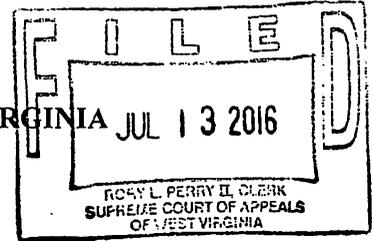


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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 15-0907

**GREGORY G. POULOS, JASON G. POULOS,
PAMELA F. POULOS, SHAUN D. ROGERS,
KEVIN H. ROGERS, DEREK B. ROGERS,
and T.G. ROGERS, III, ;**

Defendants Below, Petitioners,

v.

LBR HOLDINGS, LLC,

Plaintiff Below, Respondent.

**RESPONDENT'S REPLY TO BRIEF OF *AMICUS CURIAE* OF
THE WEST VIRGINIA ROYALTY OWNERS' ASSOCIATION**

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INTRODUCTION

By deed dated May 27, 1938 (hereinafter “the 1938 Deed”), Petitioners’ predecessors conveyed all of their interests in several parcels of property located in McDowell County, West Virginia (hereinafter “the Property”) to Respondent’s predecessor, except for “an undivided one-half interest in the oil and gas . . . together with the usual and necessary rights of ingress and egress and drilling rights to explore, get and remove said oil and gas. ” It is undisputed that, after subsequent transfers, Respondent LBR Holdings, LLC (hereinafter “LBR”) currently owns a 75% interest in the oil and gas under the Property, 100% of the coal and all other mineral interests under the Property, and certain portions of the surface of the Property, while Petitioners own a 25% interest in the oil and gas under the Property. The issue in this case is whether Petitioners, by virtue of their predecessors’ reservation of an interest in “oil and gas” in 1938, have any interest in the coalbed methane (hereinafter “CBM”) under the Property.

On or about August 19, 2015, the Circuit Court of McDowell County, West Virginia held that “an analysis of the intent of the parties and the custom/usage at the time of the 1938 deed indicates that the grantors, the Defendants, would not have intended the reservation to include CBM due to the general opinion that CBM was [a] hazard/nuisance in 1938.” Petitioners appealed the circuit court’s ruling, and the parties submitted their briefs in accordance with this Court’s scheduling order. Following the submission of the parties’ briefs, this Court entered an Order setting the case for Rule 19 argument on October 5, 2016, and inviting *amicus curiae* briefs to be filed on or before June 24, 2016, with any replies to be filed within 20 days thereafter. In response to this Court’s Order, three *amicus curiae* briefs were filed, including a brief submitted by the West

Virginia Royalty Owners' Association (hereinafter "WVROA") in support of Petitioners.¹ LBR respectfully submits this reply to the WVROA's brief.

ARGUMENT

The WVROA's brief focuses on five points which the WVROA claims weigh in favor of adopting Petitioners' argument that the word "gas" in a conveyance or reservation of real property unambiguously and automatically includes CBM in all cases. However, as discussed below, each of the WVROA's five points is without merit. Indeed, the WVROA's proposed bright-line rule that all CBM produced is the property of the gas owner in every case is inconsistent with West Virginia law, and would retroactively abrogate the actual intent of the parties to the myriad instruments affecting mineral rights in this State. The adoption of the WVROA's proposed rule would only benefit owners of severed "gas" interests who never intended to purchase or reserve any interest in CBM when it was generally regarded only as a deadly coal mining hazard, and who seek a windfall many years later now that CBM has become a valuable energy source.

- A. **This Court's decision in Faith United Methodist Church & Cemetery of Terra Alta v. Morgan, 231 W.Va. 423, 745 S.E.2d 461 (2013) does not require the adoption of a bright-line "gas is gas" rule in this case.**

LBR has already set forth at length in its primary brief why this Court's decision in Faith United does not require the adoption of a bright-line "gas is gas" rule. To briefly summarize, Faith United was a 2013 case overruling a 1923 decision that the term "surface" was presumptively ambiguous, after finding that courts have regarded the term "surface" as having a clear meaning

¹ The other two amicus curiae briefs were filed in support of LBR. One brief was filed by a consortium of *amici* including Natural Resource Partners, L.P., National Council of Coal Lessors, Inc., Piney Land Company, West Virginia Land and Mineral Owners' Association, and West Virginia Coal Association, Inc. A separate brief was filed by the West Virginia Surface Owners' Rights Organization. It is notable that this diverse group of entities, which taken together has interests in both coal *and gas* estates, as well as surface rights, supports LBR's position, while the only entity that filed a brief in support of Petitioner's position is solely interested in profiting from gas royalties.

since the 1930s. In contrast, to date, courts have not uniformly resolved the issue of whether the term "gas" in a lease or deed includes CBM. In fact, many courts hold that the coal owner owns and has the right to recover all CBM within a coal seam. This makes sense because CBM is intimately bound within the coal estate, and has been historically regarded as a dangerous hazard to be dealt with by the owner and/or lessee of the coal.

Nevertheless, the WVROA argues that Faith United requires this Court to adopt a bright-line rule that the word "gas" always includes CBM based on two public policies: (1) the quest for uniformity and certainty, and (2) the desire to stick to the four corners of the document at issue to discern the parties' intent. As to uniformity and certainty, while this Court did recognize in Faith United that these are important considerations in property law, it did not hold that they are the only, or even the most important, considerations. To the contrary, this Court recognized in Faith United that "[t]he *controlling factor* in the interpretation of deeds, wills and contracts *is the intention of the parties*; and to arrive at that intention the whole instrument must be carefully scanned." 231 W. Va. at 443, 745 S.E.2d at 481 (emphasis added). Furthermore, even if this Court determines that it should adopt a rule that serves the interests of uniformity and certainty, this Court can do so without adopting the "gas is gas" rule advanced by the WVROA. Indeed, this Court could join the various jurisdictions that hold that CBM contained within the coal seam belongs to the coal owner. Alternatively, the Court could extend Syllabus Point 8 of Energy Dev. Corp. v. Moss, 214 W. Va. 577, 591 S.E.2d 135 (2003) to hold that the term "gas" in a lease or deed does not include CBM absent specific language to the contrary or other indicia of intent.²

² The WVROA argues that LBR did not argue before the lower court that CBM belongs to the coal owner, and should be estopped from making that argument for the first time on appeal. However, LBR *did* argue to the circuit court that if the court felt the need to establish a bright-line rule regarding

Similarly, while this Court recognized in Faith United that courts “*attempt* to confine themselves to the four corners of the document to divine the parties’ intent,” the Court did not hold that courts *must* confine themselves to the four corners of the document even when the document is patently or latently ambiguous. 231 W.Va. at 436, 745 S.E.2d at 474 (emphasis added). To the contrary, this Court has held that where a document is ambiguous, courts may look at matters beyond the four corners of the document, such as the circumstances surrounding the parties when the document was entered into and their subsequent conduct, to determine the intent of the parties. *See Moss*, 214 W. Va. at 586-88, 591 S.E.2d at 144-46; Kopf v. Lacey, 208 W. Va. 302, 307, 540 S.E.2d 170, 175 (2000). Likewise, this Court has long held that “[a] latent ambiguity, which does not appear upon the face of the document, however, may be *created by* intrinsic facts or extraneous evidence.” *Moss*, 214 W. Va. at 585, 591 S.E.2d at 143 (citing Kopf, 208 W. Va. at 307, 540 S.E.2d at 175) (emphasis added); *see also Weiss v. Soto*, 142 W. Va. 783, 790-91, 98 S.E.2d 727, 732-33 (1957) (defining a latent ambiguity as “that which seemeth certain and without ambiguity for anything that appeareth upon the face of the deed or instrument, but there is some collateral matter out of the deed that breedeth the ambiguity.”).

Because latent ambiguities are *created by* facts and circumstances beyond the four corners of the document at issue, interpreting Faith United to mean that this Court must confine itself to the four corners of the document in every case would effectively nullify the concept of a latent ambiguity and thwart the overarching principle of giving effect to the intent of the parties. The holding in Faith United makes sense because it gave effect to the plain, unambiguous intent of the parties. The

CBM ownership, then the court should hold that CBM belongs to the coal owner. *See App. Vol. 1, pp. 143-144.*

conveyance at issue in that case was “the surface only,” which clearly showed the grantor’s intent to convey exactly that: only the surface, and not the underlying minerals. See Faith United, 231 W. Va. at 444, 745 S.E.2d at 482. By contrast, in the case at bar, it borders on the absurd to claim that Petitioner’s predecessors, in 1938, intended a reservation of “gas” together with the “usual” drilling rights to include CBM, given that, in 1938, CBM was generally regarded as a deadly explosive hazard contained within the coal, and none of the “usual” drilling methods at the time could have produced CBM in commercial quantities.

B. The adoption of a bright-line “gas is gas” rule would directly contravene Moss.

The WVROA contends that Moss stands only for the proposition that a “gas” lease does not grant the right to drill into the lessor’s coal seams to produce CBM, and is concerned only about a gas lessee invading the coal estate without express permission. Based on this contention, the WVROA argues that this Court need not overrule Moss in order to adopt a bright-line rule that CBM belongs to the owner of the gas estate, and can instead simply hold that once the coal owner grants permission to invade the coal seam to produce CBM, the resulting CBM is the property of the gas owner. This argument fails for several reasons.

First, as argued in greater detail in LBR’s primary brief, while Moss addressed a lease, rather than a deed, the Court’s discussion and analysis involved rules of contract law applicable to both leases *and* deeds, as well as an examination of various cases from other jurisdictions regarding the issue of CBM *ownership*. See Moss, 21 W.Va. at 585-592, 591 S.E.2d at 143-150. Indeed, the Court expressly stated that “[a]lthough we are considering a lease in this case, much of our case law concerning contracts, in general, and deeds, in particular, offers us guidance.” Id. at 585, 591 S.E.2d

at 143. Moreover, in Moss, this Court expressly and repeatedly rejected the exact “gas is gas” argument that Petitioners and the WVROA now make, and instead adopted a case-by-case approach focusing on the intent of the parties with emphasis on the state of affairs at the time of the conveyance or reservation. *See Moss*, 21 W.Va. at 585-595, 591 S.E.2d at 143-153. Thus, by asserting that this Court need not overrule Moss in order to adopt a bright-line “gas is gas” rule, the WVROA is essentially ignoring the entirety of this Court’s analysis in Moss.

Second, while the WVROA stresses the need for uniformity, the WVROA is effectively asking this Court to hold that the word “gas” has different meanings depending on whether it is used in a lease or a deed. The WVROA’s proposed rule accepts this Court’s holding in Moss that a “gas” lease *does not* automatically convey the right to *develop* CBM absent specific indicia of the parties’ intent, but adds that once the coal owner grants permission to develop the CBM, the CBM produced belongs to the gas owner because the word “gas” in a deed reservation *does* automatically convey *ownership* of CBM.

There is a patent inconsistency in this proposed rule. The question before the Court in Moss was “whether a gas lease executed in 1986, before the widespread commercial production of coalbed methane in West Virginia, signed by a lessor who owned the land, coal, oil and gas, conveyed to the oil and gas lessee the right to develop the coalbed methane, absent any specific language on the issue.” *See Id.* at 585, 591 S.E.2d at 143. The leases at issue in Moss conveyed the right to develop “all of the oil and gas and all of the constituents of either in and under” the property at issue, but based on an analysis of the intent of the parties at the time the leases were executed, this Court affirmed the lower court’s conclusion that this broad language did *not* convey the right to develop the CBM under the property. *See Id.* at 581, 583, 591 S.E.2d at 139, 141. If a 1986 lease granting the right to develop “all of the oil and gas” under the subject property *does not* unambiguously

convey the right to develop CBM absent specific indicia of the parties' intent, then it makes no sense to hold that a reservation of "oil and gas" in a 1938 deed *does* automatically and unambiguously reserve an ownership interest in CBM.

Third, the WVROA's proposed rule ignores reality. The WVROA asks this Court to hold that once the coal owner grants permission to develop the CBM, the CBM produced belongs to the gas owner. However, if a hypothetical coal owner has no interest in the gas estate, and therefore will not profit from the development of the CBM under the WVROA's proposed rule that CBM belongs to the gas owner, then the coal owner has no incentive to grant permission to develop the CBM. While the WVROA makes much out of the fact that LBR, the coal owner in this case, has already granted permission to invade the coal estate to produce CBM, LBR did so based on its belief that it owned the CBM and therefore stood to profit from its development. Conversely, if the Court adopts the bright-line rule that CBM always belongs to the owner of the gas estate, then there is no reason for coal owners who (unlike LBR) have no interest in the gas estate to ever consent to the development of CBM.

C. To ignore the history of CBM production is to turn a blind eye to the intent of the parties.

Based on the superficial distinctions between Moss and the case at bar, which LBR has addressed in its primary brief and above, the WVROA argues that this Court can avoid any analysis of when the widespread commercial production of CBM began in the United States and/or West Virginia. The WVROA essentially takes the erroneous position that the history of CBM is only relevant to the issue of whether a "gas" lease allows the lessee to invade the coal estate to produce CBM, and that since LBR has already consented to the invasion of the coal estate, the history of CBM should be ignored in this case. Again, LBR leased the CBM under the property in 1997 for

its own benefit, based on its ownership interest in the CBM under the property. The fact that LBR consented to the invasion of its coal estate in 1997 to produce its own CBM does not change the ultimate issue in this case, which is whether the parties' predecessors **intended in 1938** for the grantors' reservation of "gas" to include CBM.

Whatever distinctions exist between Moss and the case at bar, one thing is clear: this Court expressly rejected the argument that CBM is conclusively part of the gas estate which therefore passed under the "all gas" language of the 1986 leases, and refused to make a sweeping pronouncement about the general ownership of all CBM. See Moss, 214 W.Va. at 591, 591 S.E.2d at 149. Accordingly, the circuit court in the instant case correctly determined that the reservation of "gas" in the 1938 Deed did not unambiguously include CBM. Indeed, given that CBM is intimately bound within the grantee's coal estate, and was generally considered a deadly hazard associated with the coal industry (rather than a commercial resource to be exploited for profit) until long after 1938, it strains credulity to argue that a grantor's bare reservation of "gas" in 1938 unambiguously demonstrates an intent to reserve the CBM within the grantee's coal estate.

As previously discussed, this Court has held that where a deed is ambiguous, courts can examine custom and usage generally followed at the time and place of its execution to determine the intent of the parties, and therefore found it relevant in Moss that "the production of coalbed methane was not a common practice in McDowell County at the time the leases were executed." 214 W.Va. at 587, 591 S.E.2d at 145. Thus, as in Moss, the facts that the commercial production of CBM was not a common practice in McDowell County, West Virginia (or anywhere in the United States) until long after 1938, and that CBM was generally regarded as a deadly hazard associated with the coal industry rather than a profitable energy source, are not only relevant, but necessary to understand the

intent of the parties in 1938.³

D. A bright-line “gas is gas” rule is not “the next logical step in the evolution of gas law in this state,” and instead would be a radical departure from the law in this State.

In Moss, this Court addressed the question of whether a “gas” lease executed before the widespread commercial production of CBM in West Virginia conveyed the right to develop CBM by (1) applying longstanding general rules of construction applicable to both leases and deeds, (2) analyzing cases from other jurisdictions on the subject of CBM ownership, and (3) examining the intent of the parties at the time that the leases at issue were executed. In the face of this, the WVROA makes the remarkable assertion that a bright-line rule that CBM is part of the gas estate for all intents and purposes (which this Court steadfastly rejected in Moss) is “the next logical step in the evolution of gas law in this state.” Far from being “the next logical step,” such a rule would be a drastic departure from Moss, from the rules of construction and case law discussed in Moss, and

³ To the extent that the WVROA’s argument for eschewing examination of the history of CBM is based on notions of efficiency, it should be noted that this Court can eliminate the need to hear evidence about the general history of CBM in every case without adopting a bright-line “gas is gas” rule. Again, this Court could join those jurisdictions which hold that CBM contained within the coal seam belongs to the coal owner, or could extend Moss to hold that the term “gas” in a lease or deed does not include CBM absent specific indicia of intent to the contrary. However, the Court need not even go that far. The Court could simply take judicial notice of the general history that the commercial production of CBM did not begin in the United States until the 1980s, did not begin in West Virginia until the 1990s, and was generally viewed only as a dangerous waste product of coal mining before its widespread commercialization. *See* Syl. Pt. 7, Simmons v. Trumbo, 9 W.Va. 358 (1876)(“Courts should take judicial notice of such facts as are matters of general history, affecting the whole people...”). The Court could leave the case-by-case approach in Moss intact with respect to case-specific facts bearing on the intent of the parties (i.e. the knowledge of the parties, the conduct of the parties, etc.). As discussed in LBR’s primary brief, numerous courts have recognized that the commercialization of CBM is a recent development, and that historically CBM was considered a dangerous waste product of coal mining. Neither Petitioners nor the WVROA has cited a single case disagreeing with this general history of CBM. As such, there is simply no legitimate dispute about the general history of CBM. As succinctly stated in this case by the representative of the West Virginia Geological and Economic Survey, “[c]oalbed methane was not on our radar until the early 1990s.” App. Vol. 2, p. 361. Also, the mere fact that so many courts have discussed the history of CBM underscores its relevance to the intent of the parties.

from the longstanding rule that deed reservations are strictly construed against a grantor and in favor of a grantee,⁴ and would abrogate the intent of the parties.

LBR maintains that Moss contains the appropriate analysis for resolving the issue in this case, but if there is a “next logical step” in the evolution of this State’s CBM law to be derived from the case at bar, it would be a rule that a bare reservation of “gas” in a deed without any specific reference to CBM must be construed against the grantor such that it does not include CBM. This Court recognized in Moss that a gas lessee need only obtain the express right to produce CBM from the lessor if it wishes to produce CBM. 214 W.Va. at 595, 591 S.E.2d at 153. Concordantly, the grantor of a deed need only expressly include CBM in its reservation if the grantor wishes to reserve an interest in CBM.

As both *amicus curiae* briefs submitted in support of LBR point out, retroactively drawing a one-size-fits-all “gas is gas” rule that applies to the myriad instruments that affect interests in coal and/or gas would cause widespread confusion and create outcomes that go against the actual bargains and contemplations of the parties. Parties who never intended to purchase or reserve any interest in CBM would suddenly find themselves the owners of the CBM. Parties who have operated since the 1990s (when the commercialization of CBM in West Virginia occurred) with the understanding that they owned the CBM would suddenly find themselves subject to lawsuits by owners of “gas” interests who never actually intended to purchase or reserve any interest in CBM. Thus, an across-the-board ruling that the word “gas” in any instrument automatically and unambiguously includes CBM in all cases is not the “next logical step” in the CBM law of this State. Rather, it would be an aberration that places no importance on the actual intent of the parties to any given document, and

⁴ See Syl. Pt. 2, McDonough Co. v. E.I. DuPont DeNemours & Co., Inc., 167 W.Va. 611, 280 S.E.2d 246 (1981); Syl. Pt. 5, Cottrill v. Ranson, 200 W.Va. 691, 490 S.E.2d 778 (1997).

would result in much unanticipated litigation.

E. A bright-line “gas is gas” rule is neither consistent with the West Virginia Code nor the decisions of other state courts.

The WVROA argues that “gas is gas” is consistent with West Virginia’s CBM statute and the decisions of other states. However, it is consistent with neither.

In Moss, this Court observed that our State’s CBM statute, W. Va. Code § 22-21-1 *et seq.*, “completely avoids and eschews any attempt at deciding ownership of coalbed methane.” 214 W. Va. at 594, 591 S.E.2d at 152. Furthermore, the Court found that the language of the statute “shows that the Legislature was reluctant, as are we, to make a sweeping pronouncement about the general ownership of all coalbed methane.” *Id.* at 595, 591 S.E.2d at 153. Thus, a sweeping pronouncement that CBM is always included in every conveyance or reservation of “gas” is plainly *not* consistent with our State’s CBM statute. If anything, the CBM statute implicitly recognizes that there is a wide variety of instruments and arrangements regarding mineral ownership and production rights, that there is no “one size fits all” answer to the question of who owns CBM, and that each conveyance and/or reservation of mineral interests affecting coal and gas must be construed individually to effectuate the intent of the parties.

Likewise, the bright-line “gas is gas” rule advanced by the WVROA is not consistent with the decisions of other state courts. In Moss, this Court examined numerous decisions from other courts, and stated that “while the decisions do differ in many regards, the greatest common factor among these decisions is a consideration for the intent of the parties, with emphasis on the state of affairs at the time of the grant, lease, or conveyance.” *Id.* at 588, 591 S.E.2d at 146; *see also Cimarron Oil Corp. v. Howard Energy Corp.*, 909 N.E.2d 1115, 1123 (Ind. Ct. App. 2009) (“For the most part, the decisions of other jurisdictions have avoided a flat declaration that CBM is either

'coal' or 'gas.'"). Furthermore, as LBR discussed at length in its primary brief, various courts have held that the CBM within the coal seams belongs to the coal owner.

The WVROA relies extensively on Harrison-Wyatt, LLC v. Ratliff, 593 S.E.2d 234 (Va. 2004), but, notably, Harrison-Wyatt did not simply hold that "gas is gas" without any analysis of the intent of the parties at the time of the conveyance. In Harrison-Wyatt, the plaintiffs owned "the surface land and all minerals upon and within it, except the coal," while the defendant held title to *only the coal* by virtue of severance deeds recorded in 1887. 593 S.E.2d at 235. In other words, Harrison-Wyatt involved a dispute between a party who owned *only the coal* and parties who owned everything but the coal, and addressed the question of whether or not a severance of only coal, under the particular deeds at issue, passed title to CBM.⁵ In resolving this question, the court observed that at the time the severance deeds were executed, CBM was known as the "miner's curse," and not until the 1970s did it become apparent that CBM could be a valuable energy source. Id. Although the court ultimately ruled that the severance of the coal alone did not pass title to the CBM, it did so based at least in part on the finding that "the parties could not have contemplated at the time the severance deeds were executed that CBM would become a very valuable energy source." Id. at 238. This is a far cry from simply adopting a bright-line rule that the word "gas" automatically includes CBM in every conveyance or reservation.

Thus, there is a glaring lack of authority for the proposition that other states resolve the issue of CBM ownership with a bright-line rule that CBM is conclusively included in every conveyance

⁵ The Virginia Supreme Court's subsequent decision in Swords Creek Land P'ship v. Dollie Belcher, 762 S.E.2d 570 (Va. 2014), cited by the WVROA, also involved a coal severance deed. Harrison-Wyatt and Swords Creek are thus distinguishable from the case at bar, because here it is not the coal estate that was severed from the rest of the property, and LBR is not simply the owner of the coal alone. Rather, LBR was granted ownership of *all of the mineral interests* in the property, subject only to a narrow reservation of an interest in oil and gas.

or reservation of "gas," and without any regard for the intent of the parties at the time of the conveyance or reservation. To the extent that some decisions from other jurisdictions can be read to support the adoption of such a rule, there remain numerous other soundly-reasoned decisions which support a case-by-case approach consistent with Moss and/or a finding that CBM within the coal belongs to the coal owner. *See e.g.* U.S. Steel Corp. v. Hoge, 468 A.2d 1380 (Pa. 1983); NCNB Texas Nat. Bank, N.A. v. West, 631 So.2d 212 (Ala. 1993); Cont'l Res. of Illinois, Inc. v. Illinois Methane, LLC, 847 N.E.2d 897 (Ill. App. 2006); Cimarron Oil Corp. v. Howard Energy Corp., 909 N.E.2d 1115 (Ind. Ct. App. 2009); Bowles v. Hopkins Cty. Coal, LLC, 347 S.W.3d 59 (Ky. Ct. App. 2011). As one such court recognized, CBM "historically has been completely controlled by whoever controlled the coal," and the control of CBM "should not change simply by virtue of its increased value." Illinois Methane, 847 N.E.2d at 902. In any event, the circuit court correctly determined that an application of the analysis in Moss and the controlling canons of construction in *this jurisdiction* to the facts of this case leads to the conclusion that Petitioners' predecessors' reservation in the 1938 Deed does not include an interest in CBM.

CONCLUSION

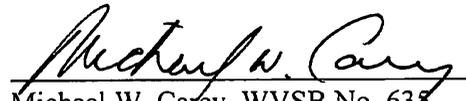
In conclusion, this Court wisely determined in Moss that CBM rights should be analyzed on a case-by-case basis by considering the intent of the parties at the time of the grant or reservation, and by applying West Virginia's longstanding canons of construction. Conversely, under the guise of promoting uniformity and certainty, Petitioners and the WVROA urge this Court to retroactively abrogate the actual bargains and contemplations of West Virginia property-owners by adopting a self-serving, bright-line rule that gives no effect to the intent of the parties and/or this State's longstanding canons of construction. For all of the reasons set forth above and in LBR's primary

brief, the circuit court properly applied the approach from Moss, and LBR respectfully requests that this Court affirm the judgment of the circuit court and hold that LBR is the owner of the CBM and associated royalties at issue.

Respectfully submitted,

LBR HOLDINGS, LLC,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 15-0907

GREGORY G. POULOS, JASON G. POULOS,
PAMELA F. POULOS, SHAUN D. ROGERS,
KEVIN H. ROGERS, DEREK B. ROGERS,
and T.G. ROGERS, III, ;

Defendants Below, Petitioners,

v.

LBR HOLDINGS, LLC,

Plaintiff Below, Respondent.

CERTIFICATE OF SERVICE

I, Michael W. Carey, do hereby certify that on the 12th day of July, 2016, I have served the foregoing “Respondent’s Reply Brief of *Amicus Curiae* of the West Virginia Royalty Owners’ Association” upon the parties to this action, via United States Mail, postage pre-paid, addressed as follows:

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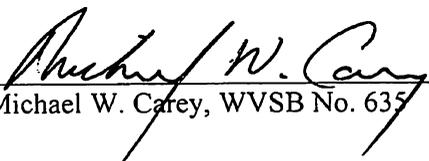
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and T.G. ROGERS, III, ;

Defendants Below, Petitioners,

v.

LBR HOLDINGS, LLC,

Plaintiff Below, Respondent.

CORRECTED CERTIFICATE OF SERVICE

I, David R. Pogue, do hereby certify that on the 13th day of July, 2016, the “**Respondent’s Reply to Brief of Amicus Curiae of the West Virginia Royalty Owners’ Association**” was served upon the parties to this action via United States Mail, postage pre-paid, addressed as follows:

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