

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 13-1087

**St. Luke's United Methodist Church,
Mary Maxine Welch,
and Jay-Bee Production Company, Plaintiffs Below,**

Respondents,

v.

**CNX Gas Company LLC, as successor in interest
to Dominion Exploration & Production, Inc. and
CNG Development Company, Defendants Below,**

Petitioners.

Hon. Timothy L. Sweeney, Judge
Circuit Court of Ritchie County
No. 03-C-65

**RESPONDENT WELCH'S
SUMMARY RESPONSE
TO PETITIONERS' BRIEF**

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Pursuant to R.A.P. 10(e), Respondent Mary Maxine Welch, by counsel, submits this Summary Response to the Petitioners' Brief.

Preliminary Statement

Respondent Welch submits this Summary Response because the case presents nothing more than the circuit court's enforcement of an agreement made by the parties after this Court remanded the case in 2008. The case does not present an issue that merits this Court's attention, much less full briefing and argument.

In *St. Luke's United Methodist Church, Mary Maxine Welch, et al. v. CNG Development Company, et al.*, 222 W. Va. 185, 663 S.E.2d 639 (2008), ["St. Luke's" or "St. Luke's United Methodist"] this Court reversed the circuit court's refusal to recognize that rescission is a legitimate form of relief for an oil and gas lessee's failure to meet its obligations under the covenant to develop that is implied by law in mineral leases in West Virginia. Mrs. Welch had claimed that CNX was not reasonably developing or protecting its leasehold.

In its 2008 decision, this Court directed that CNX should have a reasonable opportunity to demonstrate its expressed desire to increase its exploration and drilling of the minerals Mrs. Welch owns. After remand, CNX proposed a new drilling plan that called for a total of eleven new wells, and the parties ultimately signed an agreed order implementing that plan. At the end of the year in 2011, having failed to drill the two wells that the court-ordered drilling plan called for in that year, CNX filed and served a notice that it was unilaterally terminating ("suspending," according to CNX) drilling the remaining three wells called for under the plan.

Mrs. Welch protested, and after hearings, briefing, and argument below, the circuit court entered an order concluding that "CNX should give up the leased area that is not currently producing

oil or gas to allow another entity to engage in exploration and development efforts on the currently undeveloped portion of [Mrs. Welch's] Lease." Appendix [hereafter "App."] at p. 166. Finding CNX in default on its obligations under the agreed order, the court granted Mrs. Welch the remedy of partial rescission of the lease.

With the parties in agreement, the court certified [sic]¹ under W. Va. R. Civ. P. 54(b) that there was no just reason to delay entry of judgment on the partial rescission issue, and directed the entry of judgment accordingly. App. 221. CNX then filed this appeal.

RESPONDENT WELCH'S STATEMENT OF THE CASE

In June 2008, in what was apparently the final opinion of this Court authored by the late Justice Albright, the Court decided a case involving these same parties.² In *St. Luke's United Methodist Church, Mary Maxine Welch, et al. v. CNG Development Company, et al.*, 222 W. Va. 185, 663 S.E.2d 639 (2008), the Court recognized the principle that rescission of an oil and gas lease may be a proper remedy when the lessee (CNX) fails to explore and extract the lessor's (Mrs. Welch's) minerals in a reasonable fashion, *id.*, Syllabus Point 4, taking into account both the lessee's and the lessor's interests. *Id.*, 222 W. Va. at 191, 663 S.E.2d at 645, quoting from *Brewster v.*

¹ Counsel who drafted the order used the term "certified," which does not appear in Rule 54 – possibly because there exists a separate certified-question procedure under R.A.P. 17. The certified-question procedure is not involved in this case. Rule 54(b) provides simply that "[w]hen more than one claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." It is not disputed that the circuit court's order in this case satisfies the Rule 54(b) requirement.

² The parties to the 2008 appeal were in some cases the predecessors in interest to the parties to this appeal. For simplicity Petitioners are referred to in this pleading as "CNX."

Lanyon Zinc Co., 140 Fed. 801, 814 (8th Cir. 1905).³

Recognizing that CNX had said it would drill additional wells, and because it believed CNX had not had a reasonable opportunity to do so, the Court in *St. Luke's* remanded with instructions that CNX have such an opportunity.

. . . Dominion [CNX] should be given an opportunity to further develop the property. On remand to the trial court, a reasonable period of time should be established to provide for such additional development efforts on the part of [CNX].¹⁸ If the trial court finds that no significant additional development efforts have been pursued by [CNX] at the conclusion of such reasonable period of time, then the trial court should proceed to take evidence on the issue of whether [CNX] has breached the implied covenant of further development

n. 18. Obviously, [CNX] has the option of foregoing any additional development of the leased tract should it no longer be interested in pursuing the same. In such event, however, it should give up the leased area that is not currently producing oil or gas to allow another entity to engage in exploration and development efforts on the currently undeveloped portion of the leased tract.

St. Luke's, id., 222 W. Va. at 193, 663 S.E.2d at 647.

Soon after the case was remanded, on August 20, 2008, CNX filed a motion for approval of a new drilling plan. App. 37. On October 7, 2008, the circuit court held a status conference. In an order on that status conference filed on November 5, 2008, App. 41, the circuit court set a hearing on CNX's motion for a date in January 2009. The purpose of that hearing would have been to determine whether CNX's proposed drilling plan met the reasonableness and other standards articulated by this Court in its opinion in *St. Luke's*.

This Court had not anticipated advance approval of a drilling plan. Instead, this Court's opinion directed the circuit court to set a reasonable period of time for CNX to demonstrate its

³ "Whatever, in the circumstances, would be reasonably expected of operators of ordinary prudence, having regard to the interests of both lessor and lessee, is what is required." *St. Luke's, id.*, 222 W. Va. at 191, 663 S.E.2d at 645, again quoting from *Brewster*.

compliance, followed by a hearing to determine whether "significant additional development efforts have been pursued by [CNX] at the conclusion of such reasonable period of time." *St. Luke's*, 222 W. Va. at 193, 663 S.E.2d at 647.

The circuit court hearing scheduled for January 2009 did not take place. Instead the parties filed an Agreed Order, which the court entered on March 30, 2009. App. 44.⁴ In light of the parties' agreement, the March 2009 order essentially adopted CNX's drilling plan for the leased tract, with a schedule for drilling new wells, and other details regarding new development of Mrs. Welch's oil and gas resources that was to occur.

In its brief, CNX appears to suggest, inconsistently, that Mrs. Welch did not agree to the March 30, 2009, order. *See* Petitioners' brief at pp. 5 - 6. That contention is belied by the title of the order, "Agreed Order," and its endorsement by Mrs. Welch's counsel as "approved for entry." App. 46. To that end Petitioners' brief even quotes a portion of the debate between counsel negotiating the Agreed Order (App. 44). *See* Petitioners' brief at n. 3. Those negotiations may suggest that Mrs. Welch changed her position on the proposed drilling plan after the November 2008 status conference.⁵ What matters, however, is Mrs. Welch's ultimate consent to the drilling plan embodied in the agreed order.⁶

⁴ The circuit judge erroneously wrote "March 30, 2008" on the order, but it is clear from the docket that the order was actually entered on March 30, 2009.

⁵ Between the October 2008 status conference (App. 41) and the entry of the agreed order in March 2009 (App. 44), undersigned counsel on this appeal, Mr. Gillooly, had withdrawn from participation at the circuit court level. Gary Morris, who was counsel in the circuit court leading up to the first appeal, had been elected prosecuting attorney of Lewis County, and had therefore withdrawn. He was replaced by the Crichton law firm. That firm signed off on the Agreed Order.

⁶ The Petitioners' brief characterizes Mrs. Welch as having done something less than agree to the Agreed Order in order to argue that there was no agreement on its terms, and that it was therefore improper for the circuit court to determine that CNX breached the terms of the

The operative language of the Agreed Order, that is, the language that follows the phrase, "it is hereby ordered," reads as follows:

[T]he Motion of Dominion Exploration & Production, Inc. for Approval of Proposed Drilling Plan dated August 19, 2008 is approved by the Court subject to the right of any party to petition the Court to reopen the drilling plan for future drilling in the event of changed circumstances; provided that any and all rights to wells drilled prior to the date any petition is filed shall not be affected.

App. 46 [emphasis added]. Two provisions of the it-is-hereby-ordered portion of the circuit court's order are particularly significant:

– First, by describing a "petition . . . to reopen the drilling plan for future drilling," the order intended to prevent a party from modifying the drilling plan unilaterally, perhaps by seeking approval after the fact – which is what CNX did. *See* the discussion below.

– Second, making "changed circumstances" a prerequisite for petitioning to modify the drilling plan set a factual standard that could be litigated, if necessary, and on which the court could make findings. By unilaterally changing the drilling plan, and seeking approval only after the fact, CNX simply bypassed the order's prerequisite. *See* below.

From the entry of the March 2009 agreed drilling-plan order, the circuit court record is silent until November 5, 2012, when CNX filed a "Notice of Modification of Drilling Plan by CNX Gas Company LLC." ⁷ App. 48.

Instead of following the procedure laid out in the Agreed Order (and described above), CNX acted without seeking the court's advance approval. CNX did not file a petition or motion seeking circuit court approval for a modified drilling plan. Instead it filed a "notice" announcing, in

Agreed Order. The Petitioners' brief demonstrates that the drafter of an agreed order who seeks to prove that it is not an agreement has a difficult – perhaps impossible – job.

⁷ The pleadings reflected in the docket for the 2009-2012 period of time deal with Mrs. Welch's damages claims, which were not the subject of the appeal decided in 2008, and which are not involved in this appeal

substance, that it had already modified the plan unilaterally. App 48.⁸ CNX thereby deprived Mrs. Welch of the opportunity to require proof beforehand of changed circumstances sufficient to justify a modification. Of greater significance, by acting unilaterally, and waiting until the end of the year during which it was required to drill two new wells, CNX deprived the court of the ability to enforce its order – an order which CNX had drafted, and to which it had agreed.

The Petitioners' brief is essentially accurate in describing Mrs. Welch's response to CNX's unilateral action, her Petition for Partial Rescission, App. 59, and the circuit court's ultimate decision that CNX had breached the terms of the parties' agreement embodied in the Agreed Order, and its order that:

5. By electing, in its discretion, not to further develop the Flanagan Lease pursuant to the Agreed Order, CNX has exercised its option to forego any additional development of the leased tract as specifically provided for at Syl. Pt. 18 of *St. Luke's United Methodist Church v. CNG, et al.*, 663 S.E.2d 639, 222 W.Va. 185 (2008).

6. Accordingly, CNX should give up the leased area that is not currently producing oil or gas to allow another entity to engage in exploration and development efforts on the currently undeveloped portion of the Flanagan Lease. *See Id.*

Order entered May 2, 2013 (signed April 25, 2013), App. 162. The circuit court reconsidered its action, and an order was entered on September 16, 2013, which did not alter the provisions quoted above. App. 220. This appeal followed.

SUMMARY OF ARGUMENT

CNX's lead argument, and therefore presumably the one it considers its strongest, is barred by this Court's well-established practice of not considering error that the party asserting it invited below. CNX argues that the circuit court failed to correctly interpret and apply this Court's remand

⁸ "CNX hereby provides notice that it will [sic] suspend its plans to drill the remaining two wells in 2012 and one well in 2013 as a result of changed economics." If the Notice had been worded accurately , it would instead have provided notice that CNX has suspended its plans to drill.

instructions in its 2008 decision in *St. Luke's, supra*. But CNX itself procured an Agreed Order adopting procedures different from those contemplated in the remand instructions. Rather than undertake new exploration and development of the oil and gas lease, and risk losing portions of its lease based on a later determination that its efforts had not been adequate, CNX fashioned an agreed order under which a drilling plan was agreed on and approved in advance. The Agreed Order left room for future changes on proper notice by either side, and upon determination by the court, but CNX chose to cease drilling without advance notice, with three wells still called for under the Agreed Order.

If the lower court had acted *sua sponte*, or over objection, in adopting the provisions of the Agreed Order, that would be one thing. But all it did was approve the parties' agreement on how to handle new exploration and development. And when the circuit court ruled that by unilaterally suspending the drilling plan, CNX had forfeited the acreage on which it had failed to drill and produce, CNX in effect disavowed the Agreed Order it had drafted, claiming (apparently) that the court below should have refused to sign it, and should instead have hewed strictly to the 2008 remand instructions. The lower court did not err in approving the Agreed Order, but if it had, CNX invited the error.

CNX's remaining arguments (that it didn't breach the Agreed Order; that the Agreed Order was not an agreement; that CNX "only sought to suspend" drilling; and that there was no consideration for the Agreed Order) require a more-than-strained reading of the Agreed Order. CNX cannot make up its mind whether the order is ambiguous, or plain and unambiguous. In fact CNX just wants it whichever way suits each particular argument it seeks to advance. Its interpretation of the Agreed Order is therefore a jumble of inconsistencies. The only conclusion that emerges clearly is CNX's unwillingness to concede any fact that does not serve its purpose. And CNX's purpose

remains, as it was on the first appeal, to do things its way, without regard for the rights of the lessor, Mrs. Welch. It is clear by CNX's conduct that it has never accepted the guiding principle of this Court's decision in *St. Luke's*, that an oil and gas developer must proceed based not just on its own interests, but also on the interests of its lessor.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary for the Court to understand the record below, and the legal issues, such as they are. There is nothing about the case that merits anything other than disposition by memorandum decision.

ARGUMENT

Standard of Review

Respondent Welch agrees that the standard of review for an order granting partial summary judgment is *de novo*. However, this case does not present a question regarding the lower court's interpretation of the July 14, 2008, mandate in No. 33527 (*St. Luke's United Methodist, supra*). And if the case did present such a question, this Court's rule on invited error would foreclose it from reaching the question.

The Circuit Court did not Err in Applying this Court's Mandate, but Petitioners Invited what They Call Error by Procuring an Agreed Order for the Post-Mandate Procedure Followed Below⁹

This Court's rule precluding a party from benefitting from error it invited or acquiesced in below is one of long standing. The Court has applied it frequently.

[T]he Court notes that it has long recognized that it is not appropriate for an appellate body to grant relief to a party who invites error in a lower tribunal. *In Interest of S.C.*, 168 W.Va. 366, 284 S.E.2d 867 (1981); *Jennings v. Smith*, 165 W.Va. 791, 272 S.E.2d 229 (1980); *Central Trust Co. v. Cook*, 111 W.Va. 637, 163

⁹ This section deals with Petitioners' Assignment of Error A.

S.E. 60 (1932); *Thompson v. Beasley*, 107 W.Va. 75, 146 S.E. 885 (1929).

Smith v. Bechtold, 190 W. Va. 315, 319, 438 S.E.2d 347, 351 (1993).

"A judgment will not be reversed for any error in the record introduced by or invited by the party seeking reversal." Syllabus Point 21, *State v. Riley*, 151 W.Va. 364, 151 S.E.2d 308 (1966), *overruled on other grounds by Proudfoot v. Dan's Marine Service, Inc.*, 210 W.Va. 498, 558 S.E.2d 298 (2001). *See* Syllabus Points 2 and 3, *Hopkins v. DC Chapman Ventures, Inc.*, 228 W. Va. 213, 215, 719 S.E.2d 381, 383 (2011).

"A litigant may not silently acquiesce to an alleged error, or actively contribute to such error, and then raise that error as a reason for reversal on appeal." Syllabus Point 1, *Maples v. West Virginia Dep't of Commerce*, 197 W.Va. 318, 475 S.E.2d 410 (1996). *In Interest of Tiffany Marie S.*, 196 W. Va. 223, 233-34, 470 S.E.2d 177, 187-88 (1996); *Shamblin v. Nationwide Mut. Ins. Co.*, 183 W. Va. 585, 599, 396 S.E.2d 766, 780 (1990).

As explained above in the Statement of the Case, in 2008 this Court required the circuit court, on remand, to give CNX a reasonable time to demonstrate its stated desire to further develop Mrs. Welch's natural gas. The Court's opinion, incorporated in the mandate, contemplated that there would be circuit court proceedings after such reasonable time, to determine whether new exploration and drilling had been adequate under the implied covenant to develop the minerals. But after remand, CNX proposed a different process, by which it would obtain court approval of a specific drilling plan, in advance. CNX's proposal was presented in the form of an agreed order, to which CNX ultimately obtained Mrs. Welch's agreement, as well as the approval of the circuit court.

The record, and Petitioners' brief, establish that CNX drafted the Agreed Order (App. 44) that was eventually entered. In fact CNX not only drafted the Agreed Order, it advocated the order over a prolonged period of time, insisting on the language it had drafted, until it got what it wanted.

Now, of course, the shoe is on the other foot, and CNX has reason to regret its chosen course of action.

Finding itself in this predicament, CNX now chooses to fault the circuit court for not following the course of action this Court contemplated in its 2008 opinion in *St. Luke's United Methodist, supra*. But what the circuit court did was no more than what CNX, with Respondent Welch's consent, asked it to do. It adopted, in advance of any new exploration or development, a detailed drilling plan, specifying the number and locations of wells to be drilled each year.

By arguing that the circuit court failed to follow the mandate, CNX can only mean that the lower court should not have entered proposed Agreed Order submitted by CNX itself. According to CNX's current argument, the circuit court should instead have given CNX a reasonable period of time to do further development. Then, "[i]f the trial court finds that no significant additional development efforts have been pursued by Dominion . . . , then the trial court should . . . take evidence on . . . whether Dominion has breached the implied covenant of further development." *St. Luke's United Methodist*, 222 W. Va. at 193, 663 S.E.2d at 647.

Having proposed an alternative post-mandate procedure, having obtained the opposing party's consent to it, and having succeeded in getting the circuit court to do what it asked, CNX cannot now be heard to argue that the circuit court committed reversible error by doing what CNX itself requested the court to do.¹⁰

CNX's position is based on the following provision that it included in the Agreed Order:

¹⁰ Imagine, for purposes of analysis, that CNX had stuck to and completed the drilling plan to which it agreed in 2009. Then imagine that Mrs. Welch had attacked that plan, after its completion, on the basis that the circuit court's approval of the jointly proposed drilling plan was reversible error, because the court failed to follow this Court's mandate. How long would it take CNX to respond that Mrs. Welch, having signed off on the Agreed Order, could not now challenge the reasonableness of the drilling plan that the order approved?

"[CNX] reserves the right to modify the drilling plan based upon this review procedure and agrees to notify the Court and plaintiffs of any proposed changes to its future drilling plans." App. 45. This provision requires notice of proposed changes to future drilling plans. But CNX did not provide such notice. Instead CNX – without notifying the court or Mrs. Welch – decided not to drill the two wells that the Agreed Order required for 2008, giving no notice of this until November 2008, effectively after the fact. CNX certainly did not give notice of any "changes to . . . future drilling plans." CNX's interpretation of the Agreed Order on this point is unsupported by its plain language.

CNX Breached the Agreed Order by Unilaterally Failing to Drill Two Wells Required in 2008, and by Announcing that it Would not Drill a Third Required Well, Without First Giving Notice, Thus Depriving Respondent Welch of a Prior Hearing, and the Court Below of the Ability to Enforce the Terms of the Agreed Order¹¹

CNX argues, beginning at p. 16 of its Brief, that the provisions of the Agreed Order are plain and unambiguous, and that CNX had a "right" to change the drilling plan.¹² This is the basis of CNX's Assigned Error B, argued in Section C of its brief.¹³ By this argument CNX claims that the language footnoted above gave it an absolute right to modify the drilling plan unilaterally. But if that is true, then the terms of the Agreed Order are neither plain nor unambiguous. Reprinted below is the language from the "It is hereby ordered" section of the Agreed Order (on the left) and the language based on which CNX claims a "right" to modify the drilling plan unilaterally, and (judging

¹¹ Respondent Welch's remaining argument addresses Assignments of Error B (including its subparts) and C.

¹² "[CNX] reserves the right to modify the drilling plan based upon this review procedure and agrees to notify the Court and plaintiffs of any proposed changes to its future drilling plans." App. 45.

¹³ By assigning the letter "A" to its argument on standard of review, CNX created a discrepancy between its assigned errors (Brief, p. 1) and its argument headings. Assigned error A is therefore argument heading B, assigned error B is argument heading C, etc.

by its actions) without advance notice (on the right):

"[T]he Motion . . . for Approval of Proposed Drilling Plan . . . is approved . . . subject to the right of any party to petition the Court to reopen the drilling plan for future drilling in the event of changed circumstances; provided that any and all rights to wells drilled prior to the date any petition is filed shall not be affected." App. 45 - 46.

"[CNX] reserves the right to modify the drilling plan based upon this review procedure and agrees to notify the Court and plaintiffs of any proposed changes to its future drilling plans." App. 45.

The "it is hereby ordered" language, where any lawyer would look for its operative provisions, requires that a party who seeks to modify the plan request that the court reopen it. CNX, however, apparently maintains that it is not required to use that procedure, that it is instead entitled to proceed unilaterally, simply by giving notice. CNX's position is based on its claim that the Agreed Order is plain and unambiguous. As construed by CNX, however, the Agreed Order is anything but plain and unambiguous.

To confuse matters further, CNX cites what it describes as "parol evidence," Brief, p. 16, thus apparently conceding that the Agreed Order is in fact ambiguous, because if the Agreed Order were plain and unambiguous, as CNX claims, then parol evidence would not be admissible.

The parol evidence rule was stated by this Court in syllabus point 1 of *Kanawha Banking & Trust Company v. Gilbert*, 131 W.Va. 88, 46 S.E.2d 225 (1947):

Extrinsic evidence of statements and declarations of the parties to an unambiguous written contract occurring contemporaneously with or prior to its execution is inadmissible to contradict, add to, detract from, vary or explain the terms of such contract, in the absence of a showing of illegality, fraud, duress, mistake or insufficiency of the consideration. *See also* syl. pt. 1, *North American Royal Coal Co. v. Mountaineer Developers, Inc.*, 161 W.Va. 37, 239 S.E.2d 673 (1977).

Tri-State Asphalt Products, Inc. v. McDonough Co., 182 W. Va. 757, 761, 391 S.E.2d 907, 911

(1990).

Of course if the provisions reprinted above are ambiguous, as seems incontrovertible, then fundamental rules of interpretation require that the ambiguous language be construed against the party drafting it, that is, against CNX. *See, State ex rel. Richmond Am. Homes of W. Virginia, Inc. v. Sanders*, 228 W. Va. 125, 140, 717 S.E.2d 909, 924 (2011); *Thomas v. Goodwin*, 164 W. Va. 770, 775, 266 S.E.2d 792, 795 (1980). Such a construction supports the circuit court's conclusion that CNX breached the Agreed Order.

As for the remainder of CNX's Assigned Error B (argued in Section C of its brief), the contention that the Agreed Order was not agreed to is unworthy of serious discussion.

§ 71 Requirement of Exchange; Types of Exchange

(1) To constitute consideration, a performance or a return promise must be bargained for.

(2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.

(3) The performance may consist of

- (a) an act other than a promise, or
- (b) a forbearance, or
- (c) the creation, modification, or destruction of a legal relation.

(4) The performance or return promise may be given to the promisor or to some other person. It may be given by the promisee or by some other person.

§ 79 Adequacy of Consideration; Mutuality of Obligation

If the requirement of consideration is met, there is no additional requirement of

- (a) a gain, advantage, or benefit to the promisor or a loss, disadvantage, or detriment to the promisee; or
- (b) equivalence in the values exchanged; or
- (c) "mutuality of obligation."

Restatement (Second) of Contracts. In this case CNX obtained court approval of, and agreement

by the other party to a drilling plan. CNX got something it wanted (at least CNX wanted it in 2009). Mrs. Welch agreed to have the drilling plan be approved by the court, foregoing her right to contest it. This meets the requirements for consideration as defined in the Restatement.

It cannot be seriously argued that "value" was not given under these contracts. Traditional contracts law teaches that a mere peppercorn suffices as consideration. *See* Restatement (Second) of Contracts § 71 (1981) (stating that all that is required for consideration is a bargained-for exchange); *Id.* § 79 cmt. C ("[C]ourts do not inquire into the adequacy of consideration."); *First Mortgage Co. of Pa. v. Fed. Leasing Corp.*, 456 A.2d 794, 797 (Del.1982) (holding that incurring a legal detriment "in and of itself constitutes sufficient consideration").

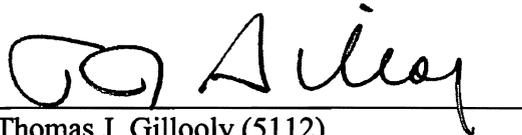
In re SemCrude, L.P., 504 B.R. 39, 55 (Bankr. D. Del. 2013) (footnote omitted).

CONCLUSION

Respondent Mary Maxine Welch respectfully requests that the Court reject CNX's petition and affirm by memorandum decision

Respectfully submitted March 17, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2014, I served the foregoing document by mailing a true and exact copy to:

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Thomas J. Gillooly