and recapture that value. So it's very important for that reason.

And the third reason that I would submit it is important to maintaining the integrity of §104, is that then it creates certainty as to what is an appropriate appraisal methodology for valuing that property?

OWEN: How do we apply §104 in the mineral context?

PORTER: There are six categories of real property under §104.2: land; improvements; mines and quarries; minerals; standing timber; and an interest or estate in any of those 5. So minerals is one of the six categories of property under 104.2 that the appraisal district is required to list that value of.

OWEN: Why isn't a hollowed out salt dome either a mine or a quarry, or estate or interest in a mineral that was in place or is in place?

PORTER: The question of what constitutes a mineral is again addressed by this court in Gifford Hill. And that case clearly defines things such as gravel, sand, other things.

OWEN: But there's a statutory definition, I assume.

PORTER: There is not a statutory definition in the tax code of what is a mineral. They fell back on the code construction act. They fell back on the common usage of the term. And based on other cases that related to...

OWEN: Salt is not a mineral?

PORTER: Salt is not a mineral.

O'NEILL: But this is not producing salt. We're not trying to take salt out of here. It's the storage nature of it that is valued. Right?

PORTER: In this particular case. The testimony at the trial was there are 14 caverns at this site that are used by Texas Brine. Seven of them are used for storage. The others are used for brining operations where they do recover the salt to sell chemical processes. In fact, Mr. Sneed stated that in fact the brining operations were more profitable than were the storage operations.

O'NEILL: But the brining operations are taxed as minerals, I presume.

PORTER: It's not in the record as to how they are taxed. But there are other categories that those types of things could fall within.

O'NEILL: Are you saying that the storage cavern as a storage cavern is an improvement?

PORTER: No. I am not. I am saying it is land. It is a part of the land that should in fact be included in the land value for the property.

OWEN: Why isn't it a mine or quarry that's being used for storage? It's a salt mine that's being used for storage.

PORTER: This court in Gifford Hill went back to and looked at the definitions of mine or quarry, and the definition is in fact an actively producing mine.

OWEN: So you are saying the only thing that can be taxed at the highest tax rate is the AG exemption?

PORTER: That may be the situation here...

OWEN: I'm asking what is your position?

PORTER: My position is, this property has to be valued as land.

OWEN: What's the most it can be valued at as land?

PORTER: The appraisal district valued this property, one cavern at \$1.8 million. They valued the other cavern at \$850,000. Our appraiser that we put on evidence of, because we also challenged the valuation of the property itself, not just this issue. Our appraiser did - to get to those numbers the way that appraisal district valued the property was they did a cost approach. They had some general...

OWEN: What do you say the property is worth and how should it be taxed?

PORTER: Our appraiser says the property is worth \$20,000 an acre and that the footprints of these caverns is 5 acres, so therefore, it's \$100,000.

OWEN: Based on what kind of use?

PORTER: As a storage cavern. Mr. Bolton, who was our expert appraiser, went around the state and found about 11 sites around the state where there were storage caverns...

OWEN: So you say they should tax a surface owner who doesn't a storage cavern for the storage cavern?

PORTER: That's the case here. If Mr. Peterson owns the surface and doesn't own the cavern, yes.

OWEN: There's been a division of the estate. The estate in the land has been divided. He owns let's say the surface and how can you tax a surface owner for something he doesn't own?

PORTER: If the estate have in fact been divided it may be able to be listed under 104.2(f), which is an estate or interest in one of the above. So it could be that a land account listed on Mr. Petersons, a land account listed on the other estate

O'NEILL: I'm not sure I understand why it's not an improvement.

PORTER: The Tax code in §104.3 defines improvements. Improvements are basically structures, fences, things of that nature above the ground. In this case it is just a hole in the ground. A hole that's created by the removal...

BRISTER: So is norad(?), but that would be a structure wouldn't it?

PORTER: Norad(?) at some point would be considered an improvement. Yes. It's a structure...

BRISTER: So is it just how fancy it is that makes a difference?

PORTER: I don't think it's how fancy it is.

BRISTER: It's clearly affixed. It ain't going anywhere.

PORTER: Because it's in the land.

O'NEILL: This sounds simplistic but you have to improve it to be able to use it the way it's being used. So why isn't that an improvement? You've got to do something to it for it to have a storage use.

PORTER: Because of the definitions that are contained within the tax code. It doesn't fit within the statutory definition of what is an improvement. When the Harris county court in

Coastal v. Harris CAD didn't analyze the question of whether or not this very facility was an improvement or not? It is an act that defines improvements that are used for hazardous liquid storage and salt dome storage caverns that are used for hazardous liquid storage. And in that statute there is a distinction created between the actual salt dome storage cavern, as we have in this case, and the other improvements that are utilized to store the hazardous...

O'NEILL: Has this issue come up in other states across the country?

PORTER: It's not indicated that there are any other cases related to this issue.

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REBUTTAL

HECHT: Your last comment in your opening argument about the effect of the AG use. I don't understand that.

LOW: The court has its finger on the 800 lb gorilla in the closet. The key for the AG use is that it has to be the primary use of the property in order to qualify for AG use. Now the question is going to be, if we have to put all the value in the land, and that includes the value of the underground storage caverns, which the record reflects are being leased at \$450,000 to \$500,000 a month by Coastal, combined or, what would you say the primary purpose is? That use or grazing _____ on the surface?

O'NEILL: What difference does it make if a separate estate has been created that would be taxable in and of itself?

LOW: It wouldn't. If the appraisal district is allowed to list and appraise for taxation the underground storage caverns separately from the AG use we have a problem.

O'NEILL: Then wouldn't you have to just put on the appraisal separate estate?

LOW: That's what we did. That's why we are here.

O'NEILL: I thought you didn't proceed under the separate estate subsection. You proceeded under land. But my understanding is that maybe they agree. It would be properly taxable as a separate estate. You would avoid the AG exemption problem.

LOW: If they agreed to that, I honestly don't believe this issue would ever have been tried. What Gifford Hill and the Harris County v. Coastal and this case are about, are the strict adherence to the §1.04 words. And if we pick a word other than land, they are going to say property is _____. And so we went out of our way. We didn't say it was a mineral because we felt we lost that in Gifford Hill. And we didn't say it was an improvement because there was litigation in Harris county...

O'NEILL: But again. If it's a separate estate, then you don't have the AG exemption problem. If it's not a separate estate, then it shouldn't be taxed as an AG exemption. It should be taxed...

LOW: That's correct.

OWEN: But you could have one owner that did both couldn't you?

LOW: And it often happens. In fact in one of our cases one owner owns both.

HECHT: Is it one of your concerns that if somebody owns 1,000 acres and there's a salt dome under 5 of them, that he will claim AG use as to the whole thousand, and that will be at the primary use because that's what 995 are used for and you won't be able to tax the salt dome?

LOW: That is absolutely correct. Now we will be back to the Gifford Hill quarry situation, which I suppose is, how many acres comprised the land that's part of the salt dome storage cavern? But we're also facing for that surface owner - if we are going to appraise for taxation a surface all the way to the core, which includes the salt dome storage caverns - I think the chief appraiser now is going to find the primary use is now for a salt dome storage cavern not for AG. So the AG is no longer going to qualify and you're looking at a 5 year roll back.

OWEN: Let's say it's 1000 acres with a 5 acre salt dome. As to the five acres, you can't tax them both for the surface and the salt dome. You've got to pick one if it's unified interest.

LOW: Sure. So the value is going to be 5 acres, plus salt dome storage \$500,000. And that tax bill - you know I really don't have that much problem doing it except when the ownership is in separate estates.

HECHT: And to fully understand your position. If the land is AG use and the other things that you want to tax, then that's fine. You don't have this problem because the AG exemption only caps the land appraisal. If you have minerals that's a separate deal. If you have a quarry that's a separate deal. Is that correct?

LOW: I believe that's correct. There may be some dispute about this 5 acre footprint. That didn't come up because we used different methods of appraisal at trial. The AG use problem is real in this case because you've got separate ownership.

HECHT: I don't understand that either. You say there may be a dispute about the 5 acre footprint. If you can tax the five acres without the AG use cap, then that solves your problem too doesn't it or not?

LOW: Except when the ownership is in different people. When the owner of the valuable storage caverns does not own the surface land, but we have to send the appraisal notice and

the tax bill to the owner of the land according to the Corpus Christi CA, then the person with acreage in this case...

HECHT: But if it's his obligation, then it's his obligation.

LOW: He doesn't own the storage caverns and I think that's the problem. It's important to see that the tax bill goes to the right people. In this case, this is dead wrong.

O'NEILL: What did happen to the Harris county case?

LOW: Y'all sent it back on procedural grounds.

O'NEILL: Is it proceeding now?

LOW: My understanding is it's completely off the hearing. One statement that was made is that the court in the Gifford Hill case did not seem to be concerned about the surface owners. That's absolutely incorrect. I refer the court to the motion for rehearing 827 S.W.2d 822, where on the motion for rehearing J. Hightower clearly was concerned about unsuspecting farmers and ranchers on the surface.

On page 18 of the underground storage cavern agreement, which is in plaintiff's ex. 24 in this case, Coastal is required to maintain \$500,000 of insurance: explosion; collapse; underground damage; bodily injury and death. And that's not just for a hole.