13-0601

NOTED DOCKET
DATE: APR 10 2013
DAVID "BUGS" STOVER
CLERK CIRCUIT COURT
WYOMING COUNTY

**IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA**

| | | |
|---|---|---|
| **WHITNEY WELL SERVICE, INC., a West Virginia corporation; DANNY WEBB CONSTRUCTION CO., INC., a West Virginia corporation; and VELMA WEBB, an individual** | ) | |
| **Plaintiffs,** | ) | |
| **v.** | ) | **CIVIL ACTION NO. 07-C-149**<br>**Hon. Judge Warren R. McGraw** |
| **CLASSIC OIL & GAS RESOURCES, INC., a Kentucky corporation licensed to do business in West Virginia** | ) | |
| **Defendant.** | ) | |

**ORDER GRANTING PLAINTIFFS' MOTION**
**TO COMPEL PERFORMANCE UNDER SETTLEMENT AGREEMENT**

On January 30, 2012 came Plaintiffs Whitney Well Service, Inc. and Danny Webb Construction Co, Inc., (the "Plaintiffs") by their corporate representative Danny Webb and by counsel Joseph G. Bunn of Jones & Associates, and the Defendant Classic Oil & Gas Resources, Inc., (the "Defendant"), by its corporate representative William Kelly and by its counsel R. Ford Francis of Allen Kopet & Associates, for a hearing on the "Plaintiffs' Motion To Compel Performance Under Settlement Agreement" (the "Plaintiffs' Motion"). After carefully considering the oral argument of counsel, the Plaintiffs' Motion, the "Defendant's Response to Plaintiffs' Motion to Compel Defendant's Performance Under Settlement Agreement" (the "Defendant's Response"), and applying relevant state law, this Court hereby **GRANTS** the Plaintiffs' Motion, as more fully set forth below.

**Background**

The controversy underlying the above-styled matter arose after the parties initially entered into a verbal agreement related to the development of certain oil and gas wells located in

southern West Virginia. In essence, the parties agreed that the plaintiff entities would perform certain work and, in return, they would receive a certain "working interest" in those wells. At some point, the relationship between the parties became troubled and this action ensued.

On March 2, 2012, pursuant to W. Va. Trial Court Rule 25.14, the parties engaged in mediation. As a result of their mediation efforts, the Plaintiffs and the Defendant signed a handwritten document bearing the caption of "Settlement Agreement." The Defendant refused to comply with the terms of such Settlement Agreement on the basis that there was no meeting of the minds of the parties when the parties executed the Settlement Agreement. Conversely, the Plaintiffs argued that the Settlement was a valid contract enforceable by either party. On August 2, 2012, the Court adopted the Plaintiffs' position and ordered the parties to comply with the terms of the Settlement Agreement. This Court also added that a review of the Settlement Agreement "clearly shows that the March 2, 2012 agreement called for a [working interest] in wells 'capable of producing' and 'located on pads built or improved by' the plaintiffs."

After this Court's August 2, 2012 Order, a dispute erupted between the parties as to the underlying meaning of the terms of the Settlement Agreement. Accordingly, the Plaintiffs filed the Plaintiffs' Motion, and in turn, the Defendant filed the Defendant's Response.

**Standard of Review**

The decision to compel performance of a party under a court order enforcing a settlement agreement rests in the sound discretion of the circuit court, and the exercise of that discretion will not be disturbed on appeal except in cases of abuse. *See Sanson v. Brandywine Homes, Inc.*, 215 W. Va. 307, 310-11 (2004); *Burdette v. Burdette Real Improvements, Inc.*, 214 W. Va. 448, 452 (2003).

## Discussion

Neither party contests the validity and legal force of the Settlement Agreement, so the law of contractual interpretation shall guide this Court's analysis. When the terms of a contract "are clear and unambiguous, they must be applied and not construed." *See Haynes v. DaimlerChrysler Corp.*, 228 W. Va. 441, 720 S.E.2d 564, 568-69 (2011); Syllabus Point 2, *Bethlehem Mines Corp. v. Haden,* 153 W.Va. 721, 172 S.E.2d 126 (1969); *accord* Syllabus Point 2, *Orteza v. Monongalia County General Hospital,* 173 W.Va. 461, 318 S.E.2d 40 (1984); Syllabus Point 3, *Waddy v. Riggleman,* 216 W.Va. 250, 606 S.E.2d 222 (2004). If the contractual language of an agreement is ambiguous, it must be construed before it can be applied. *See Estate of Tawney v. Columbia Natural Res., L.L.C.,* 219 W.Va. 266, 272, 633 S.E.2d 22, 28 (2006)("[W]hen a contract is ambiguous, it is subject to construction."). An agreement is deemed ambiguous if the terms are inconsistent on their face, or the phraseology can support reasonable differences of opinion as to the meaning of words employed and obligations undertaken. *See Haynes*, 720 S.E.2d at 568-69; Syllabus Point 6, *State ex rel. Frazier & Oxley, L.C. v. Cummings,* 212 W.Va. 275, 569 S.E.2d 796 (2002). *See also* Syllabus Point 4, *Estate of Tawney,* 219 W.Va. 266, 633 S.E.2d 22 (2006) ("The term 'ambiguity' is defined as language reasonably susceptible of two different meanings or language of such doubtful meaning that reasonable minds might be uncertain or disagree as to its meaning.").

With this general analytical framework in mind, this Court now proceeds to the issues in dispute among the parties. The dispute between the parties as to the underlying meaning of the terms of the Settlement Agreement pertains to four distinct issues: (I) whether the Plaintiffs are entitled to a 15% working interest in certain gas wells located in southern West Virginia; (II) whether the Defendant may provide provisional assignments in lieu of vested assignments for the

working interests it owes under the Settlement Agreement; (III) whether the Defendant must provide must deliver certain tools, or the replacement cost thereof, pursuant to the Settlement Agreement; and (IV) whether the Plaintiffs must sign a joint operating agreement prior to a proper determination of the working interests they are owed under the Settlement Agreement. Each of these issues is addressed below.

### *I. 15% Working Interests*

The express language of the Settlement Agreement, whether applied or construed, requires the Defendant to grant of a 15% working interest in all wells "capable of producing" and 'located on pads built or improved by" the plaintiffs. Specifically, the Settlement Agreement provides "Assign – 15% all capable of producing wells located on pads built or improved by Webb." While the express language of this term of the Settlement Agreement is lacking in grammatical quality, there are two primary components that are clear and unambiguous.

First, the express language of the Settlement Agreement indicates that the Defendant is required to assign a certain number of 15% working interests to the Plaintiff. This requirement was confirmed by this Court in its Order dated August 2, 2012. Second, the Plaintiffs are only entitled to a 15% working interest in a well if (i) the well is capable of producing gas and (ii) the well was improved or built by the Plaintiffs. This requirement was also confirmed by this Court in its Order dated August 2, 2012.

Notwithstanding the clarity of these two primary components, the Defendant argues that the Plaintiffs are not entitled to a 15% working interest unless the Plaintiffs have *totally* completed the pre-construction work of any particular well. The basis for the Defendant's position on this point is that the verbal agreement entered into among the parties, prior to the Settlement Agreement, required the Plaintiffs to complete all pre-construction work before a

15% working interest would be granted. While the verbal agreement may have required the Plaintiffs to complete all pre-construction work before receiving a 15% working interest, that condition was eliminated when the parties entered into the Settlement Agreement, i.e. 15% interest granted for all wells built or *improved*[1] by the plaintiffs. Moreover, the parol evidence rule prohibits prior or contemporaneous statements of any of the parties to a clear and unambiguous agreement from contradicting, adding to, detracting from, varying or explaining the terms of such clear and unambiguous agreement. *See Haymaker v. Gen. Tire Inc.*, 187 W. Va. 532, 533, 420 S.E.2d 292, 293 (1992): *Kanawha Banking & Trust Co. v. Gilbert*, 131 W. Va. 88, 101, 46 S.E.2d 225, 232-33 (1947). Thus, the Defendant's argument that the Plaintiffs must complete all pre-construction work before being granted a 15% working interest in a well is without merit.

The Defendant also argues that the Plaintiffs are not entitled to a 15% working interest in the Walker No. 1 gas well located in Wyoming County, West Virginia because "the Plaintiff did nothing more than clean out and clear some brush on an existing rough access road to a location where the drill site was originally going to be built, so that the surveyors could get access but which was never built." Again, the clear and unambiguous Settlement Agreement requires the Defendant to grant the Plaintiffs a 15% working interest in all wells built or improved by the Plaintiffs if the wells are capable of producing gas. The word "improved" is a derivative of the verb "improve." In Merriam-Webster's Collegiate Dictionary (10th ed.), the word "improve" means "to enhance in value or quality : make better." Based upon that information, it is nonsensical for the Defendant to claim that the Plaintiffs are not entitled to a 15% working interest in the Walker No. 1 gas well because cleaning out and clearing some brush is an act of improvement. Thus, Defendant's argument as to the Walker No. 1 gas well is also without merit.

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[1] Note that there is no limitation imposed on this condition of the Settlement Agreement.

To ensure that the Defendant understands the ruling of this Court, the Court hereby holds that the Plaintiffs are entitled to a 15% working interest in any gas well of the Defendant if (i) such gas well is capable of producing gas, and (ii) the area surrounding the gas well was built or improved *to any extent whatsoever* by the Plaintiffs, including, without limitation, the Walker No. 1 gas well. After the Plaintiffs moved this Court to compel the Defendant to perform under the Settlement Agreement, the Defendant conceded that it had paid, and would continue to pay, the Plaintiffs their amounts owed under a 15% working interest in the following wells (collectively, the "Paying Wells"):[2]

| PAYING WELLS |
|---|
| *Well Name* |
| PMC 101 |
| PMC 102 |
| PMC 103 |
| PMC 104 |
| PMC 105 |
| PCT 106 |
| PCT 107 |
| PCT 108 |
| PCT 109 |
| PCT 110 |
| PCT 111 |
| PCT 112 |
| PCT 113 |
| PCT 114 |
| PCT 115 |
| PCT 116 |
| PCT 117 |
| PCT 119 |
| PCT 120 |
| PCT 128 |
| PCT 129 |
| PCT 130 |
| PCT 131 |
| PCT 132 |
| PCT 133 |

[2] *See* Consolidated Revenue Statement dated September 13, 2012 enclosed with Letter dated September 28, 2012 from F. Francis to J. Bunn.

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|---|
| PCT 134 |
| PCT 135 |
| PCT 137 |
| PCT 138 |
| PCT 140 |
| PCT 141 |
| PCT 142 |
| PCT 143 |
| PCT 146 |
| PCT 150 |
| PCT 152 |
| PCT 153 |
| PCT 156 |
| PCT 157 |
| PCT 160 |
| PCT 161 |
| PCT 162 |
| PCT 163 |
| PCT 164 |
| PCT 166 |
| PCT 167 |
| PCT 169 |
| PCT 175 |
| Pennington No. 1 |
| S. West No. 1 |
| S. West No. 3 |
| Short No. 1 |
| Spears No. 1 |
| Stepp No. 1 |
| T. Toler No. 1 |
| West et al. No. 1 |
| Aurednick No. 1 |
| B. Wright No. 1 |
| Bolen No. 1 |
| Browning No. 1 |
| C. Toler No. 1 |
| Chambers No. 1 |
| Craig No. 1 |
| D. Toler No. 1 |
| Davis No. 1 |
| Fox No. 1 |
| H. Cooke No. 1 |
| Hatfield No. 1 |
| Hughes No. 1 |
| J. Toler No. 1 |

| |
|---|
| Jewell No. 1 |
| L. Cook No. 1 |
| L. Cook No. 2 |
| Lamb No. 1 |
| Landis No. 1 |
| Landis No. 2 |
| Landis No. 3 |
| M. Toler No. 1 |
| NLC Church No. 1 |

The fact that the Defendant had paid and will continue to pay the Plaintiffs a 15% working interests in each of the Paying Wells is indisputable proof that the Plaintiffs satisfied their obligations under the Settlement Agreement. Thus, pursuant to the terms of the Settlement Agreement, the Defendant owes the Plaintiffs a 15% working interest in each of the Paying Wells.

Moreover, after the Plaintiffs moved this Court to compel the Defendant's performance under the Settlement Agreement, the Defendant conceded that it owed the Plaintiffs additional working interests in the wells listed below through recordable assignments and provisional assignments (collectively, the "Undisputed Nonpaying Wells"):

| UNDISPUTED NONPAYING WELLS |
|---|
| *Well Name* |
| B. Wright # 1 |
| PCT 133 |
| Harrah # 1 |
| Harrah # 2 |
| H. West No. 1 |
| Yawkey # 1 |
| Lester # 1 |
| Spurlock # 1 |
| J. Wright # 1 |
| E. Cline # 2 |
| McGraw # 1 |
| PCT 145 |
| PCT 149 |
| PCT 173 |
| Landis # 4 |

| |
|---|
| Landis # 5 |
| Hughes # 2 |

Some of the recordable assignments, or provisional assignments, provided by the Defendant indicate a working interest of less than 15%. However, the terms of the Settlement Agreement require the grant of a 15% working interest for all gas wells built or improved by the Plaintiffs. The mere fact that the Defendant offered an interest, albeit a smaller one than is required under the Settlement Agreement, is sufficient evidence to conclude that the Plaintiffs built or improved the sites of the Undisputed Nonpaying Wells. Accordingly, the Plaintiffs are entitled to a 15% working interest in the Undisputed Nonpaying Wells.

The Plaintiffs have also provided evidence indicated that they are entitled to a 15% working interest in wells, other than the Paying Wells and the Undisputed Nonpaying Wells. In particular, the Affidavit of Mr. Kenneth D. Bias dated February 11, 2013 and the Affidavit of Mr. Ofie G. Helmick, Jr. dated February 10, 2013 indicate that the Plaintiffs also built or improved the following wells (collectively, the "Disputed Nonpaying Wells" and together with the Paying Wells and the Undisputed Nonpaying Wells, the "Applicable Wells"):

| DISPUTED NONPAYING WELLS |
|---|
| *Well Name* |
| McDonald # 1 |
| McDonald # 2 |
| J. Wright # 1 |
| R. West # 1 |
| Walker # 1[3] |

[3] In addition to the Bias Affidavit, the Plaintiffs have provided (ii) an affidavit of Allen Arnold which indicates that the Plaintiffs substantially improved the site of the Walker No. 1 gas well, and (iii) an affidavit of Raymond Walker, the fee holder of the minerals underlying the Walker No. 1 gas well, indicates that the Plaintiffs substantially improved the site of the Walker No. 1 gas well. Moreover, the name of the Walker No. 1 gas well used to be named the Whitney No. 1 gas well, which coincidentally is the name of the daughter of the corporate representative of the Plaintiffs. Conversely, the Defendant has only provided a "timeline" describing in the detail the work that the Defendant claims was performed by Webb. However, such timeline is not provided in the form of an admissible document. It does not identify the author or whether the author was under oath at the time of making the statements contained therein. Moreover, this Court is not aware of whether the author of such timeline even has personal knowledge of

| |
|---|
| J. Cook # 1 |
| Cline HC #1 |
| Ellis # 1 |
| Ellis # 2 |
| Bobo # 1 |
| B. Smith # 1 |
| E. Cline # 2 |
| Artimus & Glenna Atkins # 1 |
| Owens # 1 |
| Meadows # 1 |

Other than the unreliable evidence discussed in footnote 3 above, the Defendants have not provided sufficient evidence to rebut the evidence provided by the Plaintiffs. Thus, based upon the record, it is apparent that the Plaintiffs are entitled to a 15% working interest in each of the Applicable Wells.[4] Accordingly, the Defendant is hereby **ORDERED** to assign a 15% working interest in all of the Applicable Wells. The form of document that is required of the Defendant to comply with this order is the next matter of dispute.

### *II. Provisional Assignments*

The clear and unambiguous terms of the Settlement Agreement require the Defendant to assign an immediately vested working interest not a provisional assignment of a working interest. There are two provisions of the Settlement Agreement, which address the form of interest that is to be conveyed by the Defendant to the Plaintiffs. First, as discussed in the preceding Section, Paragraph 2 of the Settlement Agreement requires the assignment of a 15%

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the matters described therein. Thus, the evidence provided by the Defendant does not adequately rebut the evidence presented by the Plaintiffs.

[4] Not only is the Defendant obligated to grant a 15% working interest in the Applicable Wells, pursuant to Paragraph 5 of the Settlement Agreement, the Defendant is obligated to grant a 5% working interest in the Walker No. 1 gas well, and as many other working interests as necessary, to create a revenue stream of $6,000 based upon 2011 production data. After the Plaintiffs moved this Court to compel the Defendant's performance under the Settlement Agreement, the Defendant offered to comply with Paragraph 5 of the Settlement Agreement by granting an (i) 8% working interest in Walker No. 1, (ii) a 9.75% working interest in PCT 136, (iii) a 12.25% working interest in PCT 154, and (iv) 6.50% working interest in PCT 168. Applying this fact to the holdings above, it is clear that the Defendant must grant a 24% working interest (15% plus 9%) in Walker No. 1 to comply with all applicable provisions of the Settlement Agreement.

working interest in all wells capable of producing gas that were built or improved by the Plaintiffs. Second, Paragraph 5 of the Settlement Agreement requires the Defendant to convey a 5% working interest in the Walker No. 1 gas well, and as many other working interests as necessary, to create a revenue stream equal to $6,000 based upon the performance of such wells in the 2011 calendar year. Nowhere in each of these provisions is the word "provisional" included. For that reason alone, it should be clear to the Defendant that a provisional assignment of a working interest does not comply with the clear and unambiguous terms of the Settlement Agreement.

Notwithstanding the clear and unambiguous terms of the Settlement Agreement, the Defendant claims that a provisional assignment in lieu of a recordable assignment is proper for two reasons. First, the Defendant claims that some of the working interests owed to the Plaintiffs under the Settlement Agreement cannot be conveyed in the form of a recordable assignment because it has not received an "assignment of the earned acreage from the farmor," in this case R&B Petroleum, Inc. Second, the Defendant claims that it is standard industry practice for the operator, in this case, the Defendant, to provide a provisional assignment to a working interest holder, in this case, the Plaintiffs, in instances where "operations have been suspended for some reason at some stage prior to completion as a well capable of production." Each of these two arguments is addressed in turn below.

To properly understand the fallacies of the Defendant's arguments, one must understand the underlying meaning of several commonly used terms in the oil and gas industry. "An oil and gas lease ordinarily conveys the entire mineral interest less any royalty interest retained by the lessor." *Cox v. U.S.*, 497 F.2d 348, 350 n. 2 (1974). Accordingly, "the owner of the lease is said to own the 'working interest' because he has the right to develop and produce the minerals,"

subject to the rights retained by the lessor, i.e. the royalty interest. *See Commissioner v. P.G. Lake, Inc.*, 356 U.S. 260, 261 n. 1, 78 S.Ct. 691, 692 (1958); *Cox,* 497 F.2d at 350 n. 2. A "farmout agreement" enables the owner of a lease to assign rights of such lease to a third party, subject to the royalty interest, the lease, and any additional terms and conditions required by the leaseholder. *See Penneco Pipeline Corp v. Dominion Transmission, Inc.*, 2007 WL 1847391, at *9 (W.D. Pa. June 25, 2007).

After viewing the Defendant's arguments in the proper context, it becomes apparent that such arguments are vain attempts to delay this proceeding when the Defendant is entirely within its rights to proceed in conformance with the Settlement Agreement. At bottom, a working interest is all or part of a leasehold interest. Thus, if the Defendant possesses a valid leasehold interest,[5] the lack of production from gas wells does not prevent the Defendant from assigning a portion of that interest to the Plaintiff. Moreover, by conceding that a farmout agreement exists between the Defendant and R&B Petroleum, the Defendant has conceded that it possesses a leasehold interest via assignment. Accordingly, nothing is preventing the Defendant from granting the Plaintiff the working interests that they are owed under the Settlement Agreement under than its entrenched view of what is standard course of business.[6] Therefore, the Defendant is hereby **ORDERED** to provide the Plaintiffs with recordable assignments, *not provisional assignments*, evidencing a working interest in all of the Applicable Wells.

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[5] At all times through this proceeding, the Defendant has maintained that is possesses a right to conduct oil and gas development activities via a lease or farm-out agreement.

[6] It also should be noted that the Defendant's refusal to comply with the Settlement Agreement is subjecting the Plaintiffs to claims of other creditors to which the Defendant shall be responsible for in damages in the event that other creditors assert their rights prior to the Plaintiffs complying with the recording statute.

### *III. Tools*

The mere fact that the Defendant lost a Service Rig's title document and the Swab Rig's 2" string of tools does not excuse the Defendant of its obligations to deliver such personal property pursuant to Paragraph 4 of the Settlement Agreement. Paragraph 4 of the Settlement Agreement expressly states "3 pieces of equip – w/ all assoc. tools." Underlying the primary condition of Paragraph 4, three bullet points list "will deliver swab rig," "ditch witch in garage," and "pick up service rig," respectively. In the left-hand margin of Paragraph 4, the Settlement Agreement states "by March 9, 2012." A rational reading of Paragraph 4 would lead a reader to conclude that the Defendant was required to transfer ownership and possession of a service rig, ditch witch, and swab rig, along with all associated tools thereof, by bill of sale or title, whichever is applicable, by March 9, 2012.

At the time of this opinion, all parts of Paragraph 4 have been satisfied, except for delivery of the title to the Service Rig and delivery of a 2" string of tools associated with the Swab Rig. The Defendant believes that it is excused from performing these portions of Paragraph 4 because (i) it lost the 2" string of tools associated with the Swab Rig before entering the Settlement Agreement, and (ii) it requested a replacement title from the West Virginia Department of Motor Vehicles, but such replacement title was never delivered. These arguments are flawed for the several reasons.

Here, the Settlement Agreement does not indicate the 2" string of tools were lost. Furthermore, in the Defendants' Response, the Defendant concedes that the Plaintiffs were not informed that the 2" string of tools were lost until after the Settlement Agreement was executed.[7]

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[7] *See* Defendant's Response at p. 5 (stating that the "Defendant identified to the mediator [at] the time of the mediation . . . that all tools which Defendant still had in its possession which accompanied the swab and service rig would be provided in addition to the rigs" and when the "Defendant again explained as much to

In addition, on September 28, 2012, the Defendant's counsel conceded in his correspondence to Plaintiffs' counsel that "the common understanding in the industry by those who are knowledgeable in rig operations, is that rig tools are tools used for working down-hole in a well, such as swabbing, drilling, sand pumping, bailing, etc." Based upon these facts, it was reasonable for the Plaintiffs to conclude that they would receive a 2" string of tools for the Swab Rig by March 9, 2012.

Again, nowhere in the Settlement Agreement does it indicate that the title document of the Service Rig was lost either. Moreover, Defendant's counsel indicated on August 24, 2012 at 5:17 p.m. by electronic correspondence that the Defendant would provide the Plaintiffs "with a replacement title for the service rig from the DMV if that is possible."[8] Defendant's counsel also made another promise regarding delivery of the title document of the Service Rig on September 28, 2012 wherein he stated the Defendant "is in the process of obtaining a replacement title for the Service Rig . . ."[9] For similar reasons, it was also reasonable for the Plaintiffs to conclude that they would receive a title document to the Service Rig.

Yet, nearly one year has passed and the Plaintiffs have not received the personal property they bargained for under the Settlement Agreement. This malfeasance on the part of the Defendant has caused the Plaintiffs to miss many valuable opportunities.[10]

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defense counsel in the weeks following the mediation," the Defendant's counsel communicated that fact to Plaintiff's counsel by letter.

8 *See* Email from F. Francis to J. Bunn dated August 24, 2012 at ¶ 2.

9 *See* Letter from F. Francis to J. Bunn dated September 28, 2012 at ¶ 4(b).

10 Based upon the facts established in that certain Affidavit of Ronald D. Dalrymple dated February 8, 2013, it is indisputable that the Plaintiffs missed two clearly identifiable business opportunities worth between $35,150 and $48,250. Unfortunately, the Plaintiffs were unable to pursue these opportunities due to the Defendant's malfeasance in performing under the Settlement Agreement.

Recoverable damages are those that "may fairly and reasonably be considered as arising naturally – that is, according to the usual course of things – from the breach of the contract itself." *See Kentucky Fried Chicken of Morgantown, Inc. v. Sellaro*, 158 W. Va. 708, 716, 214 S.E.2d 823, 827-28 (1975)(citing *Hadley v. Baxendale,* 9 Exch. 341, 156 Eng. Reprint 145 (1854)). Considering that it was reasonable for the Plaintiffs to conclude that they would receive the aforementioned personal property by March 9, 2012, the Plaintiffs are entitled to possession and ownership of such property. Moreover, the Plaintiffs are entitled to damages in the amount of $35,150.00 for the valuable business opportunities missed due to the Defendant's neglect in performing obligations under the Settlement Agreement where time was of the essence. Accordingly, the Defendant is hereby **ORDERED** to (i) deliver a good and working 2" string of tools, as commonly understanding in oil and gas industry parlance, (ii) a replacement title to the Service Rig free of all liens and encumbrances, and (iii) monies in the amount of $ 35,150 to compensate the Plaintiffs for their missed business opportunities.

### *IV. Joint Operating Agreement*

The final portion of the dispute existing between the parties pertains to whether the Plaintiffs must sign a joint operating agreement prior to, or after, recordable working interest assignments are made by the Defendant. Considering that this Court has properly identified the Applicable Wells, this issue is now moot and the Plaintiffs are ordered to execute a joint operating agreement with terms and conditions common throughout the oil and gas industry, which identifies the Plaintiffs as the owner of a working interest in the Applicable Wells.

## Conclusion[11]

Based upon the foregoing, the Plaintiffs' Motion is **GRANTED** and both parties are hereby **ORDERED** to comply with the terms of the Settlement Agreement, as interpreted by this Order, as applicable, within thirty days from the date hereof.

It is so **ORDERED**.

**ENTERED** on this 16 day of Ap., 2013.

Hon. Warren R. McGraw, Circuit Court Judge

A TRUE COPY, ATTEST.
DAVID "BUGS" STOVER, CLERK
This the 19th day of April, 2013
By: L. M. Mullen
Deputy.

[11] While Paragraph 3 of the Settlement Agreement was not a matter of dispute among the parties, this Court would like to note that the Plaintiffs are entitled to an accounting with regard to the working interests conveyed under the Settlement Agreement

**IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA**

**WHITNEY WELL SERVICES, INC, A West Virginia Corporation, DANNY WEBB CONSTRUCTION CO., INC., A West Virginia Corporation, and VELMA WEBB, and Individual,**
**Plaintiffs,**

**v.**

**Civil Action No. 07-C-149**
**Honorable Warren McGraw**

**CLASSIC OIL & GAS RESOURCES, INC., A Kentucky Corporation Licensed to do Business in West Virginia.**
**Defendant.**

**CERTIFICATE OF SERVICE**

I, R. Ford Francis, do hereby certify that I served a true and exact copy of the foregoing ***Supreme Court of Appeals of West Virginia-Notice of Appeal*** upon the following counsel by depositing a true copy thereof in the United States Mail, with postage prepaid in envelopes addressed as follows:

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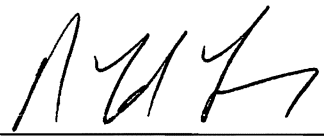

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