

ORIGINAL

IN THE SUPREME COURT OF OHIO

JON D. WALKER, JR.,)	CASE NO. 2014-0803
)	
Appellee,)	Appeal from the Noble County
)	Court of Appeals, Seventh Appellate District
v.)	(Case No. 13 CA 402)
)	
PATRICIA J. SHONDRICK-NAU,)	
)	
Appellant.)	
)	

**BRIEF OF AMICI CURIAE ECLIPSE RESOURCES CORPORATION AND
CHESAPEAKE EXPLORATION, L.L.C. IN SUPPORT OF APPELLANT
PATRICIA J. SHONDRICK-NAU**

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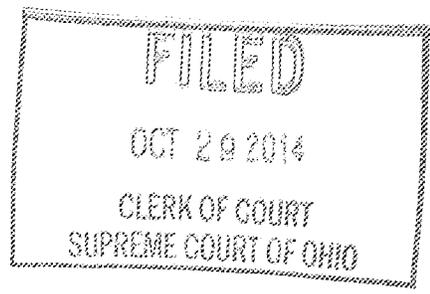


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I. STATEMENT OF INTEREST OF AMICI CURIAE

Eclipse Resources Corporation (“Eclipse”) and Chesapeake Exploration, L.L.C. (“Chesapeake”) (collectively, “Amici”) are active oil and gas exploration and production companies currently operating throughout the Utica Shale formation. Eclipse is an independent exploration and production company engaged in the acquisition and development of oil and natural gas properties in the Appalachian Basin. It has assembled over 227,000 leasehold acres in the State of Ohio, of which over 99,000 acres are located in counties that comprise a part of the Utica Shale drilling areas, including the counties of Noble, Guernsey, Belmont, Monroe, and Harrison. Eclipse has drilled or participated in the drilling of more than 75 Utica Shale horizontal wells in the State of Ohio. Chesapeake currently holds several hundred thousand leasehold acres, and has drilled over 500 Utica Shale horizontal shale wells in various Ohio counties including Carroll, Harrison, Jefferson, and Tuscarawas.

In order to obtain their respective leasehold positions, Eclipse and Chesapeake expended considerable resources to understand and address the respective interests of record holders and surface owners claiming ownership of severed oil and gas rights underlying their property pursuant to R.C. 5301.56, commonly known as the Ohio Dormant Mineral Act. Issues involving the application and interpretation of R.C. 5301.56 have resulted in significant litigation, the uncertainty of which has materially hindered Eclipse and Chesapeake’s ability to ensure that valid leases are obtained and payments are made to the proper parties in interest prior to the commencement of drilling operations.

Amici respectfully urge this Court to find that the current version of R.C. 5301.56 (commonly referred to for convenience as the “2006 ODMA”) controls in proceedings initiated after 2006. Such a ruling fulfills the purpose and intent of the Ohio Dormant Mineral Act. The

Court's resolution of this important issue will provide much needed clarity as to the operation of R.C. 5301.56, and will resolve a significant number of claims with regard to ownership of valuable severed mineral rights throughout Ohio.

II. STATEMENT OF THE CASE AND FACTS

This matter involves a dispute over ownership of severed mineral rights underlying two parcels of real property totaling approximately 44.226 acres located in Noble County, Ohio (the "Property"). The record in this case reflects the following undisputed facts:

A. Title History for the Mineral Estate.

1964 – Appellant John R. Noon acquired fee simple title to the Property by Deed. *See* Deed Book 122, Page 567 of the Noble County Recorder's Office.

July 26, 1965 – Mr. Noon conveyed the surface estate of the Property via Quit Claim Deed, which expressly reserved the underlying mineral rights (the "Mineral Estate"). The reservation language states, in pertinent part:

Excepting and reserving to the Grantor [John Noon], his heirs, successors and assigns, all coal, oil and gas and all other minerals underlying the premises together with all the easements rights and privileges therein which Grantor, his heirs successors or assigns***.

See Deed Book 122, Page 568.

1970 – The surface estate of the Property was conveyed twice via two separate Warranty Deeds. Both Warranty Deeds specifically recited the prior reservation language contained in the July 26, 1965 Quit Claim Deed, above, and referenced the book and page number of the reservation. *See* Deed Book 133, Page 686 and Deed Book 134, Page 183.

1977 – The surface estate was conveyed by Warranty Deed, which also specifically recited the prior reservation language contained in the July 26, 1965 Quit Claim Deed, above, and referenced the book and page number of the reservation. *See* Deed Book 144, Page 878.

May 14, 2009 – Appellee Jon D. Walker acquired title to the surface of the Property via Fiduciary Deed. *See* Official Record Book 165, Page 872.

B. Dormant Mineral Act Proceedings.

The proceedings involving Appellee's claim to ownership of the Mineral Estate pursuant to R.C. 5301.56 occurred as follows:

December 2, 2011 – Mr. Walker sent a notice of abandonment of the severed mineral interest to Mr. Noon under the 2006 version of the ODMA. *See* Official Record Book 195, Page 508.

January 10, 2012 – Mr. Noon responded to Mr. Walker's notice by timely filing an affidavit and claim to preserve the mineral interest within the 60 day time limitation under R.C. 5301.56(H). *See* Official Record Book 195, Page 834.

April 27, 2012 – Mr. Walker filed a complaint for quiet title and for a declaratory judgment adverse to Mr. Noon's severed mineral interest underling the Property based exclusively upon the superseded 1989 version of the ODMA. *See* Complaint.

C. Lower Court Proceedings.

After the close of pleadings, the parties filed cross-motions for summary judgment. On March 20, 2013, the Noble County Court of Common Pleas issued a decision granting summary judgment in favor of the Mr. Walker, and denying Mr. Noon's motion. In finding in favor of Mr. Walker, the trial court applied a prior version of R.C. 5301.56 (commonly referred to for convenience as the "1989 ODMA") and concluded that the three surface transfers in 1970 and 1977 did not qualify as title transactions under R.C. 5301.56(B)(3).

Mr. Noon timely appealed to the Seventh District Court of Appeals.¹ On April 3, 2014, the appellate court affirmed the trial court's decision, holding that: (1) "in order for the mineral interest to be the 'subject of' the title transactions" for purposes of R.C. 5301.56(B)(3), the grantor must actually convey or retain that interest; (2) the 1989 ODMA controls over the 2006 version of the ODMA; and (3) the state constitutional concerns (due process and retroactivity) regarding the application of the 1989 ODMA need not be addressed.

¹ During the pendency of the appeal, Mr. Noon passed away. A motion for substitution of parties was granted by the appellate court on January 8, 2014, thereby substituting the Appellant, Patricia Shondrick-Nau, as the real party in interest for purposes of this appeal.

On May 16, 2014, Appellant Patricia Shondrick-Nau timely filed a notice of appeal and a memorandum in support of jurisdiction on several propositions of law, including whether the current version of the statute applies to claims filed after June 30, 2006. On June 16, 2014, Appellee filed a Memorandum in Response. On September 3, 2014, this Court accepted the appeal and the record was filed on September 19, 2014.

III. ARGUMENT

Proposition of Law No. I: The 2006 version of R.C. 5301.56 controls in the ODMA proceedings and quiet title action initiated by Plaintiff after 2006.

and

Proposition of Law No. II: To establish a mineral interest as actually vested in the surface owner under the 1989 version of the ODMA, the surface owner must have taken some action to establish abandonment prior to June 30, 2006. In all cases where a surface owner failed to take such action to acquire the mineral interest, only the 2006 version of the ODMA can be used to obtain relief.

Propositions of Law I and II are closely related and should be considered together.

A. The 2006 Version of R.C. 5301.56 Controls this Quiet Title Action Filed in 2010.

The appellate court erred in applying the 1989 ODMA, along with the concept of “automatic vesting,” to decide the proceedings and quiet title action initiated by the Appellee. In reaching its decision, the court incorrectly construed the underlying purpose of the ODMA and the language of the 1989 version of the statute. The court has improperly added to the 1989 ODMA in order to have it operate in an automatic, self-effectuating manner which is not supported by the plain language of the statute. Moreover, the appellate court has improperly disregarded the fact that the 2006 amendments were remedial in nature and specifically directed at amending the procedural ambiguities of the 1989 ODMA.

For quiet title actions asserted by surface owners at this time, the appropriate course is for

surface owners to follow the procedure currently in place under R.C. 5301.56. It is inappropriate for surface owners and courts to now declare (over two decades later) that the 1989 ODMA “automatically” transferred title to the mineral rights. The quiet title procedure now being used by Appellee under the 1989 ODMA was the procedure required under the *prior* version of the statute. Having taking no action while the 1989 ODMA was in effect, however, the Appellee in this matter is now required to follow the current procedure under the statute if he seeks title to the Mineral Estate.

1. The Purpose of the ODMA is Effectuated by Applying the Current Version of the Statute.

The purpose of the Marketable Title Act, which includes the ODMA, is expressly set forth in R.C. 5301.55, which provides:

Sections 5301.47 to 5301.56, inclusive, of the Revised Code, shall be liberally construed to effect **the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title** as described in section 5301.48 of the Revised Code, subject only to such limitations as appear in section 5301.49 of the Revised Code.

Id. (Emphasis added.)

The purpose of the ODMA is not to “automatically” reunite a severed mineral interest with the owner of the surface at the first opportunity of inactivity for any twenty-year period. Rather, the ODMA is a recording statute which is neutral regarding whether mineral rights are held by a surface owner, or by another person. The purpose of the ODMA is to create and maintain a clear title record as to ownership of mineral rights so that those rights can be developed without concerns that an adverse claim may arise. The court’s decision in *Dodd v. Croskey*, 7th Dist. Harrison No. 12 HA 6, 2013-Ohio-4257, is in accord with the significance of this issue. In *Dodd*, the court held that if a holder of a severed mineral estate files a proper claim to preserve the interest within 60 days of a surface owner’s notice of intent to abandon being

served under the ODMA, it does not matter whether a savings event occurred during the preceding twenty years before the notice because the act of filing the claim to preserve accomplishes the purpose of the statute. *Id.* at ¶ 34. This is because a claim to preserve will reflect the owner of the mineral interest in the title record. Likewise, if the holder does not timely file a claim to preserve within 60 days, the purpose of the ODMA is also fulfilled. In either circumstance, an instrument clarifying ownership of the mineral interest will be filed of record with the county recorder.

The conclusion of automatic vesting under the 1989 ODMA adopted by the appellate court in this matter, and other recent cases, directly undercuts the very purpose of the statute. It provides for a situation where a transfer of ownership in the mineral rights can occur *outside* the record chain of title, resulting in an unreliable record with regard to ownership. Moreover, when the legislature amended R.C. 5301.56 to correct its ambiguities and clarify the procedures, *infra*, it did the opposite of endorsing or affirming a concept of an “automatic” loss of the mineral rights by a holder and transfer of the same to the owner of the surface.

2. Applying the 1989 ODMA and Automatic Vesting in Favor of Appellee Effects a Forfeiture of Appellant’s Private Property Rights, which the Law Abhors.

The court’s holding that the 1989 ODMA applies in a self-executing manner strips away a record holder’s property rights and awards them to a surface owner for no sound reason. The ODMA was not intended to create forfeitures of severed mineral interests at every opportunity. In fact, the law abhors forfeiture and such results should be avoided. *Ohio Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St.3d 532, 534, 605 N.E.2d 368 (1992), quoted at *Sogg v. Zurz*, 121 Ohio St.3d 449, 2009-Ohio-1526, 905 N.E.2d 187, at ¶ 9. It is these private property rights that are expressly protected by the Ohio Constitution’s directive that “[p]rivate property shall ever be held inviolate[.]” Ohio Const., Art. I §19. This concept is self-explanatory,

but this Court has affirmed these property rights stating, “The right of private property is an *original and fundamental* right, existing anterior to the formation of government itself.” *City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115 at ¶ 36. (Emphasis sic.) “Ohio has always considered the right of property to be a fundamental right. *** There can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces.” *Id.* at ¶ 38. Therefore, an interpretation of the 1989 ODMA as providing for an automatic forfeiture of a severed mineral interest holder’s property rights, without notice, cannot be correct.

3. The Procedural Ambiguities in the 1989 ODMA Were Addressed with the Amendments Made in 2006.

The “ambiguity of the 1989 version of the ODMA is readily apparent.” *Eisenbarth v. Reusser*, 7th Dist. Monroe No. 13 MO 10, 2014-Ohio-3792 (DeGenaro, P.J., concurring) at ¶ 65. Competing interpretations of the application of the 1989 ODMA have been advanced in every ODMA case by trial and appellate courts. The General Assembly recognized the inherent ambiguity in the 1989 ODMA during the legislative process leading to the enactment of the 2006 amendments: “Unfortunately, Ohio’s Dormant Mineral Statute has seldom been used, in large measure because the statute did not clearly define when a mineral interest became abandoned and exactly how the process to reunite the mineral ownership with the surface ownership was to be accomplished. House Bill 288 *removes the ambiguity in the existing statute.*” (Emphasis added.) *Eisenbarth*, 2014-Ohio-3792 (DeGenaro, P.J., concurring) at ¶ 108, quoting H.B. 288 Rep. Mark Wagoner, Sponsor Testimony before the Ohio House Public Utilities Committee.

As of June 20, 2006, the 1989 ODMA was repealed and amended by the 2006 ODMA. As explained by Judge DeGenaro:

The 2006 version of R.C. 5301.56 does what the General Assembly intended the 1989 ODMA to do but failed to achieve: balance the complementary policy goals of creating a reliable record chain of title via the Ohio Marketable Title Act (OMTA) statutory scheme – which includes the ODMA – and facilitate economic use of mineral rights. The Ohio General Assembly recognized that the 1989 ODMA had technical problems and was thus seldom used. Specifically, the 1989 ODMA failed to define how to calculate the 20 year look-back period before *allowable* vesting can occur – to use the General Assembly’s verbiage – and define the process to reunite the interests in the surface owner. The 2006 ODMA corrected inoperable, not merely ambiguous, statutory language. The current version of R.C. 5301.56 not only clarifies the process, it specifies the look-back period trigger and mandates notice to the holder before the mineral rights are deemed abandoned; only then can *allowable* vesting occur with the surface owner.

Eisenbarth, 2014-Ohio-3792 (DeGenaro, P.J., concurring) at ¶ 70.

Instead of allowing surface owners to regress to a law which is procedurally ambiguous and defective, the proper course is to apply the 2006 ODMA in effect today to claims filed after 2006. As the United States Supreme Court has stated, “a court should ‘apply the law in effect at the time it renders its decision’ ...even though the law was enacted after the events that gave rise to the suit.” *Landgraf v. USI Film Products*, 511 U.S. 244, 273, 114 S.Ct. 1483 (1994), citing *Bradley v. School Bd. of Richmond*, 416 U.S. 696, 711, 94 S.Ct. 2006, 40 L.Ed.2d 476 (1974). The 2006 ODMA removes the uncertainties in the prior law by setting forth clear procedures for a surface owner seeking abandonment and vesting of a mineral interest, and the law should be followed.

The desire of Appellee, and other surface owners filing ODMA actions, to have courts now apply a repealed and amended version of the statute to effect widespread forfeitures of thousands of acres of valuable property rights must be rejected. The legislature clarified the procedure under R.C. 5301.56 in a manner that does not reflect the concept of an automatic transfer of property rights as surface owners are seeking. As stated by Judge DeGenaro’s concurring opinion in *Eisenbarth*:

Viewed from the perspective that the 2006 ODMA is in effect, coupled with the General Assembly's expressed reasons for making those amendments, and that statutes in derogation of common law must be strictly construed to preserve individual property rights, the phrase 'deemed abandoned and vested' in R.C. 5301.56(B)(1), should be construed as defining an inchoate right.

The current version of R.C. 5301.56 not only clarifies the process, it specifies the look-back period trigger and mandates notice to the holder before the mineral rights are deemed abandoned; only then can *allowable* vesting occur with the surface owner.

Eisenbarth (DeGenaro, P.J. concurring) at ¶¶ 69-70.

Given the General Assembly's statement of intent based on the 2006 amendments, to now review an ODMA claim and determine that the 1989 ODMA "automatically" transferred property rights from one person to another (over two decades ago) does not make sense. Such a result is contradicted by the legislative intent and black letter law, which protects private property rights and abhors forfeitures of the same.

If the Appellee's predecessors had taken action under the 1989 ODMA by filing a quiet title claim they may have been able to utilize the presumption of the mineral rights being "deemed abandoned and vested," *if* they could show that none of the six enumerated events applied to the twenty year period. The record holders of the Mineral Estate would have had an opportunity to challenge the surface owners' abandonment claims. Under these circumstances, the Appellee's predecessors in title may have been able to effectuate a transfer and vesting of the Mineral Estate from the record holders themselves *if* none of the six enumerated events applied. However, the Appellee's predecessors took no such action so there was no determination, transfer, or vesting of the Mineral Estate from the record holders to the owners of the surface. Therefore, any current action taken by the Appellee pursuant to R.C. 5301.56 must be pursued in accordance with the current law and clarified procedures. To allow otherwise creates an unduly

harsh result for those relying on the record chain of title for which the doctrine of laches also applies. *See Eisenbarth* (DeGenaro, P.J. concurring) at ¶¶ 90-91.

B. The Appellate Court’s Decision in this Matter is not in Accord with the Statutory Language or Purpose of the Dormant Mineral Act.

The plain language of the 1989 ODMA itself does not provide for “automatic” vesting. Rather, section (B)(1) of the statute provides that under certain circumstances a severed mineral interest “shall be deemed abandoned and vested in the owner of the surface of the lands subject to the interest.” The words “automatic” or “automatically” do not appear in the statute. The “deemed abandoned and vested” language is “less than conclusive” and is suggestive of providing standards, but not resolving any issue of ownership of the severed mineral interest. *See Dahlgren v. Brown Farm Properties*, Carroll C.P. No. 13 CVH 27445 (Nov. 5, 2013) at 15. The trial court compared this language to portions of the Marketable Title Act, which establish that certain unprotected rights are “null and void” or “extinguished,” with the ODMA’s language that the property rights shall be “deemed abandoned.” *Id.* Considering that R.C. 5301.56 is codified as part of the Marketable Title Act, Appellee’s interpretation of the 1989 ODMA is irreconcilable with other provisions of the Act. *See Eisenbarth* (DeGenaro, P.J. concurring) at ¶ 85.

The court erred based on an incorrect construction of the word “vested,” taken from the phrase “deemed abandoned and vested,” which appears in both versions of the ODMA. *Walker* at ¶¶ 39-40. The court’s holding does not recognize, however, that the term “deemed” modifies both “abandoned” and “vested” *See Cravens v. Cravens*, 12th Dist. Warren No. CA-2008-02-033, 2009-Ohio-1733, at ¶ 63 (noting that statutory construction requires phrases that use the conjunction “and” to be read together and not independently). Thus, under the 1989 ODMA, a severed mineral interest may be “deemed vested” indicating that a surface owner must take

additional action for the right to become “vested.” The phrase should not be read as “deemed abandoned” and “vested.” Hence, the phrase used in the statute does not effectuate an automatic transfer of the mineral interest.

This fact is demonstrated by recent quiet title actions filed by surface owners, including this action. Appellee, and every other surface owner making claims under the 1989 ODMA, has now brought quiet title actions in order to complete a process which the 1989 ODMA plainly left unfinished – a transfer of the mineral interest to the surface owner along with a recordation of the transfer as a matter of record. The quiet title procedure now being used by Appellee is the logical and necessary step under a plain reading of the 1989 ODMA. The prior version of the statute by itself does not create an “automatic” transfer of the mineral rights. Thus, Appellee inappropriately seeks to invoke a procedure under a repealed version of the statute which no longer applies. The procedure set forth in the 2006 ODMA is what applies and controls in the quiet title action filed by Appellee in April of 2012.

Moreover, if the legislature intended to affirm an “automatic vesting” concept when addressing the ambiguities in the 1989 ODMA it would have done so in 2006. Instead, the legislature did the opposite and made it absolutely clear that there is no automatic transfer and vesting of a mineral interest in the surface owner. The legislature also made it clear that vesting of a mineral interest in the owner of the surface cannot occur outside the mineral title chain of record. *See Eisenbarth* (DeGenaro, P.J. concurring) at ¶ 94. R.C. 5301.56 does not, nor can it, cause minerals to be used, developed, left idle, forgotten, or remembered. Instead, the statute is only directed at creating and facilitating a reliable record chain of title to severed mineral interests. The automatic vesting interpretation adopted by the appellate court undercuts the purpose of the statute because it creates a situation where a transfer of ownership in the mineral

rights can occur *outside* of the record chain of title – in direct contravention of the legislative purpose of the Marketable Title Act of which the ODMA is a part. *Id.* at ¶ 106.

Proposition of Law No. III: The 2006 version of the ODMA applies retrospectively to severed mineral interests created prior to its effective date.

The Ohio legislature provided for a retrospective application of the 2006 ODMA in R.C. 5301.56(B)(3), which provides as follows:

Any mineral interest 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 the requirements established in division (E) of this section are satisfied and none of the following applies *** *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[.]

(Emphasis added).

The 1989 ODMA contained similar language concerning a retrospective operation. The relevant portion of the 1989 ODMA provides that a mineral interest shall be deemed abandoned and vested in the owner of the surface if, “*within the preceding twenty years*, one or more of the following has occurred[.]” (Emphasis added.) Although the legislature modified the language in the 2006 ODMA slightly, both statutes require a “look back” to periods of time before they were enacted by operation of their express terms. Both versions of the statute provide for a twenty-year look back period, with the result that property rights can be determined by acts or omissions that occurred long before the statute was enacted. The only reasonable conclusion is that the legislature intended *both* versions to be applied retrospectively if the statutes are to be applied at all. Moreover, the 2006 ODMA is remedial. The amendments to the statute did not change any of the substantive elements of abandonment and vesting in the surface owner. Appellee did not lose any vested substantive right by the enactment of the amendments in 2006; he lost only a procedural argument that he may have a claim to the Mineral Estate without providing notice to

the record holder. *See, Eisenbarth*, 2014-Ohio-3792, at ¶ 84 (DeGenaro, P.J. concurring) (“The extent of the rights the Eisenbarths held under the 1989 ODMA was the *potential* for abandonment and vesting, this right was not lost when the ODMA was amended. Instead, the procedure surface owners had to follow to reunite the severed mineral rights with the surface fee was clarified.”)

Consistent with the express operation of the statute, the appellate court has also applied the 2006 ODMA retrospectively to a time period before the statute was enacted. In *Dodd v. Croskey*, 7th Dist. Harrison No. 12 HA 6, 2013 WL 5437365 (Sept. 23, 2013), the court found no issue with applying the current law to address a time period before 2006. The severed mineral interest at issue in *Dodd* was created in 1947. *Id.* at ¶ 4. A notice of intent to abandon was published in 2010 and, therefore, the Court analyzed the time period from 1990 to 2010. *Id.* at ¶ 6. Thus, a plain reading of the 2006 ODMA provides that it applies retrospectively to cover the twenty-year period preceding when a *notice* of intent to abandon is served or published.

Claims that an application of the current version of the statute will violate the retroactivity clause of the Ohio Constitution are without merit. In fact, this Court recently rejected a very similar “retroactivity” challenge to statutory amendments in *Longbottom v. Mercy Hosp. Clermont*, 137 Ohio St.3d 103, 2013-Ohio-4068, 998 N.E.2d 419. In *Longbottom*, the plaintiff was injured in 2002 and his claim accrued at that time. The Ohio legislature amended the statute on prejudgment interest in 2004: a person claiming such interest must give “written notice in person or by certified mail that the cause of action has accrued,” R.C. 1343(C)(1)(c)(i), and unless and until he gives such notice, no prejudgment interest accrues. The 2004 amendment also eliminated prejudgment interest on future damages claims. This Court determined that the 2004 amendment applied to any case filed after the effective date of the amendments, *even if the*

claim had accrued before 2004. This Court rejected plaintiff's challenge under the Retroactivity Clause, stating:

Although the Retroactivity Clause bars statutes that extinguish preexisting rights, *id.*, it does not prohibit legislation that “merely affect[s] ‘the methods and procedure by which *rights are recognized, protected, and enforced, [and] not...the rights themselves.*’

(Emphasis added.)

The 2004 amendment to R.C. 1343.03(C) neither destroys nor eliminates the right to prejudgment interest...rather, the amended statute affects only the method by which prejudgment interest is calculated...R.C. 1343(C) applies to tort actions filed on or after June 2, 2004, regardless of when the cause of action accrued.

(Emphasis sic.) *Longbottom*, 137 Ohio St.3d at 109-110. Although the amendments to R.C. 1343(C) resulted in a loss of plaintiff's claim for interest that accrued before any notice was given (as well as the loss of any claim for interest on future damages), this Court determined that the amendments were not unconstitutional. Further, while the amendments were “not expressly made retrospective,” they could be applied to a claim that accrued before, but was not filed until after, the amendments were adopted. *Id.* at 109.

By this same reasoning, the 2006 ODMA applies to any quiet title action filed on or after June 30, 2006. Those amendments likewise did not destroy the right to claim that mineral interests have been abandoned; they merely changed the “methods and procedure” by which that right is recognized and enforced, while the substantive elements of an abandonment claim remained. Like the new notice requirements for a claim of prejudgment interest, the new notice requirements for a claim of abandonment apply to claims filed after the amendments, even if the claim accrued prior to 2006.

This Court also “implicitly rejected” a retroactivity challenged to the ODMA in *Heifner v. Bradford*, 4 Ohio St.3d 49, 446 N.E.2d 440 (1983).

In regard to the Pinkney Group’s claim that the MTA operates as unconstitutional retroactive legislation, the Ohio Supreme Court implicitly rejected this argument in *Heifner v. Bradford* (1983), 4 Ohio St.3d 49, 4 Ohio B. 140, 446 N.E.2d 440. In *Heifner*, the court reversed the lower court’s decision and found that a transfer under a will was a “title transaction” within the meaning of the MTA. However, in doing so, the court applied and upheld the MTA, thereby agreeing with the lower court’s analysis and rejection of alleged retroactivity and due process infirmities.

The statute is both prospective and retrospective. Insofar as it is prospective, no one would question its constitutionality. Insofar as it is retroactive, its constitutionality is justified on the grounds hereafter stated.

Pinkney v. Southwick Invests., LLC, 8th Dist. Cuyahoga Nos. 85074 & 85075, 2005-Ohio-4167, ¶ 36, quoting *Heifner v. Bradford*, 5th Dist. Muskingum No. CA-81-10, 1982 Ohio App. LEXIS 14859, rev’d on different grounds. The OMTA does “extinguish” and render “null and void” vested rights, but that is a consequence of the Act’s “procedural requirements.” *Pinkney* at ¶ 37. Thus, the Eighth District found that “[t]o the extent that the MTA operates retrospectively...it is merely remedial.” *Id.* The same is true of the ODMA. There is simply no impediment to applying the 2006 ODMA’s procedural requirements to any claim filed after June 30, 2006.

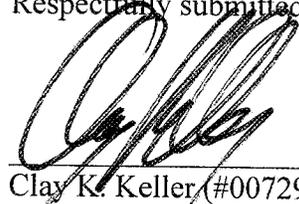
V. CONCLUSION

Ohio courts have been inundated with lawsuits involving the interpretation and application of R.C. 5301.56. The purpose of the ODMA, as part of the Marketable Title Act, is to address a potential title problem which can result from severed mineral estates. When interpreted within the context of the Marketable Title Act, the 1989 and 2006 ODMA can, and should, be applied in a consistent manner which is fair to all parties involved in these disputes so the title problem can be resolved. Resolving the potential title problem created by severed mineral

estates, through a consistent application of R.C. 5301.56, advances the public policy of encouraging responsible oil and gas development within the state. Unfortunately, the statute has become unhinged from its purpose and is attempting to be used as an instrument to obtain widespread forfeitures of mineral rights from one group of persons having title to the severed mineral interest to another group of persons who now seek title to the mineral interests.

For the reasons set forth above, Eclipse Resources Corporation and Chesapeake Exploration, L.L.C., as *amici curiae*, respectfully request that this Court affirm the propositions of law set forth herein.

Respectfully submitted,



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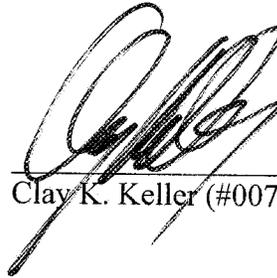
CERTIFICATE OF SERVICE

A copy of the foregoing was served by regular U.S. Mail upon the following counsel of record on this 29th day of October, 2014:

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