

ORIGINAL

In The  
**Supreme Court of Ohio**

CHESAPEAKE EXPLORATION LLC, et al.,	:	Case No. 2014-0067
	:	
Petitioners,	:	On Certified Questions of State Law from the United States District Court for the Southern District of Ohio Eastern Division
	:	
v.	:	
	:	S.D. Ohio Case No. 2:12-cv-00916
KENNETH BUELL, et al.,	:	
	:	
Respondents.	:	

**AMICUS CURIAE BEDWAY LAND & MINERALS COMPANY'S REPLY IN  
SUPPORT OF THE MERIT BRIEFS OF PETITIONERS**

Nicolle R. Snyder Bagnell\* (0091442)  
*\*Counsel of Record*

Kevin C. Abbott (0091504)  
Reed Smith LLP  
225 Fifth Avenue  
Pittsburgh, PA 15222  
T: 412-288-7112  
F: 412-288-3063  
[nbagnell@reedsmith.com](mailto:nbagnell@reedsmith.com)  
[kabbott@reedsmith.com](mailto:kabbott@reedsmith.com)

-and-

Michael R. Traven (0081158)  
Robert B. Graziano (0051855)  
Roetzel & Andress  
155 E. Broad Street, 12th Fl.  
Columbus, Ohio 43215  
T: 614-463-9700  
F: 614-463-9792  
[mtraven@ralaw.com](mailto:mtraven@ralaw.com)  
[rgraziano@ralaw.com](mailto:rgraziano@ralaw.com)  
*Attorneys for Petitioners Chesapeake  
Exploration LLC, CHK Utica LLC, Larchmont  
Resources, LLC, Dale Pennsylvania Royalty  
LP, Dale Property Services Penn LP, and  
TOTAL E&P USA, Inc.*

Matthew L. Fornshell\* (0062101)  
*\*Counsel of Record*

Nicole R. Woods (0084865)  
Ice Miller, LLP  
250 West Street  
Columbus, Ohio 43215  
614-462-2700  
614-462-5135  
[Matthew.fornshell@icemiller.com](mailto:Matthew.fornshell@icemiller.com)  
[Nicole.woods@icemiller.com](mailto:Nicole.woods@icemiller.com)

*Counsel for Amicus Curiae Bedway Land and  
Minerals Company*

Gary A. Corroto\* (0055270)  
*\*Counsel of Record*

Leonidas E. Plakas (0008628)  
Edmond J. Mack (0082906)  
Tzangas | Plakas | Mannos | LTD  
220 Market Avenue South, 8th Fl.  
Canton, Ohio 44702  
T: 330-455-6112  
F: 330-455-2108  
[gcorroto@lawlion.com](mailto:gcorroto@lawlion.com)  
[lplakas@lawlion.com](mailto:lplakas@lawlion.com)  
[emack@lawlion.com](mailto:emack@lawlion.com)

*Attorneys for Respondents*

**FILED**  
JUN 24 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

Jeffery D. Ubersax\* (0039474)

*\*Counsel of Record*

Dean C. Williams (0079785)

Jones Day

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114-1190

T: 216-586-3939

F: 216-579-0212

[jdubersax@jonesday.com](mailto:jdubersax@jonesday.com)

[dcwilliams@jonesday.com](mailto:dcwilliams@jonesday.com)

-and-

Charles H. Bean (0007119)

Thornburg & Bean

113 West Main Street

PO Box 96

St. Clairsville, Ohio 43950-0096

T: 740-695-0532

F: 740-695-8039

[Cbean\\_tbg@sbcglobal.net](mailto:Cbean_tbg@sbcglobal.net)

*Counsel for Petitioner North American Coal  
Royalty Company*

Michael DeWine (0009181)

Eric Murphy\* (0083284)

*\*Counsel of Record*

Samuel C. Peterson (0081432)

Attorney General of Ohio

Deputy Solicitor

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

T: 614-466-8980

[Eric.murphy@ohioattorneygeneral.gov](mailto:Eric.murphy@ohioattorneygeneral.gov)

*Counsel for Amicus Curiae State of Ohio*

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** ..... v

**I. INTRODUCTION** ..... 1

    A. The Purpose of the Ohio Dormant Minerals Act Will Be Served Only By Answering the Certified Questions of Law in the Affirmative..... 1

    B. The State of Ohio Should Not Be Afforded Any Deference as an Amicus Curiae and Should Not Be Permitted to Raise Issues Outside the Certified Questions..... 2

**II. STATEMENT OF THE INTEREST OF AMICUS CURIAE** ..... 3

**III. STATEMENT OF THE FACTS** ..... 4

**IV. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW** ..... 4

Certified Question of State Law No. 1: Is the recorded lease of a severed subsurface mineral estate a title transaction under the Ohio Dormant Minerals Act, RC 5301.56(B)(3)(a)? ..... 4

    A. The Statutory Language Does Not Exclude Oil and Gas Leases from Qualifying as Savings Events for the Purposes of the ODMA..... 4

    B. Oil and Gas Leases Are Transactions that Affect Title to Interest in Land and Therefore Qualify as Title Transactions. .... 7

    C. Decisions of Both This Court and Various Courts Throughout the State Support a Finding that an Oil and Gas Lease is a Title Transaction..... 8

        1. The overwhelming majority of lower court decisions throughout the state hold that an oil and gas lease is a title transaction for purposes of the ODMA......8

        2. The existing rule of law from this Court also supports the finding that an oil and gas lease is a title transaction. .....9

Certified Question of State Law No. 2: Is the expiration of a recorded lease and the reversion of the rights granted under that lease a title transaction that restarts the twenty-year forfeiture clock under the Ohio Dormant Minerals Act at the time of the reversion? ..... 11

**V. CONCLUSION** ..... 14

CERTIFICATE OF SERVICE ..... 16

**TABLE OF CONTENTS**  
(continued)

<b>APPENDIX</b>	<b>Page</b>
<i>Myers v. Bedway Land &amp; Minerals Co.</i> , Harrison C.P. No. CVH 2012-0120 (April 30, 2014) .....	Appx. 1

## TABLE OF AUTHORITIES

### CASES

<i>Back v. Ohio Fuel Gas Co.</i> , 160 Ohio St. 81, 113 N.E.2d 865 (1953).....	9, 10
<i>Bender v. Morgan</i> , Columbiana C.P. No. 2012-CV-378 (Mar. 20, 2013) .....	8, 9
<i>Bernard v. Unemp. Comp. Rev. Comm.</i> , 136 Ohio St.3d 264, 2013-Ohio-3121, 994 N.E.2d 437. ....	2
<i>Dahlgren v. Brown Farm Props., LLC</i> , Carroll C.P. No. 13CVH 27445 (Nov. 5, 2013).....	8
<i>Davis v. Consolidation Coal Co.</i> , Harrison C.P. No. CVH-2011-0081 (Aug. 28, 2013).....	8
<i>Eisenbarth v. Reusser</i> , Monroe C.P. No. 2012-292 (June 6, 2013).....	8
<i>Energetics, Ltd. v. Whitmill</i> , 42 Mich. 38, 497 N.W.2d 497 (1993).....	11, 12, 13
<i>Hall v. Banc One Mgt. Corp.</i> , 114 Ohio St.3d 484, 2007-Ohio-4640, 873 N.E.2d 290.....	5
<i>Harris v. Ohio Oil Co.</i> , 57 Ohio St. 118, 48 N.E. 502 (1897).....	9
<i>Hughes v. Ohio Bur. of Motor Veh.</i> , 79 Ohio St.3d 305, 681 N.E.2d 430 (1997).....	5
<i>Kramer v. PAC Drilling Oil &amp; Gas LLC</i> , 197 Ohio App.3d 554, 2011-Ohio-6750 (9th Dist.).....	7, 8
<i>Lipperman v. Batman</i> , C.P. No. 12-CV-0085 (Dec. 16, 2013).....	8
<i>M&amp;H P’Ship v. Hines</i> , Harrison C.P. No. 2012-0059 (Jan. 14, 2014).....	8
<i>McLaughlin v. CNX Gas Co.</i> , No. 5:13CV1502 (N.D. Ohio Dec. 13, 2013).....	11
<i>Myers v. Bedway Land &amp; Minerals Co.</i> , Harrison C.P. No. CVH 2012-0120 (April 30, 2014).....	8
<i>Ricks v. Vap</i> , 280 Neb. 130, 784 N.W.2d 432 (2010).....	13, 14
<i>Schucht v. Bedway Land &amp; Minerals Co.</i> , Harrison C.P. No. CVH 2012-0010 (April 21, 2014).....	8
<i>Shannon v Householder</i> , Jefferson C.P. No. 12-cv-226 (July 17, 2013).....	9
<i>State ex rel. Carna v. Teays Valley Sch.</i> , 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193. ....	5

<i>Swartz v. Householder</i> , Jefferson C.P. No. 12-CV-328 (July 17, 2013) .....	9
<i>Taylor v. Crosby</i> , Belmont C.P. No. 11CV422 (Sept. 15, 2013).....	8
<i>Wellington v. Mahoning Cnty. Bd. of Elections</i> , 117 Ohio St.3d 143, 2008-Ohio-554, 882 N.E.2d 420 .....	3

**STATUTES**

R.C. 5301.47(F) .....	passim
R.C. 5301.55 .....	12
R.C. 5301.56(B)(1) .....	12
R.C. 5301.56(B)(2) .....	12
R.C. 5301.56(B)(3) .....	5, 6, 14
R.C. 5301.56(B)(3)(a).....	4, 6
R.C. 5301.56(B)(3)(b).....	6
R.C. 5301.56(B)(3)(c).....	12
R.C. 5301.56(B)(3)(f) .....	12

## I. INTRODUCTION.

### A. The Purpose of the Ohio Dormant Minerals Act Will Be Served Only By Answering the Certified Questions of Law in the Affirmative.

This Court has agreed to answer two questions concerning the Ohio Dormant Minerals Act (“ODMA” or the “Act”) certified to it by the United States District Court for the Southern District of Ohio Eastern Division:

1. Is the recorded lease of a severed subsurface mineral estate a title transaction under the ODMA, Ohio Revised Code 5301.06(B)(3)(a)?  

and
2. Is the expiration of a recorded lease and the reversion of the rights granted under that lease a title transaction that restarts the twenty-year forfeiture clock under the ODMA at the time of the reversion?

The purpose of the ODMA is not to facilitate the promptest possible reversion of severed mineral interests back to the surface owners. Rather, its purpose is twofold. First, the Act ensures a traceable title record for the severed mineral interests. For those interests that were severed from the surface long ago and have since been fragmented and forgotten, the Act serves the purpose of reuniting mineral and surface interests to clarify recorded title. Second, by reducing the number of those unknown and fragmented interests, the Act facilitates the use of those mineral interests and encourages the exploration for and production of the state’s minerals.

What Respondents and Amicus State of Ohio<sup>1</sup> urge this Court to do, however, is to answer both certified questions in the negative. Remarkably, Respondents argue that a *known* mineral interest that was the subject of a *recorded* oil and gas lease fails to further the ODMA objectives of chain of title clarity and mineral exploration. This view not only defies logic, but also the weight of authority on this issue and common sense.

---

<sup>1</sup> For the sake of brevity, because State of Ohio filed its amicus brief in support of Respondents, both Respondents and the State will be referred to collectively within as simply “Respondents.”

Amicus curiae Bedway Lands and Minerals Company (“Bedway”), who files this reply brief in support of Petitioners, urges this Court to answer both certified questions in the affirmative. In doing so, this Court will serve the intent and policy behind the Act.

**B. The State of Ohio Should Not Be Afforded Any Deference as an Amicus Curiae and Should Not Be Permitted to Raise Issues Outside the Certified Questions.**

On June 4, 2014, the State of Ohio filed an Amicus Curiae brief in support of Respondents in this matter. In its Statement of Amicus Interest, the State indicates its interests in this matter are twofold: (1) one in “simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title” in order to facilitate the use of the state’s minerals, and (2) as “a property owner itself.” [State Amicus Br. at 3.] It is difficult to imagine how permitting a *recorded* oil and gas lease to serve as a title transaction under ODMA would not promote the state’s interest in allowing persons to rely on a record chain of title. More importantly, however, is that the State has joined the ODMA litigation fray and comes to this matter not as a body politic but rather as a landowner with a very real pecuniary interest in the outcome of this and related ODMA litigation. Although the State is generally afforded deference in its statutory interpretation, that deference is granted where the State has been “delegated the responsibility of implementing legislative command.” *Bernard v. Unemp. Comp. Rev. Comm.*, 136 Ohio St.3d 264, 2013-Ohio-3121, 994 N.E.2d 437, ¶ 12. In this matter, however, the State has appeared as an amicus and as a landowner interested in “preserving ownership of [its] mineral interests.” [Id.] As such, this Court owes the State’s interpretation of ODMA no particular deference.

Moreover, “[a]mici curiae are not parties to an action and may not, therefore, interject issues and claims not raised by the parties.” *Wellington v. Mahoning Cnty. Bd. of Elections*, 117

Ohio St.3d 143, 2008-Ohio-554, 882 N.E.2d 420, ¶ 53 (refusing to address issue raised by amicus brief that was not addressed by the parties). In its amicus brief, the State repeatedly stresses the “automatic vesting” nature of the 1989 version of ODMA in an apparent attempt to have this Court sanction the State’s reading of the Act. Whether the 1989 version of the Act permits or requires “automatic vesting” of mineral rights is not an issue before this Court. It was not raised by the actual parties to this case and it is not a part of the questions certified for this Court’s decision. Therefore, the State’s continuous characterization of the Act as “automatic vesting” should be disregarded by this Court.

## II. STATEMENT OF THE INTEREST OF AMICUS CURIAE

Bedway is a small, family-owned company that began two generations ago. Bedway has been investing in and operating mineral interests in and around Ohio well before the current oil and gas boom. Due to the sudden interest in these precious resources, Bedway has reluctantly become involved in litigation initiated by surface owners looking to capitalize on the same and receive well beyond what they bargained for when they purchased their surface property. Currently, Bedway is involved in two actions: *Myers, et al. v. Bedway Land and Minerals Company, et al.*, HA 2014-011, et seq. and *Schucht v. Bedway Land and Minerals Company, et al.*, HA2014-010, both of which are pending before the Seventh District Court of Appeals. The outcome of this case will directly impact Bedway’s current appeals as well as the mineral interests of countless other rights holders throughout the state.

Because of the important interests raised in this case, Bedway offers this amicus reply in support of the merit briefs of Petitioners.

### III. STATEMENT OF THE FACTS

Bedway agrees with the statements of the facts as set forth in the merit briefs of Petitioners and incorporates them herein by reference.

### IV. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

*Certified Question of State Law No. 1: Is the recorded lease of a severed subsurface mineral estate a title transaction under the Ohio Dormant Minerals Act, RC 5301.56(B)(3)(a)?*

ODMA states that:

(B) Any mineral interests held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface of the lands subject to the interest if \* \* \* none of the following applies:

\* \* \*

(3) Within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section, one or more of the following has occurred:

\* \* \*

(a) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located.

R.C. 5301.56(B)(3)(a). [Pet'r. Appx. at 56<sup>2</sup>.]

#### A. The Statutory Language Does Not Exclude Oil and Gas Leases from Qualifying as Savings Events for the Purposes of the ODMA.

Respondents repeatedly argue that because neither R.C. 5301.47(F) nor 5301.56(B)(3)(a) expressly include "oil and gas leases" in their language, leases should be automatically excluded

---

<sup>2</sup> All references to "Pet'r Appx." are to the Merit Brief Appendix filed by Petitioners Chesapeake Exploration LLC, CHK Utica LLC, Larchmont Resources, LLC, Dale Pennsylvania Royalty LP, Dale Property Services Penn LP, and TOTAL E&P USA, Inc.

as serving as savings events under ODMA. [Resp. Br. at 13; State Amicus Br. at 11.] This argument, however, completely disregards the rules of statutory construction that this Court is bound to follow.

When considering statutory construction, it is fundamental that no language of a statute is “treated as superfluous” or is subject to interpretation “which renders a provision meaningless or inoperative.” *State ex rel. Carna v. Teays Valley Sch.*, 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶ 19. Moreover, as stressed by this Court, courts “are bound by the language enacted by the General Assembly, and it is our duty to give effect to the words used in a statute. We are free to neither disregard nor delete portions of the statute through interpretation, nor to insert language not present.” *Hall v. Banc One Mgt. Corp.*, 114 Ohio St.3d 484, 2007-Ohio-4640, 873 N.E.2d 290, ¶ 24 (internal citations omitted). Finally, it is well-settled that “[a]ll statutes pertaining to the same general subject matter must be read *in pari material* \* \* \* courts must harmonize and give full application to all provisions unless they are irreconcilable and in hopeless conflict.” *Hughes v. Ohio Bur. of Motor Veh.*, 79 Ohio St.3d 305, 309, 681 N.E.2d 430 (1997)(internal citations omitted).

Looking at the words used and not used in R.C. 5301.47(F) and 5301.56(B)(3), this Court should answer the certified question in the affirmative. First R.C. 5301.47(F) provides:

"Title transaction" means any transaction affecting title to any interest in land, **including** title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

[Pet'r Appx. at 65. (Emphasis added.)] Respondents argue that the legislature's failure to expressly list oil and gas leases in this definitional section is concrete evidence that oil and gas leases do not qualify as title transactions. That interpretation, however, would render the word “including” as entirely superfluous. The word “including” is a word that allows a definition to

be illustrative, rather than exclusionary. The Southern District Court in this matter agreed, holding “[t]he definition of a title transaction in § 5301.47(F) provides a non-exhaustive list of what is considered a title transaction. The word ‘including’ means it is not exclusive, and other unlisted transactions may qualify as title transactions.” [Order, Pet’r Appx. at 35.] Holding that the list of examples provided in 5301.47(F) is exhaustive is contrary to the rules of statutory construction.

Respondents also argue that finding an oil and gas lease to be a title transaction would render R.C. 5301.56(B)(3)(b) meaningless. 5301.56(B)(3)(b) states that a mineral interest cannot be deemed abandoned where “there has been actual production or withdrawal of minerals by the holder from \* \* \* the lands covered by a lease to which the mineral interest is subject \* \* \* .” Respondents argue that if oil and gas leases are considered a savings event under R.C. 5301.56(B)(3)(a), then section (B)(3)(b)’s use of “from the lands covered by a lease” would be superfluous. Respondents’ interpretation again fails to respect the rules of statutory construction.

R.C. 5301.56(B)(3) defines savings events as the occurrence of “one or more” of the listed events. This language expressly contemplates that the events listed are not mutually exclusive; more than one event can occur to “save” the mineral interest. For example, a recorded oil and gas lease can serve as a savings event under section (B)(3)(a) and the later removal of minerals pursuant to that lease can then serve as a second savings event under section (B)(3)(b). Moreover, even if an oil and gas lease at issue was never recorded (and therefore is not a savings event under section (B)(3)(a)), the removal of the minerals pursuant to that lease can still trigger a savings event under section (B)(3)(b). Quite simply, finding that a lease is a title transaction under section (B)(3)(a) in no way makes section (B)(3)(b) superfluous. In actuality, the two sections are complementary.

**B. Oil and Gas Leases Are Transactions that Affect Title to Interest in Land and Therefore Qualify as Title Transactions.**

Respondents argue that an oil and gas lease is not a transaction that “affect[s] title to any interest in land” under R.C. 5301.47(F), and is therefore not a “title transaction.” Respondents’ argument, at its essence, is that oil and gas leases should not be treated any differently from any other type of real property leases. This argument, however, entirely ignores the very nature of an oil and gas lease and the meaning and import of “affecting” title.

An oil and gas lease, as compared to a normal real estate lease, does not permit the lessee to merely occupy the leased land. Rather, the oil and gas lessee is permitted to *permanently alter* the leased property by consumption of the minerals. In fact, the very purpose of the ODMA encourages such an alteration of the property by facilitating the use and exploitation of the minerals (and the mechanism for doing so is an oil and gas lease). There is a very real possibility that the lessee may even *entirely deplete* the minerals that are the subject of the lease. The very nature of an oil and gas lease forever “*affect[s]* title to the interest in land.” R.C. 5301.47(F). “Affect” is a verb, and therefore requires some action or impression. An oil and gas lease “affects” title inasmuch as consumption of the minerals permanently and forever divests the owner of its possession, use, and enjoyment of that aspect of its real estate. There can be no greater impact or “affect” on title because once the lease holder consumes the minerals, there is no longer any mineral to own or hold title to.

Moreover, as described more fully in Section C. below, courts have determined that an oil and gas lease is a hybrid instrument and actually conveys a “fee simple determinable” in the mineral interests to the lessee. *See, Kramer v. PAC Drilling Oil & Gas LLC*, 197 Ohio App.3d 554, 2011-Ohio-6750, ¶ 11 (9th Dist.). The *Kramer* court held that “the lessee/grantee acquires ownership of all the minerals in place that the lessor/grantor owned and purported to lease,

subject to the possibility of reverter in the lessor/grantor.” *Id.*; see also, *Bender v. Morgan*, Columbiana C.P. No. 2012-CV-378, at p. 4-5 (Mar. 20, 2013)(“[A]n oil and gas lease does more than merely permit the use of minerals for the development. Rather, an oil and gas lease does actually convey (a determinable fee interest) in the oil and gas (severed mineral interests in this case) in place, for production.”) [Pet’r Appx. at 239.]

Given the very nature of an oil and gas lease, the purpose of the ODMA, and existing jurisprudence, this Court should answer the certified question in the affirmative.

**C. Decisions of Both This Court and Various Courts Throughout the State Support a Finding that an Oil and Gas Lease is a Title Transaction.**

**1. The overwhelming majority of lower court decisions throughout the state hold that an oil and gas lease is a title transaction for purposes of the ODMA.**

Of the various lower courts that have considered whether an oil and gas lease is a title transaction for purposes of ODMA, the overwhelming majority has answered, “yes.” See *Schucht v. Bedway Land & Minerals Co.*, Harrison C.P. No. CVH 2012-0010 (April 21, 2014) [Pet’r Appx. at 160.]; *Myers v. Bedway Land & Minerals Co.*, Harrison C.P. No. CVH 2012-0120 (April 30, 2014) [Appx. at 1.]; *M&H P’Ship v. Hines*, Harrison C.P. No. 2012-0059, at 6 (Jan. 14, 2014) [Pet’r Appx. at 259.]; *Eisenbarth v. Reusser*, Monroe C.P. No. 2012-292 (June 6, 2013) [Pet’r Appx. at 270.]; *Lipperman v. Batman*, C.P. No. 12-CV-0085 (Dec. 16, 2013) [Pet’r Appx. at 286.]; *Dahlgren v. Brown Farm Props., LLC*, Carroll C.P. No. 13CVH 27445 (Nov. 5, 2013) [Pet’r Appx. at 73.]; *Taylor v. Crosby*, Belmont C.P. No. 11CV422 (Sept. 15, 2013) [Pet’r Appx. at 151.]; *Davis v. Consolidation Coal Co.*, Harrison C.P. No. CVH-2011-0081 (Aug. 28, 2013) [Pet’r Appx. at 323]; *Bender v. Morgan*, Columbiana C.P. No. 2012-CV-378 (Mar. 20, 2013 [Pet’r Appx. at 236.].

Respondents argue, however, that there is a “clear split in the Ohio trial courts” as to whether an oil and gas lease is a title transaction. [Resp. Br. at 19.] This so-called “clear split” to which Respondents refer are two decisions out of Jefferson County: *Swartz v. Householder*, Jefferson C.P. No. 12-CV-328 (July 17, 2013) [Pet’r Appx. at 306.] and *Shannon v Householder*, Jefferson C.P. No. 12-cv-226 (July 17, 2013) [Pet’r Appx. at 314.]. However, those two nearly identical decisions—from the same judge in the same court on the same day—do not contain any reasoned explanation for why the court did not find an oil and gas lease to be a title transaction. That hardly creates a “clear split” in the trial courts. The fact remains, the majority of trial courts throughout the state overwhelming agree that oil and gas leases constitute title transactions.

2. The existing rule of law from this Court also supports the finding that an oil and gas lease is a title transaction.

As the briefing in this matter thus far has pointed out at length, this Court has issued two decisions that, at first blush, seem to be at odds regarding oil and gas leases: *Harris v. Ohio Oil Co.*, 57 Ohio St. 118, 48 N.E. 502 (1897) and *Back v. Ohio Fuel Gas Co.*, 160 Ohio St. 81, 113 N.E.2d 865 (1953). In *Harris*, this Court held that an oil and gas lease conveys “a vested, though limited, estate in the lands for the purposes named in the lease.” *Harris*, 57 Ohio St. at 130. The *Harris* decision still remains valid law in this State; it has not been revisited or overruled. In fact, courts throughout the state continue to rely on the *Harris* decision in finding an oil and gas lease conveys an ownership interest and/or is a title transaction for purposes of ODMA. *See, e.g., Bender, supra.*

Respondents, however, insist that *Harris* is no longer the rule of law in this State, and instead, *Back* guides this Court to find that an oil and gas lease is a mere “license” that does not convey or affect title. This argument is misplaced for several reasons. First, this Court noted in *Back* that it relied upon the gas company’s own concession that the instrument at issue was, in

fact, not an oil and gas lease at all. The gas company's counsel frankly stated: "[T]he instrument in question is not a 'lease' because it grants rights in perpetuity, reserved nothing in the nature of rent, and the rights granted are not subject to defeasement upon the happening of any conditions." *Back*, 160 Ohio St. at 85. The Court in *Back* was deciding a question of law entirely different than the question before this Court: whether the document at issue in *Back*—which was conceded not to be a lease—should be considered a license or a deed of conveyance.

Second, the *Back* decision did not cite to, mention, or discuss the *Harris* decision. And despite Respondents' assertions otherwise, *Harris* is not "in direct conflict with this Court's decision in *Back* \* \* \* ." [Resp. Br. at 17.] *Back* dealt with an entirely different set of issues than *Harris*. It is hard to fathom how a case that plainly states that the instrument at issue was not an oil and gas lease—*Back*—somehow overrules or replaces the rule of law from a case that dealt specifically with the characterization of an oil and gas lease—*Harris*. Quite simply, it does not. *Harris* is still the applicable rule of law in this state, and Respondents' attempts to cite to multiple out-of-state and federal case decisions do not alter this fact.

Finally, it is important to note that neither *Back* nor *Harris* concerned the characterization of an oil and gas lease as a title transaction under ODMA; the cases were decided decades before the ODMA was in effect. This is an important distinction because "the context of the statute has always been a key factor in how to consider the nature of the lease." [Order, Pet'r Appx. at 40-41.] Although *Harris* is the standing rule of law and may guide this Court's decision, this Court need not find that an oil and gas lease is an ownership interest, a conveyance, or a license. It must simply decide if an oil and gas lease is a title transaction that "affect[s] title to any interest in land." R.C. 5601.47(F). As a recent lower court decision held:

[T]itle transaction means *any transaction* affecting title to *any interest* in land. It is difficult for the Court to conceive of a broader definition than the one chosen

by Ohio law. By its plain language, the statute does not require a conveyance or transfer of real property in order to constitute a title transaction.

\* \* \*

Even if Defendant's property interests through the [oil and gas] lease are something less than a grant of real property, those interests quite clearly still **affect** title to the mineral interests in the property.

*McLaughlin v. CNX Gas Co.*, No. 5:13CV1502, at 5 (N.D. Ohio Dec. 13, 2013). (Emphasis in original.) [Pet'r Appx. at 251.]

For the foregoing reasons, Amicus Bedway respectfully requests this Court to answer the Certified Question of State Law No. 1 in the affirmative.

*Certified Question of State Law No. 2:* *Is the expiration of a recorded lease and the reversion of the rights granted under that lease a title transaction that restarts the twenty-year forfeiture clock under the Ohio Dormant Minerals Act at the time of the reversion?*

The question of whether the expiration of a recorded lease and reversion of the rights granted under that lease constitute a title transaction under ODMA is one of first impression for this Court. A review of the policy supporting the Act, the language of the Act itself, and decisions of other state supreme courts makes clear that this Court should answer this question in the affirmative.

The Supreme Court of Michigan previously decided the issue of whether a lease expiration is a savings event under Michigan's Dormant Mineral Act (a model for ODMA) in *Energetics, Ltd. v. Whitmill*, 42 Mich. 38, 497 N.W.2d 497 (1993). The *Energetics* court held that the lease expiration did qualify as a savings event, and that decision is instructive here. Respondents unsuccessfully attempt to argue that the *Energetics* case is completely

distinguishable from the case before this Court based on the language of and policy supporting the ODMA.

First, Respondents argue that a lease expiration is not recorded, and therefore, cannot satisfy R.C. 5301.56 as a savings event. In fact, Respondents go so far as to say that allowing a lease expiration to serve as a savings event would transform the ODMA into an “unworkable system shrouded in uncertainty.” [Resp. Br. at 25.] Nothing could be further from the truth.

The ODMA, like Michigan’s statute, is not “merely a ‘recording statute’ \* \* \* .” *Energetics*, 497 N.W.2d at 501. Both statutes permit multiple savings events that do not require recording, e.g. the use of underground storage tanks. *See*, R.C. 5301.56(B)(1), (2), (3)(c), and (3)(f). More importantly, in the case of a lease expiration, it need not be recorded because the expiration is occurring pursuant to the terms of an *already recorded document*. A recorded oil and gas lease contains two transactions—(1) the initial transfer, and (2) the reversion—and both are contained within the same recorded instrument. The *Energetics* court agreed that “two transfers occur when an interest in oil and gas is leased,” and they both “were evidenced in the recorded lease.” *Energetics*, 497 N.W.2d at 502.

Moreover, finding a lease expiration to be a savings event will not make the ODMA “unworkable” or somehow transform it into a chaotic mess as Respondents claim. The policy behind the ODMA is to simplify and facilitate “land title transactions by allowing persons to rely on a record chain of title \* \* \* .” R.C. 5301.55. This purpose is wholly advanced by recognizing expirations of recorded leases as savings events. Oil and gas leases have defined expiration dates that are contained within the recorded instrument. The expiration of a lease is not an ephemeral concept that title search experts would have to somehow pluck out of the ether to determine. As recognized by *Energetics*, “[a]nyone checking the status of the title of the subject matter property

would have to be on notice of the recorded lease and its expiration date, that being the expiring of the lease at the end of its term.” *Energetics*, 497 N.W.2d at 502. Additionally, “[w]hen a lease is recorded, the provisions of the lease are available to anyone who conducts a title search. The terms of the lease indicate whether further inquiry may be required to determine if the lease continues in force.” *Id.* at 504.

Second, Respondents attempt to distinguish *Energetics* by arguing that the language of the ODMA differs from the Michigan statute so drastically that the holding of *Energetics* cannot possibly apply. A comparison of the statutes’ language, however, quickly discredits Respondents’ argument. The statute at issue in *Energetics* defined the savings event as one when “[t]he interest has been ‘sold, leased, mortgaged, or transferred’ by recorded instrument \* \* \* .” *Id.* at 500. Focusing on the word “transferred” in the statute, the court agreed that the “expiring of the lease is itself a transfer of the interest” and found it to be a savings event. *Id.* at 502.

The language of the ODMA is even broader than that of *Energetics*. Under Ohio law, a title transaction is “any transaction affecting title to any interest in land.” R.C. 5301.47(F). Respondents argue that “[u]pon expiration of the lease, no conveyance is made to the lessor \* \* \* .” [Resp. Br. at 26.] That, however, is not the applicable standard. The expiration of the lease, and the accompanying transfer of the reversionary interest in the minerals, must merely affect title to any interest. This is a much broader and much more inclusive statute than the *Energetics* statute. Thus, *Energetics* is highly instructive for this Court.

Finally, Respondents argue at length that this Court should instead follow the holding of *Ricks v. Vap*, 280 Neb. 130, 784 N.W.2d 432 (2010), a decision of the Nebraska Supreme Court that held lease expirations do not qualify for savings events under the Nebraska Dormant Minerals Act. Respondents all but ignore the fact that *Ricks* was decided based on statutory

language in Nebraska’s act that does not appear anywhere in the ODMA, and therefore is neither instructive nor persuasive for this Court.

The Nebraska statute provides that a savings event occurs when the “record owner of [the] mineral interest has \* \* \* exercised publicly the right of ownership.” *Id.* at 435. The court then went on to hold that mineral rights owners can only “publically exercise” their rights by filing the leases, not with the expiration of those leases, because the expiration “was initiated either by the lessee or simply by operation of law—not by the record owners.” *Id.* Simply, the Nebraska statute requires mineral rights owners to “take action” to initiate the savings events. In distinguishing the holding in *Energetics*, the *Ricks* court noted:

[T]he [*Energetic*] court's reasoning was grounded in the unique language of the Michigan statute, which, as set forth above, simply required that an oil or gas interest be “sold, leased, mortgaged or transferred” to avoid abandonment, without regard to who (if anyone) initiated the action. Nebraska's statute, on the other hand, expressly requires “the record owner of such mineral interest” to “exercise[ ] publicly the right of ownership” by performing one of the actions specified in the statute during the statutory period.

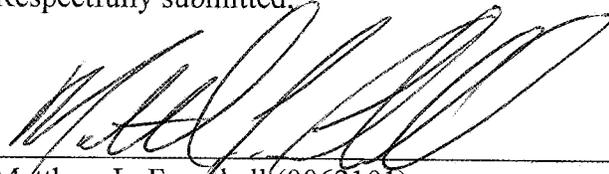
*Id.* at 436. The same applies to the ODMA.

The ODMA is not analogous to the Nebraska statute in any way, and therefore, *Ricks* is not pertinent here. The ODMA’s savings events do not turn on who “initiated” the event, e.g., the use of underground storage tanks, or the removal of minerals pursuant to a lease. *See*, R.C. 5301.56(B)(3). This Court should disregard *Ricks* and follow the reasoning in *Energetics*—which is entirely supported by the purpose and language of ODMA—and answer the certified question in the affirmative.

## V. CONCLUSION

For the foregoing reasons, the Court should answer both Certified Questions of State Law in the affirmative.

Respectfully submitted,



---

Matthew L. Fornshell (0062101)

Nicole R. Woods (0084865)

Ice Miller, LLP

250 West Street

Columbus, Ohio 43215

614-462-2700

614-462-5135

[Matthew.fornshell@icemiller.com](mailto:Matthew.fornshell@icemiller.com)

[Nicole.woods@icemiller.com](mailto:Nicole.woods@icemiller.com)

*Counsel for Amicus Curiae Bedway Land and  
Minerals Company*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served upon the following persons this 24th day of June, 2014 via regular U.S. Mail, postage prepaid:

Nicolle R. Snyder Bagnell  
Kevin C. Abbott  
Reed Smith LLP  
225 Fifth Avenue  
Pittsburgh, PA 15222

-and-

Michael R. Traven  
Robert B. Graziano  
Roetzel & Andress  
155 E. Broad Street, 12th Fl.  
Columbus, Ohio 43215

*Attorneys for Petitioners Chesapeake Exploration LLC, CHK Utica LLC, Larchmont Resources, LLC, Dale Pennsylvania Royalty LP, Dale Property Services Penn LP, and TOTAL E&P USA, Inc.*

Jeffery D. Ubersax  
Dean C. Williams  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190

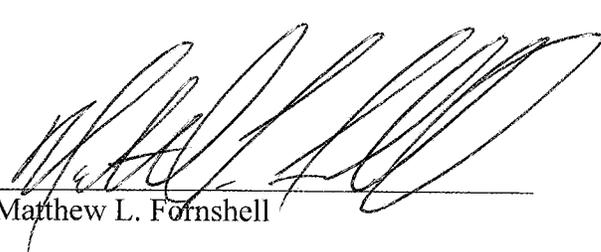
-and-

Charles H. Bean  
Thornburg & Bean  
113 West Main Street  
PO Box 96  
St. Clairsville, Ohio 43950-0096  
*Counsel for Petitioner North American Coal Royalty Company*

Gary A. Corroto  
Leonidas E. Plakas  
Edmond J. Mack  
Tzangas | Plakas | Mannos | LTD  
220 Market Avenue South, 8th Fl.  
Canton, Ohio 44702

*Attorneys for Respondents*

Michael DeWine  
Eric Murphy  
Samuel C. Peterson  
Attorney General of Ohio  
Deputy Solicitor  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
*Counsel for Amicus Curiae State of Ohio*

  
Matthew L. Fornshell

IN THE COURT OF COMMON PLEAS  
HARRISON COUNTY, OHIO  
GENERAL DIVISION

FILED  
14 APR 30 PM 1:17  
LESLIE B. TULLOCH  
CLERK OF COURTS  
HARRISON COUNTY, OHIO

ROBERT B. MYERS, et al. :

Plaintiffs :

v. :

BEDWAY LAND AND MINERALS  
COMPANY, et al. :

Defendants :

Case No. CVH 2012-0120

JUDGMENT ENTRY

---

This matter having come on before this Court upon Defendant Bedway Land and Minerals Company's Motion For Summary Judgment filed January 2, 2014, Defendant Eric Petroleum Corporation's Motion For Summary Judgment filed January 3, 2014, Defendant Chesapeake Exploration, L.L.C.'s Motion For Partial Summary Judgment filed January 3, 2014, Plaintiff Robert B. Myers, et al.'s Motion For Summary Judgment filed March 12, 2014, Defendant Lucretia Vandemark, et al.'s (the McLaughlin Heirs) Motion For Summary Judgment filed March 12, 2014 and Defendant T. Mark Beetham's Motion For Summary Judgment filed March 11, 2014. Responses and Replies were thereafter filed by all parties.

**STATEMENT OF FACTS**

The Plaintiffs herein acquired title to the surface rights in the parcels in question in the early to mid 2000's. The total acreage owned by the Plaintiffs is approximately

631.0384 in Shortcreek Township, Harrison County, Ohio. The Defendant Bedway Land and Minerals Company (Bedway) received a 7/8 interest in the mineral rights herein, including coal, oil and gas by way of a Quitclaim Deed. The deed regarding the parcel in question was filed December 18, 1984 with William W. Wehr and Mary Ann Wehr as the grantors. Prior to the 1984 Quitclaim Deed, while William W. Wehr and Mary Ann Wehr owned the minerals, a Memorandum of Lease with a three year primary term was filed by K.S.T. Oil & Gas Co. Inc. The same being filed on May 25, 1983 and recorded at Lease Book 179, Page 359. Said memorandum leased approximately 1383.953 acres (including Bedway's disputed Mineral Estate herein).

On December 28, 1989 K.S.T. filed a Release of its interest in the Oil and Gas Lease with said Release recorded at Lease Book 75, Page 152. On June 16, 2005 at Official Record 160, Page 2912, Defendant Bedway filed an oil and gas lease with Mason Dixon Energy, Inc. which covered Bedway's disputed Mineral Estate herein. Thereafter, Mason Dixon Energy, LLC, successor in interest to the Lessee Mason Dixon Energy, Inc., assigned its interest in the lease to Burlington Resources Oil & Gas Company L.P.(Burlington Resources) at Official Record Book 21, Page 451. Burlington Resources assigned their interest to Defendant Eric Petroleum on October 1, 2007 who then signed a partial assignment to Ohio Buckeye Energy L.L.C. on July 15, 2010 at Official Record Book 183, Page 2737. On December 22, 2011 Defendant Chesapeake obtained Ohio Buckeye's interest by way of a merger.

Defendants Lucretia Vandemark et al. (the McLaughlin Heirs) claim their interests in approximately 121.37 acres by way of mineral reservations set forth in a deed dated March 7, 1921 (Volume 83, Page 145); 109 acres in a deed dated March 7, 1921

(Volume 83, Page 146); and 154 acres in deeds dated March 21, 1921 (Volume 83, Page 210) and March 4, 1921 (Volume 83, Page 214). Defendant Lucretia Vandemark recorded an "Affidavit Preserving Minerals" with the Harrison County Recorder on May 4, 2011 (Volume 188, Page 2427). According to the Affidavit, the affected surface owners are Plaintiffs Robert B. Myers and Rhonda Myers, JoDee Myers and Bruce Myers, Sherrilyn Vantassel, Albert W. Wright, Jr., Trustee, Scott and Janet Myers, James Richardson, and John P. Lamb and Donna R. Lamb.

Rupert Beetham filed a "Corrected Affidavit Preserving Minerals" with the Harrison County Recorder on March 15, 2012 (Volume 196, Page 2107) and Rupert N. Beetham filed an "Affidavit Preserving Minerals" on May 10, 2011 with the Harrison County Recorder (Volume 188, Page 2741). Furthermore, on October 28, 2011 Thomas Mark Beetham filed an "Affidavit Preserving Minerals" underlying the properties of Plaintiffs JoDee Myers, Bruce Myers, Scott Myers and Janet Myers. The same being filed with the Harrison County Recorder (Volume 193, Page 321).

Consequently, Plaintiffs own the surface herein and claim the severed minerals pursuant to the 1989 version of the Ohio Dormant Mineral Act. The Defendant Bedway claims a 7/8 interest in the minerals also claimed by Plaintiffs in Shortcreek Township and Defendants Eric Petroleum and Chesapeake Exploration claim interests by way of an oil and gas lease and subsequent assignments. Defendants Lucretia Vandemark et al. (the McLaughlin Heirs) claim an interest in the minerals in the acreage as previously enumerated by way of reservations in 1921 deeds and Defendant T. Mark Beetham claims a 7/30 interest in the minerals in accordance with his "Affidavit Preserving Minerals."

## **SUMMARY JUDGMENT STANDARD**

Ohio Rule of Civil Procedure Rule 56 provides that summary judgment is warranted when “it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.” Ohio Rule of Civil Procedure 56 (c).

Pursuant to Temple v. Wean United, Inc., 50 Ohio St. 2d 317, 327, 364 N.E. 2d 267, 274 (1977) summary judgment is appropriate when the moving party demonstrates that (1) no genuine issues of material fact remain to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion that is adverse to the party against whom the motion is made.

## **THE CONSTITUTIONALITY OF THE 1989 OHIO DORMANT MINERAL ACT**

The Ohio Dormant Mineral Act was enacted in its original form on March 22, 1989. The act has been characterized as a “use it or lose it” statute. The Ohio Legislature attempted to balance the interests of property owners and the compelling public interest in drilling, producing and marketing the mineral interests of this state. Dormant and abandoned mineral interests were viewed as of no benefit to the state, while making use of the state’s mineral resources was for the public good.

In order to negate the retroactive effect of the Act, the following language was inserted at 5301.56(B)(2).

(2) A mineral interest shall not be abandoned under division (B)(1) of this section..... until three years from the effective date of this section.

The oil and gas owners thereby were given 3 years to meet one of the “Saving Events” provisions. A similar statute was enacted in Indiana and provided for a two year grace period. This act was upheld by the United States Supreme Court in Texaco Inc. v. Short, 454 US 516 (1982). In Texaco, it was held that, “There was no constitutional right for a mineral interest owner to receive individual notice that his rights will expire.”

Based upon Texaco, this Court finds the 1989 Ohio Dormant Mineral Act to be constitutional.

### 1989 OHIO DORMANT MINERAL ACT V. 2006

#### OHIO DORMANT MINERAL ACT

The Defendants argue that the 2006 version of the Ohio Dormant Mineral Act supersedes the 1989 version, and in effect eliminates the need to analyze the facts herein in relation to the earlier version. The 1989 version states that unless one of the Saving Events have been met within the 20 year look back period, the oil and gas shall be deemed abandoned and vested in the owner of the surface. Revised Code 1.58 (A)(1) and (2) provide that “[t]he reenactment, amendment, or repeal of a statute does not, except as provided in division (B) of this section: (1) Affect the prior operation of the statute for any prior action taken thereunder, or (2) Affect any validation, cure, right, privilege,

obligation, or liability previously acquired, accrued, accorded, or incurred thereunder...”

A change in the law that deals with substantive rights does not affect such rights even though no action or proceeding has been commenced, unless the amending or repealing act expressly provides that the rights are affected. O’Mara v. Alberto-Culver Co., 6 Ohio Misc. 132, 133, 215 N.E. 2d 735 (Ohio Com. Pl. 1966). “A vested right can be created by common law or statute and is generally understood to be the power to lawfully do certain actions or possess certain things: in essence, it is a property right.” State ex rel. Jordan v. Indus. Comm. 120 Ohio St. 3d 412, 413, 900 N.E. 2d 150 (2008) quoting Washington Cty. Taxpayers Assn. v. Peppel, 78 Ohio App. 3d 146, 155, 604 N.E. 2d 181 (1992). Wendt v. Dickerson 2012 CV 020135 Tuscarawas County Common Pleas Court, decided February 21, 2013.

If no Saving Event has occurred, pursuant to law, the abandonment and vesting have already taken place in the case at bar. This Court finds that the 1989 and the 2006 versions of the Ohio Dormant Mineral Act are both applicable to the case at bar, however, should the mineral interest vest herein pursuant to the 1989 Act, any review under the 2006 version of the Act would become moot. See Walker v. Noon, 7<sup>th</sup> Dist. Case No. 13 NO 402, 2014-Ohio-1499(April 3, 2014).

## THE 1989 VERSION OF THE OHIO DORMANT MINERAL ACT

In order to preserve one's interest in a severed mineral right one must meet the requirements of ORC 5301.56. In accordance with (B)(1) the mineral interest held by any person, other than the owner of the surface, shall be deemed abandoned and vested in the owner of the surface unless: the interest is in coal or the interest is held by the government. ORC 5301.56 also provides protection if within the preceding 20 years the mineral interest has been the subject of a title transaction, there has been actual production or withdrawal of the minerals, underground gas storage has taken place, a drilling or mining permit has been issued, a claim to preserve the interest has been filed or a separately listed tax parcel has been created for the mineral interest.

In the case at bar the only portions of ORC 5301.56 that are applicable herein deal with whether there was a separately listed tax parcel issued and whether the property in question has been the subject of a title transaction. Applying the requirements of the 1989 Ohio Dormant Mineral Act, we must first look to the years 1992 back to 1969. The Act provides for a 20 year look back period from March 22, 1989, but also allows for a three year grace period to March 22, 1992.

The Defendants argue that the 1989 Act is a static 20 years plus the grace period. The Plaintiffs take the position that the look back period is a rolling 20 years. The Defendants rely on Riddell v. Layman, 94 CA 114, 5<sup>th</sup> District, Licking County (1995). Riddell was presented with the question of whether a 1965 deed recorded in 1973 qualified as a title transaction. A "rolling look back period" was not an issue.

ORC 5301.56 (D)(1) provides:

A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) of this section by the occurrence of any of the circumstances described in division (B)(1)(C) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section. (Emphasis added).

A static 20 year look back period would have no need for a provision providing for indefinite preservation of mineral interests through successive filings of preservation claims. Based upon the same, this Court finds the 1989 Ohio Dormant Mineral Act to provide for a “rolling look back period.” Also see Shannon v. Householder 12 CV 226 Jefferson County Common Pleas, July 17, 2013.

This Court finds this determination to be consistent with the comments set forth in the Ohio Legislative Service Commission Report relating to the 1989 enactment of R.C. 5301.56. The Commission therein stated:

Under the act, an interest could be preserved indefinitely from deemed abandonment by the occurrence of any of the four listed categories of exceptional circumstances **within each preceding 20 year period.** (Emphasis added).

Ohio Legislative Service Commission, December, 1988, p. 38.

**APPLICATION OF THE 1989 OHIO DORMANT MINERAL ACT**  
**AS TO DEFENDANTS BEDWAY LAND AND MINERALS COMPANY, ERIC**  
**PETROLEUM CORPORATION AND CHESAPEAKE EXPLORATION L.L.C.**

The Plaintiffs argue that in applying the 20 year “rolling look back period,” Bedway, who received the mineral interest via Quitclaim deed on Dec. 18, 1984, lose that interest on December 18, 2004. The 1984 Quitclaim Deed qualifies as a title

transaction and a saving event as required by R.C. 5301.56. Defendant Bedway further argues that a separately listed tax parcel number was issued for the minerals shortly after they received the Quitclaim Deed in 1984. There is a question as to what that Parcel No., being 26-0000590.000 actually reserves. It relates to 226.18 acres in Shortcreek Township, but there is no reference to what section or sections of the township are affected by the parcel number. Again, there are no 226.18 acre parcels listed in the case at bar. Without more specificity, this Court finds Parcel No. 26-0000590.000 to lack the requirements of a saving event per R.C. 5301.56. Even if it were more specific it would merely act as one savings event in approximately the same year as the Quitclaim Deed and would require additional saving events within the next twenty years in order to protect Defendant Bedway's mineral interest.

This Court does not find the Parcel No. issue to be determinative herein, but rather looks to other saving events within the twenty year "rolling" window. On May 25, 1983 Bedway's predecessor in the mineral interest William W. Wehr and Mary Ann Wehr entered into an oil and gas lease with K.S.T. Oil & Gas Co. Inc. The Memorandum of Lease provided for a three year primary term. On December 28, 1989 K.S.T. released their interest in the lease in question. Defendant Eric Petroleum's expert, Rodney C. Yoder, opined that the K.S.T. Lease "covered all of the oil and gas interests located in Shortcreek Township which were subsequently conveyed in 1984 from Wehr to Bedway Land and Minerals Company." See Yoder Supp. Affidavit at para. 18. "Given the nature of interest conveyed by an oil and gas lease, the Court finds that such represents a 'title transaction' as defined by law." Bender v. Morgan Columbiana County Court of Common Pleas Case No. 2012 CV 378 ( Mar. 22, 2013). R.C. 5301.251 provides in

pertinent part “in lieu of the recording of a lease, there may be recorded a memorandum of lease.” Additionally, R.C. 5301.33 in dealing with methods to cancel leases provides that, “Lease as used in this section includes a memorandum of lease provided for by section 5301.251 of the Revised Code.”

The question of a lease and/or a release of an oil and gas lease being a title transaction was addressed in McLaughlin v. CNX Gas Co., N.D. Ohio No. 5:13 CV 1502, 2013 U.S. Dist. LEXIS 174698, \*9 (Dec. 13, 2013). It was held that “even if Defendant’s property interests through the lease are something less than a grant of real property, those interests quite clearly affect title to the mineral rights in the property. As the lease itself was a title transaction, there can be no dispute that the release of rights under that lease qualifies as a title transaction as well.”

This Court finds that the K.S.T. Lease filed in 1983 and the K.S.T. Release filed in 1989 are title transactions and saving events pursuant to R.C. 5301.56. Looking forward from 1989, in order to protect their severed interest, the Defendant Bedway must exhibit another saving event within the next twenty years. On May 3, 2005 Defendant Bedway entered into a lease with Mason Dixon Energy, Inc. which was filed on June 16, 2005. Said lease was subsequently assigned to Defendants Eric Petroleum Corporation and Chesapeake Exploration L.L.C. thus protecting the mineral interest herein.

The severed mineral interest owner Bedway Land and Minerals Company has complied with the requirements of the 1989 Ohio Dormant Mineral Act. The surface owners have not pursued their claim by following the requirements of the 2006 Ohio Dormant Mineral Act.

**APPLICATION OF THE 1989 OHIO DORMANT MINERAL ACT AS TO**

**T. MARK BEETHAM AND THE MCLAUGHLIN HEIRS**

The 1989 Ohio Dormant Mineral Act provided for a 20 year look back window from March 22, 1989 to March 22, 1969 with a 3 year grace period to March 22, 1992. The Defendant T. Mark Beetham sets forth that his predecessor in interest Thomas Beetham protected his mineral interest by filing an Affidavit Preserving Notice of Ownership in Substance, Oil, Gas, Coal and Mineral Rights on October 13, 1976. Applying a 20 year rolling look back window, the mineral interest protection afforded by way of Affidavit on October 13, 1976 expired on October 13, 1996. Any Affidavits filed after that date regarding this interest were a nullity as the mineral rights vested in the surface owners on October 13, 1996 pursuant to the Ohio Dormant Mineral Act.

As to the McLaughlin Heirs, the record reflects no saving events between March 22, 1992 and March 22, 1969. Pursuant to R. C. 5301.56, their mineral interests herein expired on March 22, 1992. Any Affidavits filed after that date were of no effect as the mineral rights had vested in the surface owners pursuant to the provisions of the Ohio Dormant Mineral Act.

**CONCLUSION**

This Court considered Plaintiff Robert B. Myers et al.'s Motion For Summary Judgment, Defendant Bedway's Motion For Summary Judgment, Defendant Eric Petroleum's Motion For Summary Judgment, Chesapeake Exploration's Partial Motion

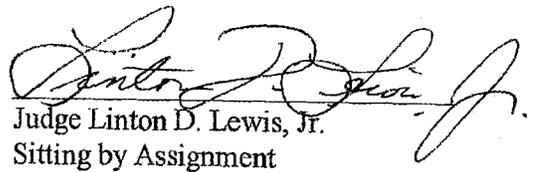
For Summary Judgment, Defendant Lucretia Vandemark et al.'s (the McLaughlin Heirs) Motion For Summary Judgment and Defendant T. Mark Beetham's Motion For Summary Judgment. After having considered the same and construing the evidence most strongly in favor of the nonmoving parties and having determined that there is no genuine issue as to any material fact and further that reasonable minds can come to but one conclusion and that there is no just reason for delay, this Court makes the following ruling. This Court grants Defendant Bedway's Motion For Summary Judgment, grants Defendant Eric Petroleum's Motion For Summary Judgment, grants Defendant Chesapeake Exploration's Partial Motion For Summary Judgment, grants Plaintiff Robert B. Myers et al.'s Motion For Summary Judgment as to Counts 1, 2, 3, 4, 5 and 6 as they relate to the Defendant Lucretia Vandemark et al. (the McLaughlin Heirs) and T. Mark Beetham, denies the Motion For Summary Judgment of Defendant Lucretia Vandemark et al. (the McLaughlin Heirs), denies the Motion For Summary Judgment of T. Mark Beetham and denies the Motion For Summary Judgment of Plaintiff Robert B. Myers et al. as it relates to Defendant Bedway Land and Minerals Company, Defendant Eric Petroleum and Defendant Chesapeake Exploration and as set forth in Counts 7, 8 and 9.

This Court further declares the Plaintiffs are the lawful owners of the oil and gas rights in dispute in this action as they relate to the parcels claimed by Lucretia Vandemark et al. (the McLaughlin Heirs) and T. Mark Beetham. This Court orders that title to the subject mineral interest be quieted in the Plaintiffs' names. Further, the reservations in the 1921 deeds, and the purported Affidavits preserving minerals premised thereon, are cancelled by operation of law and terminated as a consequence of the merger of the mineral interests with the surface estates of the Plaintiffs' properties.

Plaintiffs' counsel shall provide the Court with a journal entry with the legal description of the subject property quieted, in the Plaintiffs, which is sufficient for recording in the office of the Harrison County Recorder.

This Court declares Bedway Land and Minerals Company to be the lawful owners of the oil and gas in dispute in the amount claimed regarding the parcels within which they claimed an interest herein and consequently this Court declares the interest additionally claimed by Eric Petroleum Corporation and Chesapeake Exploration L.L.C. to likewise be valid and hereby quiets title to the same.

Costs herein shall be taxed against the deposit with any balance to be split between the parties. This is a final appealable order. **IT IS SO ORDERED.**

  
Judge Linton D. Lewis, Jr.  
Sitting by Assignment

WITHIN THREE (3) DAYS OF ENTERING THIS JUDGMENT UPON THE JOURNAL, THE CLERK SHALL SERVE NOTICE OF THIS JUDGMENT AND ITS DATE OF ENTRY UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR. SERVICE SHALL BE MADE IN A MANNER PRESCRIBED IN CIVIL RULE 5 (B) AND SHALL BE NOTED IN THE APPEARANCE DOCKET. CIVIL RULE 58.

Stamped copies:

Attorney Robert J. Tscholl  
Attorney James F. Mathews  
Attorney Michael J. Shaheen  
Attorneys Matthew L. Fornshell/Ross Fulton  
Attorney Thomas A. Hill  
Attorney Clay K. Keller  
Attorney Rupert N. Beetham  
Attorney T. Owen Beetham  
Judge Linton D. Lewis Jr.-Sitting by Assignment