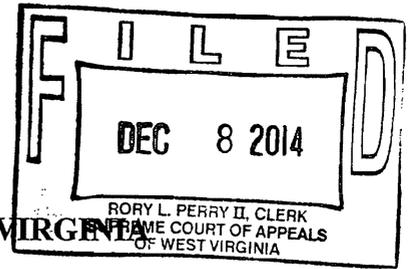


NO. 14-0921



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

(Circuit Court Civil Action No. 12-C-11)

**CHESAPEAKE APPALACHIA, L.L.C.,  
RED SKY LAND, L.L.C., RED  
SKY-WEST VIRGINIA, L.L.C. and  
TERRY L. MURPHY,**

**Petitioner,**

**v.**

**CECIL L. HICKMAN,**

**Respondents.**

**ON APPEAL FROM THE CIRCUIT COURT OF  
OHIO COUNTY, WEST VIRGINIA**

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**APPELLANT'S BRIEF**

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Submitted by:

Timothy M. Miller (WVSB No. 2564)

[tmiller@babstcalland.com](mailto:tmiller@babstcalland.com)

Mychal S. Schulz (WVSB No. 6092)

[mschulz@babstcalland.com](mailto:mschulz@babstcalland.com)

Babst Calland Clements & Zomnir, P.C.

500 Virginia Street East, Suite 590

Charleston, West Virginia 25301

(681) 205-8888

(681) 205-8814 (fax)

*Counsel for Petitioners, Chesapeake  
Appalachia, LLC, Red Sky Land, LLC, Red  
Sky-West Virginia, LLC, and Terry L.  
Murphy*

I. TABLE OF CONTENTS

II. TABLE OF AUTHORITIES .....4

III. ASSIGNMENTS OF ERROR .....5

IV. STATEMENT OF THE CASE.....6

V. SUMMARY OF THE ARGUMENT .....9

VI. STATEMENT REGARDING ORAL ARGUMENT .....10

VII. ARGUMENT .....10

    A. Standard of Review.....10

    B. The Circuit Court erred in examining the merits of Mr. Hickman’s claims against the Chesapeake Defendants, and in making findings of fact and conclusions of law concerning the merits of those claims, despite the presence of a valid arbitration agreement in the Chesapeake Lease .....11

        1. Mr. Hickman’s claims fall squarely within the scope of the arbitration agreements .....12

        2. The Circuit Court’s findings violated the severability doctrine.....14

        3. When the Circuit Court found that a valid and binding arbitration agreement existed, and that the claims at issue fall within the scope of that arbitration agreement, it should have referred Mr. Hickman’s claims to arbitration without making extraneous findings of fact and conclusions of law.....15

    C. The Circuit Court erred in finding that the February 2011 Lease by Mr. Hickman in February 15, 2011, after Chesapeake surrendered the Chesapeake Lease as to Mr. Hickman, was “procured due to a mistake in fact and misrepresentation on the part of Chesapeake, Red Sky and Murphy, and is therefore, void and unenforceable as a matter of law” .....15

        1. The Circuit Court should never have substantively addressed the validity of the February 2011 Lease.....16

        2. The Circuit Court’s finding of a “mistake in fact” was erroneous because there was no “fact” that was “mistake.” .....17

        3. The Circuit Court’s finding of “misrepresentation” was erroneous because the alleged “misrepresentation” was true .....17

D. The Circuit Court erred in concluding that the 2005 Great Lakes Lease signed on December 21, 2005, by Mr. Hickman’s siblings, which was *not signed* by Mr. Hickman, was the “controlling contract” between Mr. Hickman, as lessee, and Great Lakes, as lessee, and not 2006 Great Lakes Lease that Mr. Hickman *did* sign with Great Lakes on July 19, 2006.....18

VIII. CONCLUSION.....18

## II. TABLE OF AUTHORITIES

### *Cases:*

<u>Adkins v. Labor Ready, Inc.</u> , 303 F.3d 496, 500 (4th Cir. 2002).....	12
<u>AT &amp; T Technologies, Inc. v. Communications Workers</u> , 475 U.S. 643, 649, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986).....	12
<u>Painter v. Peavy</u> , 192 W.Va. 189, 451 S.E.2d 755, Syl. Pt. 1 (1994).....	10
<u>Riffe v. Home Finders Assocs., Inc.</u> , 205 W.Va. 216, 517 S.E.2d 313, Syl. Pt. 2 (1999).....	11
<u>State ex rel. Clites v. Clawges</u> , 685 S.E.2d 693, 700 (W. Va. 2009).....	12
<u>State ex rel. TD Ameritrade v. Kaufman</u> , 225 W.Va. 250, 692 S.E.2d 293 (2010) .....	8-9, 11-16
<u>United Steelworkers v. American Mfg. Co.</u> , 363 U.S. 564, 568, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960).....	12

### *Statutes:*

9 U.S.C. §§1-307 (2006).....	9
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## APPELLANT'S BRIEF

### III. ASSIGNMENTS OF ERROR

Appellants/Defendants Chesapeake Appalachia, L.L.C.; Redsky Land, L.L.C; Red Sky-West Virginia, L.L.C.; and Terry L. Murphy (collectively, “the Chesapeake Defendants”) assert that the Circuit Court of Ohio County (“Circuit Court”) erred as follows:

1. The Circuit Court erred in examining the merits of Appellee/Plaintiff Cecil L. Hickman’s claims against the Chesapeake Defendants, and in making findings of fact and conclusions of law concerning the merits of those claims, despite the fact that (1) the Circuit Court explicitly found that the a lease signed in January 2011 by Mr. Hickman and his siblings (“the Chesapeake Lease”) contained an enforceable arbitration provision that was both procedurally and substantively conscionable, and (2) the dispute between Mr. Hickman and the Chesapeake Defendants (i.e., whether he is entitled to any payments or other consideration under the Chesapeake Lease) falls squarely within the scope of the arbitration agreement in that lease.

2. The Circuit Court erred in finding that another lease signed by Mr. Hickman in February 15, 2011 (“the February 2011 Lease”), after Chesapeake Appalachia, L.L.C. (“Chesapeake”) surrendered the Chesapeake Lease as to Mr. Hickman, was “procured due to a mistake in fact and misrepresentation on the part of Chesapeake, Red Sky and Murphy, and is therefore, void and unenforceable as a matter of law.”

3. The Circuit Court erred in concluding that a lease signed on December 21, 2005, by Hickman’s siblings with Great Lakes Energy Partners, LLC (n/k/a Range Resources, LLC) (the “2005 Great Lakes Lease”), which was *not signed* by Mr. Hickman, was the “controlling contract” between Mr. Hickman, as lessee, and Great Lakes, as lessee, and not the lease that Mr. Hickman did sign with Great Lakes July 19, 2006 (the “2006 Great Lakes Lease”).

#### IV. STATEMENT OF THE CASE.

This case arises out of efforts by Appellee Cecil L. Hickman to avail himself of the terms of the Chesapeake Lease that he and his siblings signed in January 2011, including the payment of certain bonus amounts, despite that fact that Chesapeake surrendered that lease as to Mr. Hickman (as it had a right to do), and despite the fact that Mr. Hickman signed the February 2011 Lease that contained different terms.

Mr. Hickman owns a  $\frac{1}{4}$  undivided interest in a 143.77-acre tract of land in Ohio County, West Virginia, along with his siblings, John Mark Hickman, Lawrence Grant Hickman, and Carol Sue Criswell. App. at 101. In 2001, they all signed a lease with Canton Oil and Gas Company that expired in December 2005. On December 21, 2005, Hickman's siblings signed the 2005 Great Lakes Lease with Great Lakes Energy Partners, LLC (n/k/a Range Resources, LLC), which contained a five-year term. App. at 101-102. Mr. Hickman, however, did not sign the 2006 Great Lakes Lease with Great Lakes until July 19, 2006, which lease also contained a five-year term. App. at 102, 147-158. Both of those leases were validly assigned to Chesapeake in 2010. App. at 102.

After taking assignment of the leases, Chesapeake contacted Mr. Hickman and his siblings to discuss extending the Great Lakes leases for another five-year-primary term. On January 5, 2011, Mr. Hickman and his siblings signed the Chesapeake Lease for an additional five-year-primary term, but the Order of Payment accompanying that lease conditioned payment "upon title to the property interests leased being confirmed satisfactorily to Chesapeake, in its sole discretion." App. at 102, 160-167 (Lease); 167 (Order of Payment). The Chesapeake Lease also granted Chesapeake "the right to surrender the Lease associated with the Order of Payment

at any time and for any reason.” App. at 167. Chesapeake agreed to submit payment, by check, to the lessees within 90 days of receipt of the original Order of Payment and the executed lease, provided that the above conditions were met.

Because Mr. Hickman’s interests in the property remained subject to the 2006 Great Lakes Lease, which did not expire until July 19, 2011, his title to the property subject to the Chesapeake Lease was not confirmed satisfactorily to Chesapeake; hence, Chesapeake did not make the Order of Payment to him under the Chesapeake Lease, which was surrendered as to Hickman. App. at 103. Thereafter, Chesapeake and Mr. Hickman entered into the February 2011 Lease, which ratified through a “Top-Lease Provision” that the 2006 Great Lakes Lease remained in force as to him. App. at 103-104, 169-174. The February 2011 Lease was obtained on behalf of Chesapeake by Appellee/Defendant Terry L. Murphy of Appellee/Defendant Redsky Land, LLC.

Mr. Hickman filed his civil action on January 5, 2012, and alleged a number of legal theories in an effort to avail himself of the terms and conditions of the Chesapeake Lease, including the front-end payment of \$179,000. Those legal theories included declaratory judgment, breach of contract, fraud, misrepresentation, negligence, breach of implied covenant of good faith and fair dealing, slander of title, and the tort of outrage. App. at 25-38.

The 2005 Great Lakes Lease, the 2006 Great Lakes Lease, the Chesapeake Lease, and the February 2011 Lease all contain arbitration agreements. App. at 104-105. More importantly for purposes of this appeal, however, the Chesapeake Lease contained the following arbitration provision:

ARBITRATION - In the event of a disagreement between Lessor and Lessee concerning this Lease or the associated Order of Payment, performance thereunder, or damages caused by Lessee’s operations, the resolution of all such disputes shall be determined

by arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be the exclusive remedy and cover all disputes, including but not limited to, the formation, execution, validity, and performance of the Lease and Order of Payment. All fees and costs associated with the arbitration shall be borne equally by Lessor and Lessee.

App. at 162.

Because these arbitration provisions encompassed the claims made by Mr. Hickman, the Chesapeake Defendants moved the Circuit Court to dismiss Mr. Hickman's claims and refer them to arbitration. App. at 56-67. Initially, the Circuit Court denied without prejudice the motions, ordering the parties to conduct discovery concerning "factual issues surrounding the alleged arbitration clauses within the contracts[.]" App. at 94-97. Subsequently, the Circuit Court considered the Chesapeake Defendants' motions for summary judgment, which again asked that Mr. Hickman's claims be referred to arbitration pursuant to the arbitration agreements contained in the leases.

Although the Circuit Court ostensibly sent Mr. Hickman's claims to arbitration, it also entered an Order making detailed findings of fact and conclusions of law that essentially granted summary judgment to Hickman and effectively directed the arbitrators on how to rule on the claims by Hickman. App. at 1-18. In fact, the Circuit Court's findings of fact and conclusions of law went far beyond the permissible scope of inquiry for a court examining whether a claim is subject to arbitration, and did exactly what this Court said should not be done in State ex rel. TD Ameritrade v. Kaufman, 225 W.Va. 250, 692 S.E.2d 293 (2010) -- rule on issues that involve the underlying dispute before submitting that dispute to arbitration.

As a result of the Circuit Court's Order, all of the disputes concerning the various leases - - disputes that are subject to the arbitration agreements in each of the leases — have been addressed and decided. As a result, the Circuit Court's referral to arbitration "if any issues

remain with regard to the Chesapeake lease” is, in the context of the Order, meaningless. App. at 17. Accordingly, the Chesapeake Defendants request that this Court reiterate its rule that “[w]hen a trial court is required to rule upon a motion to compel arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. §§1-307 (2006), the authority of the trial court is limited to determining the threshold issues of (1) whether a valid arbitration agreement exists between the parties; and (2) whether the claims averred by Plaintiff fall within the substantive scope of that arbitration agreement.” State ex rel. TD Ameritrade, 225 W.Va. at 254 , 692 S.E.2d at 298.

#### V. SUMMARY OF THE ARGUMENT.

The Circuit Court should have simply determined whether the arbitration provision contained in the Chesapeake Lease (1) was a valid, binding agreement between Chesapeake and Mr. Hickman, and (2) encompassed the claims made by Mr. Hickman against the Chesapeake Defendants. While the Circuit Court found that the Chesapeake Lease contained a valid arbitration agreement that was binding between Chesapeake and Mr. Hickman, it then made findings of fact and conclusions of law that directly addressed the substance of Mr. Hickman’s claims. In doing so, the Circuit Court went well beyond what this Court instructed it should do in State ex rel. TD Ameritrade, and its Order, therefore, should be reversed.

Likewise, the Circuit Court erroneously concluded that the February 2011 Lease was “procured due to a mistake in fact and misrepresentation[.]” The “mistake in fact” was *Chesapeake’s* determination that it was not satisfied with Mr. Hickman’s title -- a determination that fell squarely within Chesapeake’s sole discretion. Chesapeake’s discretionary decision is not, and cannot be, a “mistake in fact” because that decision was neither mistaken nor a fact. Likewise, the “misrepresentation” identified by the Circuit Court -- that Mr. Murphy told him that the February 2011 Lease had to be executed in order for Mr. Hickman’s siblings to receive

bonus payments and future royalty payments -- cannot be a “misrepresentation” because the alleged statement by Mr. Murphy (if even made) was completely true.

Finally, the Circuit Court erred in finding that the 2006 Great Lakes Lease was “procured due to a mistake on the part of [Mr. Hickman] and Great Lakes” and that, as a result, that lease is “void as a matter of law[.]” The evidence reflects that Mr. Hickman did not sign the 2005 Great Lakes Lease, but did sign the 2006 Great Lakes Lease, which he had the opportunity to negotiate. In fact, Mr. Hickman never even raised any issues with regard to the 2006 Great Lakes Lease, but the Circuit Court, in its effort to decide Mr. Hickman’s substantive claims under the Chesapeake Lease, erroneously concluded that the 2006 Great Lakes Lease was void.

## **VI. STATEMENT REGARDING ORAL ARGUMENT.**

The Chesapeake Defendants’ appeal presents unique factual and procedural issues that merit oral argument. For this reasons, the Chesapeake Defendants believe that this appeal merits oral argument.

## **VII. ARGUMENT.**

### **A. Standard of Review.**

This Court’s review of the Order entered by the Circuit Court is de novo. See Painter v. Peavy, 192 W.Va. 189, 451 S.E.2d 755, Syl. Pt. 1 (1994) (“A circuit court’s entry of summary judgment is reviewed de novo.”). As this Court articulated in Painter,” [t]he circuit court’s function at the summary judgment stage is not to weigh the evidence and determine the truth of the matter, but is to determine whether there is a genuine issue for trial.” Painter, 192 W.Va. at 190, 451 S.E.2d at 756, Syl. Pt. 3.

In addition, as the issues in this appeal center on the Chesapeake Defendants' request that the Circuit Court honor an arbitration agreement, this Court's review of the Circuit Court's Order is also de novo on those issues. See Riffe v. Home Finders Assocs., Inc., 205 W.Va. 216, 517 S.E.2d 313, Syl. Pt. 2 (1999), (The interpretation of an insurance contract, including the question of whether the contract is ambiguous, is a legal determination that, like a lower court's grant of summary judgment, shall be reviewed de novo on appeal.").

**B. The Circuit Court erred in examining the merits of Mr. Hickman's claims against the Chesapeake Defendants, and in making findings of fact and conclusions of law concerning the merits of those claims, despite the presence of a valid arbitration agreement in the Chesapeake Lease.**

The Court's review of a motion to compel arbitration is limited to two questions: (1) whether a valid, binding arbitration agreement exists; and (2) whether the claims at issue fall within the scope of the arbitration agreement. See State ex rel. TD Ameritrade v. Kaufman, 225 W. Va. 250, 255, 692 S.E.2d 293, 298 (2010).

Here, the Circuit Court determined that (1) "Chesapeake entered into valid and enforceable lease with Plaintiff and his siblings on January 5, 2011 [i.e., the Chesapeake Lease]," and (2) "the arbitration clause in the Chesapeake lease is neither procedurally nor substantively unconscionable, and is, therefore, valid and enforceable." App at 13 and 17. As such, the only other inquiry by the Circuit Court should have been whether Mr. Hickman's claims fall within the scope of that arbitration provision.

All of Mr. Hickman's claims center on his allegations that he is entitled to certain rights and payments under the Chesapeake Lease. App. at 25-38. Rather than simply confirm that, however, the Circuit Court made certain findings of fact and conclusions of law that went far beyond this limited inquiry. Because of that, the Order should be reversed and remanded.

**1. Mr. Hickman's claims fall squarely within the scope of the arbitration agreements.**

Critically, courts must construe any doubts concerning the existence of an agreement to arbitrate or the scope of arbitrable issues in favor of arbitration. See State ex rel. Clites v. Clawges, 685 S.E.2d 693, 700 (W. Va. 2009). The FAA's directive "is mandatory;" courts have "no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview." Adkins v. Labor Ready, Inc., 303 F.3d 496, 500 (4th Cir. 2002).

As this Court emphatically noted in State ex rel. TD Ameritrade,

The law is well-settled "that, in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims." AT & T Technologies, Inc. v. Communications Workers, 475 U.S. 643, 649, 106 S. Ct. 1415, 89 L. Ed. 2d 648 (1986). Discussing the general rule that courts are to decide the threshold issue of arbitrability (i.e. whether there is an enforceable agreement to arbitrate), the United States Supreme Court recognized the limited nature of that initial determination: "The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim." 475 U.S. at 650 (quoting United Steelworkers v. American Mfg. Co., 363 U.S. 564, 568, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960)).

State ex rel. TD Ameritrade, 255 W. Va. at 253-254, 692 S.E.2d at 296-297.

Here, at their core, Mr. Hickman's claims center on his allegation that he is entitled to certain rights under the Chesapeake Lease that was signed by him and his siblings in 2011. Mr. Hickman, however, agreed that the terms of that lease, including payment of the front-end payment of \$179,000 that he seeks in his civil action, were "conditioned upon title to the property interests leased being confirmed satisfactorily to Chesapeake, in its sole discretion." App. at 167. Chesapeake determined that Mr. Hickman's title was not confirmed to its

satisfaction, and thus, Chesapeake chose to exercise its “right to surrender the Lease associated with the Order of Payment at any time and for any reason” and not make the Order of Payment, which it had a right to do under the express and unambiguous terms of the lease. App. at 103. While Mr. Hickman disagrees with Chesapeake’s decision that his title was not confirmed to Chesapeake’s satisfaction, that dispute falls squarely within the arbitration provision in the Chesapeake Lease that the Circuit Court found to be enforceable. That arbitration provision states:

ARBITRATION. In the event of a disagreement between Lessor and Lessee concerning this Lease or the associated Order of Payment, performance thereunder, or damages caused by Lessee’s operations, the resolution of all such disputes shall be determined by arbitration in accordance with the rules of the American Arbitration Association. Arbitration shall be the exclusive remedy and cover all disputes, including but not limited to, the formation, execution, validity, and performance of the Lease and Order of Payment. All fees and costs associated with the arbitration shall be borne equally by Lessor and Lessee.

App. at 162. Under the clear and unambiguous language of this provision, any “disagreement” between Hickman and Chesapeake concerning “this Lease or the associated Order of Payment” or “performance” under the lease “shall be determined by arbitration[.]” The “disagreement” between Hickman and Chesapeake, therefore, “fall[s] within the substantive scope” of the arbitration agreement.” State ex rel. TD Ameritrade, 225 W.Va. at 255, 692 S.E.2d at 298.

The Circuit Court, therefore, should have conducted only an inquiry into whether Mr. Hickman’s claims fell within the substantive scope of the arbitration provision in the Chesapeake Lease, but it did not do so. Instead, the Circuit Court went far beyond this and made a number of findings that directly affect the very issues that are subject to arbitration under the Chesapeake Lease. For example, the Circuit Court found that the 2005 Great Lakes Lease “was the controlling contract between Plaintiff and his siblings, as lessors, and Great Lakes, as lessees” --

even though Mr. Hickman did not sign the 2005 Great Lakes Lease until July 19, 2006. App. at 12, 156-157. Likewise, the Circuit Court found that the February 2011 Lease “was procured due to a mistake in fact and misrepresentation on the part of Chesapeake, Red Sky and Murphy and is therefore, void and unenforceable as a matter of law.” App. at 13. Finally, the Circuit Court determined that “the Chesapeake lease is the controlling contract by and between Plaintiff and his siblings, as lessors, and Chesapeake, as lessee.” App. at 13. The net result of the Circuit Court’s findings was to order Chesapeake to “immediately make all bonus payments and royalty payments due to Plaintiff under the terms of the Chesapeake [L]ease, together with interest at the legal rate from the date said payments were due until paid.” App. at 18. In other words, the Circuit Court already made determinations and findings on the substantive claims made by Mr. Hickman in his Complaint, which the Circuit Court implicitly recognized when it noted that arbitration can proceed, but only “*if any issues remain with regard to the Chesapeake [L]ease . . .*” App. at 17 (emphasis added).

**2. The Circuit Court’s findings violated the severability doctrine.**

The Circuit Court’s actions also violated the severability doctrine, which “permits trial courts to address challenges to an arbitration clause but reserves to arbitrators challenges to the contract as a whole.” State ex rel. TD Ameritrade, 225 W. Va. at 254, 692 S.E.2d at 297. Here, the Circuit Court should only have determined whether the arbitration provision in the Chesapeake Lease was valid. Instead, it went much further and examined the validity of the 2005 Great Lakes Lease, the 2006 Great Lakes Lease, the Chesapeake Lease, and the February 2011 Lease, all of which should have been issues that were reserved to the arbitration panel. See State ex rel. TD Ameritrade, 225 W. Va. at 255, 692 S.E.2d at 298 (“The law is clear that the trial court had no authority to rule on any issue other than whether arbitration of Mr. Salamie’s

claims was required under the applicable contracts. [citation omitted] By addressing issues that are expressly reserved for arbitration, the trial court exceeded the scope of its authority.”<sup>1</sup>

Because Mr. Hickman claims that he was entitled to certain payments under the Chesapeake Lease, and the Circuit Court found the arbitration provision in that lease to be valid and binding, whether the Chesapeake Lease or any other leases were, as a whole, valid represents something to be decided by that arbitration tribunal, not the Circuit Court.

**3. When the Circuit Court found that a valid and binding arbitration agreement existed, and that the claims at issue fall within the scope of that arbitration agreement, it should have referred Mr. Hickman’s claims to arbitration without making extraneous findings of fact and conclusions of law.**

As noted above, the Circuit Court explicitly ruled that “the arbitration clause contained in the Chesapeake [L]ease is neither procedurally nor substantively unconscionable and is, therefore, valid and enforceable.” App. at 17. It also, at least implicitly, found that the claims asserted by Mr. Hickman against the Chesapeake Defendants fell within the scope of the arbitration clause in the Chesapeake Lease when it implicitly acknowledged that its Order addressed all of Mr. Hickman’s claims. App at 17 (“Therefore, after the entry of this Order, if any issues remain with regard to the Chesapeake lease, the Court grants Defendants’ various Motions to Compel Arbitration of the remaining issues and accordingly orders this matter stayed pending arbitration.”). Under this Court’s explicit instructions in State ex rel. TD Ameritrade, that was *all* the Circuit Court should have done. Instead, it went much further and, like the trial

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<sup>1</sup> Indeed, the Circuit Court’s Order represents exactly what this Court found to be a “semantic explanation” that was “unavailing.” See State ex rel. TD Ameritrade, 225 W. Va. at 255, 692 S.E.2d at 298, n. 11 (“Mr. Salame argued that he was merely requesting a ruling that all parts of the contract, and not just a portion of it, would apply when the matter proceeded to arbitration. We find this semantical explanation to be unavailing. By seeking a pre-arbitral ruling on the validity of the entire contract, Mr. Salame sought to sidestep the general requirement that issues addressing the validity of a contract are expressly reserved to the arbitrator.”).

court in TD Ameritrade, made certain findings of fact and conclusions of law that, ostensibly, was to be binding on the arbitration tribunal.

Like the trial court in TD Ameritrade, the Circuit Court went too far. Like this Court did in TD Ameritrade, therefore, the Order should be reversed and remanded with instructions to strike all findings of fact and conclusions at law that do not directly related to the issue of whether the arbitration provision under the Chesapeake Lease is valid and enforceable.

- C. The Circuit Court erred in finding that the February 2011 Lease by Mr. Hickman in February 15, 2011, after Chesapeake surrendered the Chesapeake Lease as to Mr. Hickman, was “procured due to a mistake in fact and misrepresentation on the part of Chesapeake, Red Sky and Murphy, and is therefore, void and unenforceable as a matter of law.”**

The Circuit Court further erred when it found that the February 2011 Lease was “procured due to a mistake in fact”; i.e., that Chesapeake’s determination that Mr. Hickman’s title was not satisfactory was somehow invalid, and that its procurement of the February 2011 Lease from Mr. Hickman was unnecessary and, therefore, “due to a mistake in fact[.]” App. at 13.

- 1. The Circuit Court should never have substantively addressed the validity of the February 2011 Lease.**

As detailed above, the mere fact that the Circuit Court examined the circumstances surrounding the signing of the February 2011 Lease as part of its examination of the arbitration provision in the Chesapeake Lease was error in and of itself and violated the severability doctrine. An examination of the merits of Mr. Hickman’s substantive claims under the Chesapeake Lease, including the validity of the February 2011 Lease, should have been submitted to arbitration pursuant to the Chesapeake Lease.

**2. The Circuit Court’s finding of a “mistake in fact” was erroneous because there was no “fact” that was “mistake.”**

In addition, the “mistake in fact” identified by the Circuit Court was neither a “mistake” nor even a “fact” because whether Chesapeake, *in its sole discretion*, found Mr. Hickman’s title to be satisfactory is not a “fact” that can be mistaken. On that basis alone, the Circuit Court erred when it found that Chesapeake’s procurement of the February 2011 Lease was “due to a mistake in fact[.]”

**3. The Circuit Court’s finding of “misrepresentation” was erroneous because the alleged “misrepresentation” was true.**

Likewise, the Circuit Court also erred when it determined that the February 2011 Lease was “procured due to a . . . misrepresentation on the part of Chesapeake, Red Sky and Murphy[.]” The Circuit Court found that those parties allegedly “misrepresented certain facts to” Mr. Hickman and his siblings “as an inducement” to Mr. Hickman to execute the February 2011 Lease. App. at 13. But those allegedly “misrepresented facts” center on Mr. Hickman’s allegations that Mr. Murphy stated that the February 2011 Lease had to be executed in order for Hickman’s siblings to receive bonus payments and future royalty payments. App. at 14. As noted above, however, Chesapeake was not satisfied with Mr. Hickman’s title to the property and, therefore, it surrendered the Chesapeake Lease as to Mr. Hickman without paying the Order of Payment to him, which it unquestionably had a right to do under the terms of that lease. App. at 103. The only way for Mr. Hickman’s siblings to receive any future royalty payments from Chesapeake was for all the property interests to be under lease -- including Mr. Hickman’s interest. For that reason, Mr. Hickman had to enter into a lease with Chesapeake for everyone, including his siblings, to receive future royalties, and he did just that when he signed the

February 2011 Lease. The allegedly “misrepresented facts,” therefore, *were completely true*, and the Circuit Court’s finding to the contrary was completely contrary to the evidence.

**D. The Circuit Court erred in concluding that the 2005 Great Lakes Lease signed on December 21, 2005, by Mr. Hickman’s siblings, which was *not signed* by Mr. Hickman, was the “controlling contract” between Mr. Hickman, as lessee, and Great Lakes, as lessee, and not 2006 Great Lakes Lease that Mr. Hickman *did* sign with Great Lakes on July 19, 2006.**

Despite no ambiguity in the 2006 Great Lakes lease, despite Mr. Hickman admitting that he did not raise any specific issues with regards to that lease, and despite his opportunity to negotiate the terms of that lease, the Circuit Court, nonetheless, concluded that the 2006 Great Lakes Lease was “procured due to a mistake on the part of Plaintiff and Great Lakes” and that, as a result, that lease is “void as a matter of law[.]” App. at 12. In addition, the Circuit Court found that the 2006 Great Lakes Lease lacked “mutual assent to material terms, i.e., the parties therefor and the effective date[.]” despite the fact that Mr. Hickman knowingly signed the 2006 Great Lakes Lease on July 19, 2006, had it notarized the same date, and had no issues with its terms. App. at 12-13, 156-157. In fact, Mr. Hickman even acknowledged and ratified in the February 2011 Lease that the 2006 Great Lakes Lease remained in force and effect. App. at 172.

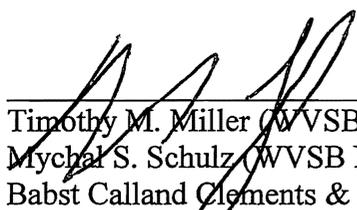
Under the severability doctrine, however, the validity of the 2006 Great Lakes Lease, as a whole, should have been left for the arbitration tribunal. As with the February 2011 Lease, the Circuit Court’s substantive consideration of the 2006 Great Lakes Lease, as a part of its consideration of the arbitrability of Mr. Hickman’s claims under the Chesapeake Lease, was erroneous and should be reversed.

## VIII. CONCLUSION

For the reasons detailed above, the Chesapeake Defendants ask that this Court reverse the Order entered by the Circuit Court and remand with directions to grant the Chesapeake

Defendants' Motion for Summary Judgment and refer all of Mr. Hickman's claims against the Chesapeake Defendants to arbitration.

By Counsel



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Timothy M. Miller (WVSB No. 2564)  
Mychal S. Schulz (WVSB No. 6092)  
Babst Calland Clements & Zomnir, P.C.  
500 Virginia Street East, Suite 590  
Charleston, West Virginia 25301  
(681) 205-8888  
(681) 205-8814 (fax)  
*Counsel for Petitioners, Chesapeake  
Appalachia, LLC, Red Sky Land, LLC,  
Red Sky-West Virginia, LLC, and Terry L. Murphy*

NO. 14-0921

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

(Circuit Court Civil Action No. 12-C-11)

CHESAPEAKE APPALACHIA, L.L.C.,  
RED SKY LAND, L.L.C., RED  
SKY-WEST VIRGINIA, L.L.C. and  
TERRY L. MURPHY,

**Petitioner,**

v.

CECIL L. HICKMAN,

**Respondents.**

**CERTIFICATE OF SERVICE**

I, Mychal S. Schulz, one of counsel for Petitioners Chesapeake Appalachia, L.L.C.; Redsky Land, L.L.C; Red Sky-West Virginia, L.L.C.; and Terry L. Murphy, do hereby certify that on this day I served an original and ten copies of the following **APPELLANT'S BRIEF** via United States Postal Service, first class postage prepaid and addressed as follows:

Gregory A. Gellner, Esquire  
GELLNER LAW OFFICES  
1440 National Road  
Wheeling, West Virginia 26003  
*Counsel for Plaintiff Cecil L. Hickman*  
(304) 242-0200

Robert C. James, Esquire  
FLAHERTY SENSABAUGH BONASSO PLLC  
1225 Market Street  
P.O. Box 6564  
Wheeling, WV 26003  
*Counsel for Defendants Geological Assessment & Leasing and William A. Capouillez*  
(304) 230-6610

Kenneth J. Witzel  
BARNES DULAC WATKINS  
Two Gateway Center, 17 East  
603 Stanwix Street  
Pittsburgh, Pennsylvania 15222  
*Counsel for Defendant Range Resources – Appalachia, LLC*  
(412) 434-5554

Given under my hand December 8, 2014.

  
\_\_\_\_\_  
Michael Sommer Schulz