

5-8-19
W H Lawrence
T Miller
F Simmerman III

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

ANTERO RESOURCES CORPORATION,
a Delaware Corporation,

Plaintiff,

v.

Civil Action No. 18-C-271-2
THOMAS A. BEDELL, Judge

BISON INTERESTS, L.L.C.,
an Oklahoma Limited Liability Company,

and

CGAS PROPERTIES, L.P.,
a Delaware Limited Partnership,

Defendants.

FINAL ORDER

**GRANTING DEFENDANT, CGAS PROPERTIES, L.P.'S, REQUEST FOR DISMISSAL
FROM THIS CIVIL ACTION AND DISMISSING CGAS AS A PARTY LITIGANT**

**GRANTING ANTERO RESOURCES CORPORATION'S
MOTION FOR SUMMARY JUDGMENT**

**DENYING BISON INTERESTS, L.L.C.'S MOTION
TO DISMISS / MOTION FOR SUMMARY JUDGMENT**

**DECLARING JUDGMENT IN FAVOR OF PLAINTIFF, ANTERO RESOURCES
CORPORATION, AND AGAINST DEFENDANT, BISON INTERESTS, L.L.C.**

**DECLARING, AS A MATTER OF LAW, BISON IS NOT ENTITLED TO ANY
OVERRIDING ROYALTY INTEREST IN ANTERO'S PRODUCTION FROM
MARCELLUS SHALE DEPTHS WITHIN OR UNDERLYING THE 900-FOOT RADII OF
ASH #1 WELL AND CLARK #1 WELL BOREHOLES**

**DECLARING, AS MOOT, AND DISMISSING, WITH PREJUDICE, BISON'S CLAIMS
AGAINST ANTERO AS TO ANY OVERRIDING ROYALTY INTEREST IN ANTERO'S
PRODUCTION FROM MARCELLUS SHALE DEPTHS WITHIN OR UNDERLYING
THE 900-FOOT RADII OF ASH #1 WELL AND CLARK #1 WELL BOREHOLES**

**CANCELLING THE PRE-TRIAL SCHEDULING
CONFERENCE SET FOR THURSDAY, MAY 9, 2019**

RETIRING THIS CIVIL ACTION FROM THE ACTIVE DOCKET OF THIS COURT

Summary of Pending Motions and related Responsive Pleadings

Presently before this Court is *Bison Interests, L.L.C.'s Motion To Dismiss / Motion For Summary Judgment* filed by and through legal counsel on behalf of Defendant, Bison Interests, L.L.C. (hereafter referred to as "Bison") on December 7, 2018 pursuant to Rule 56 of the *West Virginia Rules of Civil Procedure*. Accompanying Bison's Motion is its *Memorandum Of Law In Support Of Bison Interests, L.L.C.'s Motion To Dismiss / Motion For Summary Judgment* with Exhibits 1 through 20.¹

Bison essentially asserts that Plaintiff, Antero Resources Corporation's, claims stated in its *Complaint For Declaratory Judgment* filed on November 5, 2018 are respectively barred by the doctrines of *res judicata*, collateral estoppel, and judicial estoppel. *Inter alia*, Bison primarily relies upon the record and prior rulings in Harrison County Circuit Court Civil Action No. 15-C-124-1 as previously tried and believes was fully litigated so that the same claims and issues Antero asserts herein were resolved.

This Court's Order entered herein on December 11, 2018 scheduled responsive pleading deadlines for Bison's Motion. Various pleadings were then filed, to-wit:

1. In lieu of filing a Response to Bison's pending Motion in keeping with such December 11, 2018 Order, *Antero Resources Corporation's Motion For Summary Judgment* with an accompanying *Antero Resources Corporation's Memorandum In Support Of Its Motion For Summary Judgment And In Opposition To Bison Interests, L.L.C.'s Motion To Dismiss / Motion For Summary Judgment* on December 28, 2018. Such pleading being Plaintiff, Antero Resources Corporation's (hereafter referred to as "Antero"), Rule 56 Motion and Memorandum in Support with responsive Opposition.

¹ Therein, Bison footnotes a request for prompt resolution of the issues raised herein while further noting its expectation to timely answer, raise applicable counterclaims if it becomes necessary, and benefit from Rule 12(a) tolling effect of time.

Therein, Antero essentially asserts *inter alia* that:

The evidence from the prior litigation and Bison's own admissions at trial [therein] show that Antero is now entitled to a declaration that Bison is not entitled to the overriding royalties at issue despite Bison's continued attempts to misconstrue the record and to hide behind procedure.

...

Antero's request for a declaration as to the parties' respective rights was not settled in the prior litigation. In fact, it was specifically not decided by the Court where...[in its Opinion and Order dated July 20, 2018, it] expressly declined to address Antero's post-trial motion for declaratory judgment as to the overriding royalty interest on the Ash Lease and Clark Lease because [Defendant herein] CGAS was no longer a party [in that litigation having been dismissed out by prior Order therein].

(Footnote omitted; *but, see* Analysis, Page 19 of 29 at no. 21 herein *infra*).

...

Having been invited by the Court to seek resolution of the matter in a new suit, Antero now simply requests a ruling on the substantive merits of its claim – that Bison's interests in the Ash Lease and Clark Lease are depth limited and therefore, Bison is not entitled to overriding royalties from Antero's production on those leases.

(See Antero's Memorandum in Support, p. 1 at § 3 and p. 2 at §§ 1 and 3).

2. *Reply Brief In Further Support Of Bison Interests, L.L.C.'s Motion To Dismiss / Motion For Summary Judgment* on January 7, 2019.²

In requesting this Court to "swiftly apply the doctrines of *res judicata*, collateral estoppel and judicial estoppel...[in prohibiting Antero]...from asserting claims against..." it herein, Bison avers and argues *inter alia* that Antero's pleading is nothing more than:

- "[R]eactive", "illusory" and "deflective" of persuasively asserted arguments made by Bison in its pending Motion (particularly its "material and substantive *res judicata*" argument).

² Therein, Bison again footnotes a request for prompt resolution of the issues raised herein while noting its expectation to timely answer, raise applicable counterclaims if it becomes necessary and further reserving the right to address issues raised in Antero's Motion for Summary Judgment.

- "[A] calculated attempt to shield...[Antero's]...admissions and concessions, as well as the actual issues decided by the jury in the underlying state court litigation... ". (See Bison's Reply, pp. 1 – 2).

Having reviewed these responsive pleadings as well as Bison's noted reservation of the right to further address Antero's pending motion and in light of Defendant, CGAS Properties, L.P.'s (hereafter referred to as "CGAS") having filed its *CGAS Properties, L.P.'s Answer To Complaint For Declaratory Judgment* on December 11, 2018 after entry of its initial Response Scheduling Order, this Court had entered an Order on January 17, 2019 establishing *inter alia* additional responsive pleading deadlines for Antero's Rule 56 Motion while further providing CGAS an opportunity to file Responses.

Pursuant thereto, various pleadings were then filed herein, to-wit:

1. *CGAS Properties, L.P.'s Response To Bison Interest, L.L.C's Motion To Dismiss / Motion For Summary Judgment And Antero Resources Corporation's Motion For Summary Judgment* on February 4, 2019.

CGAS straightforwardly argues that:

- By Agreed Orders (See Bison Motion, Exhibits 12 and 13) entered August 22, 2016 and May 1, 2017 respectively in Civil Action No. 15-C-124-1, it essentially declared and confirmed that it had no rights in or to overriding royalty interest payments to certain mineral production by Antero in relation to the Okey Clark #1 Well located on the Clark Lease and in relation to the Ash #1 Well in relation to the Hazel D. Ash, et ux. Lease.
- Having executed such Orders, it believes that it may have had an undivided interest in the Clark Lease but, wished to avoid further litigation costs

as well as that it does not own any Ash leasehold interests as to Marcellus Shale depths as a result of a May 16, 2011 Assignment³ with Antero.

- It makes no representations as to any Bison entitlement "to overriding royalties arising from the 2012 Assignment (See Antero Memorandum of Law, Exhibit D) in Antero's production of the Marcellus Shale depths from the Clark Lease and Ash Lease within the 900 foot radii of the Clark Well and Ash Well."
- It wishes to eliminate further unnecessary litigation costs and expenses related thereto and requests dismissal from this instant matter.

Thereupon, "CGAS respectfully requests that it be dismissed from further proceedings in this matter and leave to judicial determination whether or not Antero or Bison owns the disputed overriding royalty." (See CGAS Response, p. 5 at WHEREFORE).

2. *Bison Interests, L.L.C's Response In Opposition To Antero Resources Corporation's Motion For Summary Judgment* on February 11, 2019 accompanied by Exhibits 1 through 9 (with Exhibit 5 under seal).

Bison specifically identifies and relies upon language in various Oil and Gas Leases, Turnkey Drilling Agreements and Assignments (See Response, pp. 3 – 9 and Exhibits 1 – 4, 6 – 8) related to the Ash and Clark wells and the overriding royalty interest payments heretofore made by Antero to Bison on such interests now at issue in this instant matter upon which it requests *inter alia* this Court's denial thereof.

Thereupon, Bison maintains that there are no identifiable depth restrictions or limitations (in any way, shape or form) that Antero can now insist upon as existing that

³ Such *Partial Assignment of Oil And Gas Leases* (with Exhibit "A") is of record in the Office of the Clerk of the Harrison County Commission at Deed Book No. 1470 at Page No. 1024.

further act to negate any such payments to Bison from Marcellus Shale production within a 900-foot radii of such wells' respective boreholes.

Bison accuses Antero of, *inter alia*, attempting to utilize subsequent assignments (that are extrinsic to the Ash/Clark Turnkey Drilling Agreements and Warranty Deeds of Assignment at issue) in support of its argument that Bison has no overriding royalty interest in the Ash #1 Well or Clark #1 Well. That attempt, it believes, is nothing more than a 'red herring' argument to distract this Court from the controlling instruments that establish Bison's overriding royalty interest in Antero's Marcellus play from the Ash and Clark wells.

In summary therein, Bison states a belief that Antero's real motivation for this litigation is for complete elimination of Bison's overriding royalty interest so that it vests in Antero for a greater share of production/working interest in the Ash and Clark Leases. Such end game Bison attributes to nothing short of "spite and retribution as a result of [Bison's] prior litigation, and recovery/enforcement of rights against [Antero]." (*Id.*, p. 2. at ¶ 1).

Finally, Bison asserts its "entitlement to a 6.25% overriding royalty interest from Marcellus shale production on the Ash/Clark radius lease acreage just as the jury did in the underlying state court litigation" (i.e.; Civil Action No. 15-C-124-1). (*Id.*, at ¶ 2).

3. *Antero Resources Corporation's Reply In Support Of Its Motion For Summary Judgment* on March 1, 2019 with Exhibit 1 as well as Supplemental Exhibit on March 4, 2019.

Antero maintains its position that it is entitled to a declaration that Bison is not entitled to overriding royalties from its Marcellus Shale depths' production of the Ash Lease or the Clark lease. Relying on its position that the language contained in the

assignments and the turnkey drilling agreements is plain and unambiguous as well as upon what it avers to be undisputed facts admitted by Bison manager (and president of other affiliated companies), Mark Harison, during his trial testimony in Civil Action 15-C-124-1, Antero unequivocally asserts that Bison's overriding royalty interests under such Leases are depth-limited.

Antero particularly further asserts, *inter alia*, three (3) specific points, to-wit:

- One of Bison's positions expressed in its Response mischaracterizes the language in paragraph 1.3 of the turnkey drilling agreements as stating a minimum depth when such agreements' text clearly applies to the working interest. As such, "Bison's argument regarding a minimum burden is simply not supported by the plain language of the instrument". (See Reply, pp. 2 – 4 at A.).
- As to entering various assignments and turnkey drilling agreements like those involving the Ash Lease and Clark Lease, the intent of Bison's predecessor (i.e.; Doran and LaMaur) was to explore for oil and gas in shallow depths to and through the Benson Sand Horizons expected to be encountered at approximately 4,700 feet. In light thereof, the only sensible construction of applicable assignments is that there was and is a limitation of the conveyance therein to the Benson Sand as it was actually developed previously. (*Id.*, pp. 4 – 5 at B.).
- During Bison and Antero negotiations prior to the 2012 Assignment, a turnkey drilling agreement not containing the purported depth limitation language was proffered by Mr. Harison to Antero as being representative of all such agreements for various leases under consideration (including those agreements for the Ash Lease and the Clark Lease). Such scenario conclusively implies his awareness of the depth limitations in such referenced agreements for the Ash

and Clark leases that precluded any overriding royalty entitlement to Bison for Marcellus Shale formation production under such leases. (*Id.*, pp. 5 – 7).

Conclusions

This Court has respectively reviewed, in detailed fashion, Bison's and Antero's respective Motions with supporting Memorandum of Law in Support, related responsive pleadings and all accompanying Exhibits as well as CGAG's collective Response to both Antero's and Bison's pending Motions. It has reviewed the entirety of the Civil Action file herein as well as matters deemed pertinent for determination purposes herein from the official records maintained by the Clerk of this Court for Civil Action No. 15-C-124-1. It has further conducted independent legal research in light all thereof.

Having fully considered the parties' respective arguments and positions along with sufficiently deliberating all thereon, this Court determines that no further pleadings or oral argument are necessary for it to render appropriate rulings herein as it deems the record sufficiently developed otherwise. In addition to CGAS's responsive pleading request herein, Bison's and Antero's respective contentions are now fully briefed and their Motions are ripe for disposition.

Thereupon, this Court concludes that:

1. CGAS's request should be GRANTED and it be dismissed from further proceedings herein. Such ruling being upon representations contained in their pleadings and a final ruling as to their abandonment of any legal right, title or interest in and to any overriding royalty ownership as to the well leases at issue in this instant litigation, particularly as to the respective 900-foot radii of the Ash #1 and Clark #1 well boreholes and Antero's production of Marcellus shale depths therefrom.

2. Antero's Motion for Summary Judgment should be GRANTED as presented and Antero is entitled to judgment, as a matter of law, being further molded herein along with other necessary and related rulings.

3. Bison's Motion to Dismiss / Motion for Summary Judgment should be DENIED as presented and Bison not being entitled to judgment, as a matter of law, upon unsuccessful application of *res judicata*, collateral estoppel and/or judicial estoppel.

4. Upon such ruling conclusions, further judgments and determinations should be DECLARED with respect to particular overriding royalty interest claims pertaining to Antero's production from Marcellus shale depths within and underlying the 900-foot radii of the respective Ash #1 Well and Clark #1 Well well boreholes at issue herein.

Applicable Standards of Review

Subsection (a) of Rule 56(a) of the *West Virginia Rules of Civil Procedure* states in part that, "[A] party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may...move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof." Subsection (b) likewise states, "[A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof." Still further, subsection (c) states in part that, "[T]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, ... show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

As to any required defense by the non-moving party, subsection (e) thereof states in part that, "...an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, ... , must set forth specific facts showing that there is a genuine issue for trial."

Rule 56 is "...designed to effect a prompt disposition of a controversy on the merits without resorting to a lengthy trial, if in essence there is no real dispute as to the salient facts or if only a question of law is involved." *Hanks v. Beckley Newspaper Corp.*, 153 W. Va. 834, 837, 172 S.E.2d 816, 817 (1970). (Citation string omitted).

Accordingly, our West Virginia Supreme Court of Appeals has clearly stated on numerous occasions that, "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. Pt. 3, *Aetna Casualty & Surety Co. v. Federal Ins. Co. of New York*, 148 W. Va. 160, 160, 133 S.E.2d 770, 771 (1963). (Citation string omitted).

Under this standard, "[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." Syl. pt. 3, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994). However, "the party opposing...summary judgment must offer more than a 'mere scintilla' of evidence in support of their allegations; ..., they must produce evidence from which a rational juror could find in their favor." *Id.* at 193.

In other words, "Summary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient

showing on an essential element of the case that it has the burden to prove." Syl. pt. 2, *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 459 S.E.2d 329 (1995).

"If the moving party makes a properly supported motion for summary judgment and can show by affirmative evidence that there is no genuine issue of a material fact, the burden of production shifts to the nonmoving party who must either (1) rehabilitate the evidence attacked by the moving party, (2) produce additional evidence showing the existence of a genuine issue for trial, or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f) of the West Virginia Rules of Civil Procedure." Syl. pt. 3, *Id.*

"Summary judgment cannot be defeated on the basis of factual assertions contained in the brief of the party opposing a motion for such judgment." Syl. pt. 6, *McCullough Oil, Inc. v. Rezek*, 176 W. Va. 638, 346 S.E.2d 788 (1986); Syl. pt. 3, *Guthrie v. Northwestern Mutual Life Insurance Co.*, 158 W. Va. 1, 208 S.E.2d 60 (1974). Accordingly, general allegations that do not show facts with detail and precision are insufficient to prevent entry of summary judgment for the moving party.

Particularly applicable herein; "A motion by both plaintiff and defendant for summary judgment under Rule 56, R.C.P. does not constitute a determination that there is no issue of fact to be tried and if a genuine issue of material fact is involved both motions should be denied." Syl. Pt. 3, *Haga v. King Coal Chevrolet Co.*, 151 W. Va. 125, 150 S.E.2d 599 (1966).

Rule 57 of the *West Virginia Rules of Civil Procedure* states, in whole:

The procedure for obtaining a declaratory judgment pursuant to the West Virginia Uniform Declaratory Judgments Act, Code chapter 55, article 13 [§ 55-13-1 et seq.], shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another

adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. A party may demand declaratory relief or coercive relief or both in one action. Further relief based on a declaratory judgment may be granted in the declaratory action or upon petition to any court in which the declaratory action might have been instituted. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

West Virginia Code § 55-13-1 states:

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

West Virginia Code § 55-13-2 states:

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

As such, it is recognized, "a declaratory judgment action is a proper procedural means for adjudicating the legal rights of parties to a disputed contract." *Black v. St. Joseph's Hosp. of Buckhannon, Inc.*, 234 W. Va. 175, 764 S.E.2d 335, 40 (2014).

Furthermore, extrinsic evidence may be received in a subsequent suit to show what was actually at issue in a prior suit and what was determined on the trial of a former suit. See, e.g., *State v. McEldowney*, 54 W. Va. 695, 47 S.E. 650 (1904); see also *Michie's Jurisprudence* § 81, Former Adjudication or Res Judicata (2001).

Analysis

1. This instant litigation was initiated by Antero's *Complaint For Declaratory Judgment* filed herein on November 5, 2018 pursuant to the Uniform Declaratory

Judgments Act. Therein, it requests declarations by this Court as to, "the rights, status and other legal relations vis-à-vis the parties with regard to rights to overriding royalties arising from the 2012 Assignment in Antero's production of the Marcellus Shale from the Clark Lease and Ash Lease within and underlying the respective 900 foot radii of the Clark Well and Ash Well." (See Complaint, p. 1 at 1.).

2. Following effective service of process upon Bison and CGAS respectively:

(a) Bison, in lieu of filing an Answer and/or other responsive pleading, filed its Motion to Dismiss / Motion for Summary Judgment with accompanying Memorandum of Law and Exhibits on December 7, 2018. (Heretofore reviewed herein *supra*).

(b) *CGAS Properties, L.P.'s Answer To Complaint For Declaratory Judgment* was filed herein on December 11, 2018. Therein, *inter alia*, CGAS states:

In its Answer, CGAS makes no representations as to whether Defendant Bison is entitled to overriding royalties arising from the 2012 Assignment in Antero's production of the Marcellus Shale depts. From the Clark Lease and Ashe Lease within the 900 foot radii of the Clark Well and Ash Well. By Agreed Orders dated August 22, 2016 and May 1, 2017 [in Civil Action No. 15-C-124-1], CGAS agreed it was not entitled to overriding royalty interest payments from mineral production below the Benson Sand by Antero Resources Corporation on and under the 900-foot radii of the Clark Well and Ash Well because CGAS was not a party to such Assignment and CGAS believes such overriding royalties do not exist as such 900-foot radii of the Clark Well and Ash Well only extend to depths of 4,700 feet or the Benson Sand, whichever is deeper, as stipulated by the initial assignments to LaMaur Development [as Developer by Doran as Operator], predecessor to Bison, and associated Turnkey Drilling Agreements and Operating Agreements relating to the Ash Lease and Well and Clark Lease and Well. (Underline emphasis provided by this Court as a particular point of interest).

(See CGAS Answer to Complaint, pp. 5 – 6 at "Affirmative Defense").

3. Antero's Complaint and CGAS's Answer each further aver their respective positions in establishing the leasehold chain of title to Marcellus Shale Depths with regard to the Ash Lease and Clark Lease and are incorporated herein by reference.⁴

4. By *Warranty Deed Of Assignment* (with Exhibit "A" and "B") dated June 21, 1979 by and between Doran & Associates, Inc. ("Doran"), and LaMaur Development Corporation (LaMaur), Doran *inter alia* assigned its interests in and to that December 21, 1978 Oil and Gas Lease by and between Hazel D. Ash, et ux, and Doran.

5. Such Deed, *inter alia*, conveyed by assignment:

...the entire working interest, to the oil and gas reserves in, and production from, that portion of the oil and gas lease to be used for the well site, and within a radius of 900 feet of the borehole of such well, together with such protective acreage as is described in the Turnkey Drilling Agreement, dated June 21, 1979 and the Operating Agreement of even date therewith, between [those parties].

(See Antero Memorandum in Support, particularly at Exhibit G).

6. By *Warranty Deed Of Assignment* (with Exhibit "A" and "B") dated June 7, 1979 by and between Doran and LaMaur, Doran *inter alia* assigned its lease interests in and to that October 25, 1978 Oil and Gas Lease by and between Okey Clark, et ux, and Doran.

7. Such Deed, *inter alia*, conveyed by assignment:

... the entire working interest, to the oil and gas reserves in, and production from, that portion of the oil and gas lease to be used for the well site, and within a radius of 900 feet of the borehole of such well, together with such protective acreage as is described in the Turnkey Drilling Agreement, dated June 7, 1979 and the Operating Agreement of even date therewith, between [those parties].

(*Id.*, particularly Exhibit H).

⁴ See Antero's Complaint, p. 6 at ¶ nos. 27 and 28 and CGAS's Answer, p. 3 at ¶ nos. 27 and 28.

8. As such Lease language respectively states, they are each subject to a Turnkey Drilling Agreement bearing even date therewith.

9. *Turnkey Drilling Agreement* (Drilling Prospect 1979 – No. 2) by and between Doran & Associates, Inc. (as "Operator"), and La Maur Development Corp. (as "Developer") dated June 21, 1979 pertains to *inter alia* the Ash Lease at issue herein. (*Id.*, Exhibit I and Bison's Response in Opposition, Exhibit 2). Such Agreement states, in pertinent part to overriding royalty interests:

Operator agrees that any well site or location, drilling and producing right, farm-out agreement or lease acquired for or on behalf of Developer for the purpose of this Agreement shall provide that Developer shall be entitled to be assigned and shall be assigned not less than 81.25% of all oil and gas reserves in place, **to a depth through the Benson Sand Horizons**, on the subject acreage and produced by any well drilled on such location or site. Notwithstanding the provisions of this paragraph, Developer may agree in writing to accept a well site or location which provides for a lesser interest in the oil and gas from any well drilled on such location or site.

(Bold type emphasis added in Antero's pleadings and by this Court herein).

10. *Turnkey Drilling Agreement* (Drilling Prospect 1979 – No. 3) by and between Doran & Associates, Inc. (as "Operator"), and La Maur Development Corp. (as "Developer") dated June 7, 1979 pertains to *inter alia* the Clark Lease at issue herein. (*Id.*, Exhibit J and Bison's Response in Opposition, Exhibit 3). Such Agreement states in pertinent part to overriding royalty interests:

Operator agrees that any well site or location, drilling and producing right, farm-out agreement or lease acquired for or on behalf of Developer for the purpose of this Agreement shall provide that Developer shall be entitled to be assigned and shall be assigned not less than 81.25% of all oil and gas reserves in place, **to a depth through the Bradford-Kane sand, but not to exceed 4,000 feet with regard to Pennsylvania wells, and through the Benson Sand Horizons with regard to West Virginia wells**, on the subject acreage and produced by any well drilled on such location or site. Notwithstanding the provisions of this paragraph, Developer may agree in writing to accept a well site or location which provides for a lesser interest in the oil and gas from any well drilled on such location or site.

(Bold type emphasis added by Antero in its pleadings and by this Court herein).

11. By *Assignment, Bill Of Sale And Conveyance* dated May 25, 2012 (effective March 1, 2012 and hereafter referred to as "2012 Assignment"), Bison's predecessor(s) in interest (particularly Bison Associates, LLC then acting by its President, Mark Harison,⁵ who is presently Bison's Principle Manager) assigned thirteen (13) leases to Antero with two (2) of those leases being the Ash Lease (#KL-235) and the Clark Lease (#KL-169) and respectively including Clark #1 Well and Ash #1 Well. (See Assignment with Exhibits A and B thereto; Exhibit D to Antero's Motion herein).

12. Such Assignment by Bison's predecessor(s) in interest to Antero included, in pertinent part to this instant litigation:

...all of Assignor's right, title and interest whether present, contingent or reversionary, in and to the following (collectively, the "Assets")...:

A. The oil and gas leases, including all...overriding royalty interests...related thereto, described in Exhibit "A" ..., less and except [now Bison's] wellbore interests in the wells described on Exhibit "B"; ...⁶

13. By Agreed Order entered on August 22, 2016 in Civil Action No. 15-C-124-1, Division 1 of this Court declared and confirmed that "CGAS...has no rights in and to overriding royalty interest payments from mineral production below the Benson Sand by Antero...on and under the 900-foot radius of the [Okey] Clark #1 Well (API 4701702357)... ." (See Order, p. 2 at ¶ 1, Exhibit 12 to Bison's Motion herein).

14. By Agreed Order entered on May 1, 2017 in Civil Action No. 15-C-124-1, Division 1 of this Court declared and confirmed that "CGAS...has no rights in and to overriding royalty interest payments from mineral production below the Benson Sand by

⁵ Mr. Harison's listed title therein also includes "Bison Resources Corporation, Manager".

⁶ Exhibit B list of wellbore interests excepted therefrom includes O. Clark #1 Lease Number KL-139 API 4701702357 and O. Ash #1 Lease Number KL-235 API 4703302090.

Antero...on and under the 900-foot radius of the Ash #1 Well (API 4703302090)... " (See Order, p. 2 at ¶ 1; Exhibit 13 to Bison's Motion herein).

15. Such Orders did not establish that either CGAS or Bison were entitled to an overriding royalty payment; only that neither claimed a competing interest to the other's claimed acreage.

16. By *Agreed Consent Order Regarding Declaration Of Bison Interests, L.L.C.'s And CGAS Properties, L.P.'s Property Interests And Resolution of the Claims And Counterclaim Between Bison Interests, L.L.C. And CGAS Properties, L.P.* entered on November 30, 2017 in Civil Action No. 15-C-124-1, all matters therein between Bison and CGAS were resolved and CGAS was dismissed from that Civil Action by another Agreed Order entered that same day. (See Order; Exhibit B to Antero's Memorandum In-Support).

17. Therein, *inter alia*, it was agreed that CGAS has no rights in and to overriding royalty interest payments, if any, from oil and/or natural gas production below the Benson Sand by Antero Resources Corporation on and under an area designated as the 900-foot radii of specifically identified wells including Ash #1 and Clark #1 therein.

18. Following a jury trial, *Partial Judgment Order* with Exhibit A (the completed and signed Verdict Form dated March 30, 2018) was entered on April 9, 2018 in Civil Action No. 15-C-124-1. Such Order states in pertinent part to matters herein:

...[T]he Court previously deferred addressing Count VI, Bison Interests, L.L.C.'s Request for a Declaratory Judgment until the resolution of the jury trial on Counts I, II, and IV, asserting claims for Breach of Contract, Breach of Fiduciary Duty, and Commission of Constructive Fraud.

...

...the jury returned the verdict, attached hereto as "Exhibit A."

...

Finally, the parties, by counsel, are hereby directed to return to this Court on Tuesday, May 22, 2018, at 9:30 a/m/ to address Bison Interests, L.L.C.'s Count IV, Declaratory Judgment, whereupon the Court will enter a Final Judgment Order.⁷

19. Further review of that Order shows such *Verdict Form* reflects that the Jury therein answered three (3) questions submitted to them and determined a monetary award of \$55,357.63 following trial and presentation of evidence by Bison and Antero for their deliberations and determinations, to-wit:

- Question No. 1: Do you find by a preponderance of the evidence that Defendant Antero Resources Corporation breached its contract with Plaintiff Bison Interests, LLC? (Answered in the affirmative)
- Question No. 2: Do you find by clear and convincing evidence that Defendant Antero Resources Corporation committed a constructive fraud towards Plaintiff Bison Interests, LLC? (Answered in the negative)
- Question No. 3: Do you find by a preponderance of the evidence that Defendant Antero Resources Corporation breached a fiduciary duty to Plaintiff Bison Interests, LLC? (Answered in the negative);

for damages it believed Bison proved it suffered as a result of such contract breach but, with no further attribution, breakdown or explanation thereof requested by the parties.

20. A *Memorandum Opinion And Order Concerning Declaratory Relief* entered on July 20, 2018 in Civil Action No. 15-C-124-1, in pertinent part to matters herein, addressed *inter alia* "Antero Resources Corporation's Combined Motion for Declaratory Judgment and Memorandum of Support Thereof".

⁷ A certified copy of such Order with Exhibit is provided herein as Exhibit 18 to Bison's Motion along with a copy of Bison Interests, L.L.C.'s, notarized *Satisfaction Of Judgment* issued therein as signed by Mark Harison, its Manager, on September 14, 2018.

21. In such Opinion and Order that focused on Bison's deferred Count VI Declaratory Judgment, that Court principally addressed and determined the particular manner for calculations of Overriding Royalty Interest ("ORI") on production with regard to the underlying subject leases (including Ash and Clark) litigated therein. However, Antero's declaratory judgment requests now being litigated herein that were raised therein were summarily addressed by that Court only by footnote 2 therein found on unnumbered page 4, to-wit:

Antero also urges this Court to interpret the terms of the agreements between Bison and CGAS Properties, L.P., and their respective predecessors in interest, to determine Bison's entitlement to royalties on Marcellus Shale production by Antero from the Ash and Clark Leases. Third parties to a contract between two private citizens generally cannot sue to obtain a declaration as to validity of such a contract or to raise questions as to its construction. See § 55-13-2, but see Shobe v. Latimer, 1979, 253 S.E.2d 54, 162 W.Va. 779. Further, in the instant case, one of the parties, CGAS Properties, L.P., whose entitlement under the agreements would be directly affected, is no longer a party to this case and, thus, would not have the opportunity to be heard on the issue. The Court, therefore declines to address this issue in the instant action.

22. That Court expressly declined to rule on Antero's motion for declaratory action without having CGAS a present party litigant for purposes of stating any interest and/or position as to overriding royalty interests, if any, pertaining to Antero's production from Marcellus Shale depths below the 900-foot radii of the well borehole for Clark #1 Well and Ash #1 Well respectively under the Ash and Clark Leases as presently assigned to Antero.

23. "It is the province of the court, and not of the jury, to interpret a written contract." Syl. Pt. 6, *Franklin v. Lilly Lumber Co.*, 66 W. Va. 164, 66 S.E. 225 (1909).

24. "The construction of a deed, not dependent in any way upon extrinsic evidence, and also of a deed dependent upon extrinsic evidence, when the facts are

undisputed, is a question for the court and not for the jury." Syl. Pt. 7, *Mylius v. Raine-Andrew Lumber Co.*, 69 W. Va. 346, 71 S.E. 404 (1911).

25. "A valid written instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent." Syl. Pt. 1, *Cotiga Dev. Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 128 S.E.2d 626 (1962). "It is not the right or province of a court to alter, pervert or destroy the clear meaning and intent of the parties as expressed in unambiguous language in their written contract or to make a new or different contract for them." *Id.* at Syl. Pt. 3.

26. It has been long recognized in West Virginia that, "[i]t is true that another instrument or document, under some circumstances, may be legally embodied in a deed or mortgage by appropriate words of reference, and such instrument need not be recorded." *Roane Cty. Bank v. Phillips*, 124 W. Va. 720, 22 S.E.2d 291, 293 (1942) (citing *Snooks v. Wingfield*, 52 W. Va. 441, 44 S.E. 277 (1903) as well as *Pere Marquette R. Co. v. Graham*, 150 Mich. 219, 114 N.W. 58; *King v. Lane*, Tex.Civ.App., 186 S.W. 392; 16 Am.Jur., Deeds, sec. 275, p. 594.).

27. Under such Deeds of Assignment, Doran particularly assigned to LaMaur (Bison's predecessor-in-interest) the Ash Lease with Ash #1 Well and Clark Lease with Clark #1 Well; each assignment specifically referencing these non-recorded Turnkey Drilling Agreements that identified the 900-foot radius of each well's borehole together with such protective acreage.

28. Such Turnkey Drilling Agreements to the Ash Lease and Clark Lease assignments were not of record and had not been previously produced by Bison until during discovery in Civil Action No. 15-C-124-1.

29. In Civil Action No. 15-C-124-1, that Court expressly declined to address Antero's post-trial motion for declaratory judgment as to any overriding royalty interest on the Ash Lease and Clark Lease believing CGAS should be heard thereon (even though having been previously dismissed out by Agreed Orders).

30. Although CGAS had intervened subsequent to initial civil action filings in Civil Action No. 15-C-124-1, the rights with respect to all three (3) parties therein as to the Ash Lease and Clark Lease with respect to any overriding royalty interests to Antero's production from Marcellus Shale depths were not fully settled at the time of CGAS's dismissal from further proceedings prior to Bison's and Antero's jury trial and subsequent verdict determinations. Unfortunately post-trial, CGAS was no longer a party litigant for any remaining substantive matters brought by Antero wherein that Court then determined CGAS needed heard thinking its interests might be affected.

31. Bison is not entitled to any payment for any overriding royalties from Antero for any production below the Benson Sand formation and of the Marcellus Shale depths within and underlying the respective 900-foot radii of the Ash #1 Well and Clark #1 Well boreholes under the assigned Clark Lease or the Ash Lease.

32. Bison's leasehold rights in the Clark Lease and Ash Lease, particularly as to overriding royalties, did not and do not include any such royalties from Antero's production of the Marcellus Shale depths within and underlying the 900-foot radius of either the Clark #1 Well or the Ash #1 Well.

33. Those specific rights are depth limited by the unambiguous (i.e.; plain) language contained in both the referenced and incorporated Turnkey Drilling Agreements (i.e.; 79-2 and 79-3) with each *Warranty Deed of Assignment* by and between Doran and LaMaur that respectively included the Clark Lease and Ash Lease

and which were further appurtenant to such Leases' subsequent conveyances and assignments in their respective chain of title that ultimately included Antero.

34. Bison's argument regarding a minimum burden is simply not tenable given the plain and unambiguous language in the referenced Turnkey Drilling Agreements.⁸

35. The totality of the pleading record herein and the record further relied upon by Bison and Antero herein from Civil Action No. 15-C-124-1 does not

⁸ Mr. Harison particularly admitted at trial in Civil Action No. 15-C-124-1 that there is a depth limitation that limits Bison's interest in certain West Virginia leases, as assigned and including the Ash Lease and Clark Lease, through the Benson Sand formation but not into the deeper Marcellus Shale. See, Harison Test. 125:20-23 and 226:1-5. *Also see* Transcript portions of Harison Testimony at Trial on March 27, 2018 provided with Antero's Memorandum in Support at Exhibit L and Antero's Reply at Exhibit 1.

Additionally, Mr. Harison's March 5, 2012 email to Antero landman (James Wood) during negotiations (*See* Antero's Memorandum in Support at Exhibit K) characterized 'West Virginia Title Info' as to West Virginia lease assignments with information "sufficient to pretty much verify the titles..." and "[T]here were no further reservations in any of these assignments."

Specifically further stated and represented, in part, therein by Mr. Harison:

The initial assignments from Doran to LaMaur [sic] reference Drilling and Operating Agreements between Doran and LaMaur. These agreements were defined by a "Program Number" and "Years". ... The programs which relate to the wells are as follows:

79-2: KL-235 [Turnkey Drilling Agreement & Lease references for Ash]

79-3: KL-169 [Turnkey Drilling Agreement & Lease references for Clark]

...

The relevant language defining existing overriding royalties is typically as follows:

Drilling Agreement

1.3 Operator (Doran) agrees that any well site or location, drilling and producing right, farm-out agreement or lease acquired for or on behalf of Developer (LaMaur) for the purpose of this Agreement shall provide that Deveopler [sic] shall be entitled to be assigned and shall be assigned not less than 81.25% of all oil and gas reserves in place, to an unlimited depth, unless the applicable farm-out agreement provides for a depth limitation on the subject acreage, and produced [sic] by any well drilled on such location or site. Notwithstanding [sic] the provision [sic] of this paragraph, Developer may agree in writing to accept a well site or location which provides for a lesser interst [sic] in the oil and gas from any well drilled on such location or site.

Still further, assignments immediately subsequent to the 1979 Assignments by and between Doran and LaMaur, as to the Ash Lease and Clark Lease, demonstrate that LaMaur assigned its right, title, and interest in the oil and gas reserves and production from those leases with language containing such depth limits. (*Id.* at Exhibit M and Exhibit N).

convincingly establish that neither during prior litigation nor once CGAS had been dismissed out by agreed Orders therein did Antero concede or admit that the depth limitations found in the Turnkey Drilling Agreements were still not at issue with respect to Bison and Antero for the limited application and determination of any overriding royalties to Antero's production from Marcellus Shale depths within and underlying such 900-foot radii of the Ash #1 Well and Clark #1 Well boreholes.

36. Antero has never disputed the validity of the 2012 Assignment and has affirmed its application to the thirteen (13) leases and the particular wells identified within accompanying Exhibits thereto, specifically including the Ash and Clark leases.

37. Antero does not otherwise dispute that Bison owns an overriding royalty interest in Antero's production on Bison's assigned acreage for other leases subject to the 2012 Assignment that are within Antero's Marcellus shale production units.

38. Also offered by Bison for its averred positions in support of summary judgment and dismissal in its favor herein is the record in a certain federal civil action involving, *inter alia*, Bison and Antero.⁹

39. However, upon this Court's limited review thereof, such litigation was initiated by another Bison entity and particularly focused on rights of first refusal issues involving both the Ash Lease and Clark Lease and another lease. Such litigation was finally resolved with, *inter alia*, both Antero's motion for summary judgment and its

⁹ *Bison Resources Corporation v. Antero Resources Corporations and Antero Resources Appalachian Corporations and Antero Resources Corporation v. Bison Associates, L.L.C., PSPI Partnership No. 2, Brown Resources, LLC, and Bison Interests, L.L.C.* – Civil Action No. 1:16-CV-107 in the United States District Court for the Northern District of West Virginia; the Honorable Frederick P. Stamp, Jr., Senior Judge, presiding.

counterclaim for declaratory judgment granted by that Court declaring Antero the owner of the Marcellus depths rights in such leases.¹⁰

40. As for the application of the *res judicata* doctrine to a West Virginia matter being litigated, Syl. Pt. 4, *Blake v. Charleston Area Med. Ctr., Inc.*, 201 W. Va. 469, 498 S.E.2d 21 (1997) establishes:

Before the prosecution of a lawsuit may be barred on the basis of *res judicata*, three elements must be satisfied. First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings. Second, the two actions must involve either the same parties or persons in privity with those same parties. Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action.

(Also see Syl. Pt. 3, *Beahm v. 7-Eleven, Inc.*, 223 W. Va. 269, 273, 672 S.E.2d 598, 602 (2008)).

41. As for any successful application of the collateral estoppel doctrine to a West Virginia matter being litigated, Syl. Pt. 1, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995) states:

Collateral estoppel will bar a claim if four conditions are met: (1) The issue previously decided is identical to the one presented in the action in question; (2) there is a final adjudication on the merits of the prior action; (3) the party against whom the doctrine is invoked was a party or in privity with a party to a prior action; and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

(Also see, Syl. Pt. 9, *West Virginia Department of Transportation v. Veach*, 239 W. Va. 1, 799 S.E.2d 798 (2017)).

¹⁰ A copy of *Memorandum Opinion And Order Granting Defendant Antero's Motion For Summary Judgment, Granting Defendant Antero's Counterclaim For Declaratory Judgment As Framed And Denying Third-Party Defendants' Motions For Summary Judgment And Other Pending Motions As Moot* is provided herein as Exhibit C to Antero's Memorandum in Support.

42. Antero's request for a declaration as to the overriding royalty interests of the parties on the Ash Lease and Clark lease respectively identified well boreholes received no final adjudication on the merits in Civil Action No. 15-C-124-1. Particularly, that Court declined to make any ruling in finality let alone even address such matters further in any procedural and substantive manner. As such, there was no preclusive effect with that Court leaving such matter expressly undetermined and neither *res judicata* nor collateral estoppel precludes this instant litigation.

43. As for Bison's assertion of judicial estoppel precluding Antero's request for declaratory relief as presented herein:

Judicial estoppel bars a party from re-litigating an issue when: (1) the party assumed a position on the issue that is clearly inconsistent with a position taken in a previous case, or with a position taken earlier in the same case; (2) the positions were taken in proceedings involving the same adverse party; (3) the party taking the inconsistent positions received some benefit from his/her original position; and (4) the original position misled the adverse party so that allowing the estopped party to change his/her position would injuriously affect the adverse party and the integrity of the judicial process.

Syl. Pt., *Larry V. Faircloth Realty, Inc. v. Public Service Com'n of West Virginia*, 230 W. Va. 482 740 S.E.2d 77 (2013) citing Syl. Pt. 2, *W. Va. Dept. of Transp., Div. of Highways v. Robertson*, 217 W. Va. 497, 499 618 S.E.2d 506, 508 (2005).¹¹

¹¹ Our State Supreme Court recently provided an extensive overview of judicial estoppel in *State ex rel. Universal Underwriters Insurance Company v. Wilson*, --- W. Va. ---, 825 S.E.2d 95, 107-108 (2019) therein stating, *inter alia*, in part:

We begin by observing that the doctrine of judicial estoppel has been explained as follows:

The judicial estoppel doctrine generally prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding or the same proceeding. The purpose of the doctrine is to protect the integrity of the judicial process, by prohibiting a party from deliberately changing positions according to the exigencies of the moment.

Palmer, et al., *Litigation Handbook*, § 8(c), at 235. See *Monterey Dev. Corp. v. Lawyer's Title Ins. Corp.*, 4 F.3d 605, 609 (8th Cir. 1993) ("Unlike its related counterparts—

44. Antero did not assume a position clearly inconsistent with its position in Civil Action No. 15-C-124-1 (or in federal court proceedings addressed herein *supra*). As such, Antero is not judicially estopped from presently requesting a declaration by this Court as to such overriding royalties particularly now at issue and limited only to such Marcellus shale depths and production therefrom by Antero within and underlying such well borehole radii that is below the Benson Sand formation.

45. Therefore, declarations are now appropriate upon the developed record and pleadings herein as to the specific overriding royalties issues presented herein.

46. Furthermore, this Court expressly finds and concludes, upon the totality of pleadings and prior related proceedings determining other substantive matters, in part,

collateral estoppel, which prevents repetitive litigation, and equitable estoppel, which prevents contracting parties from asserting contradictory positions to ensure fairness between them—judicial estoppel is designed to preserve the dignity of the courts and insure order in judicial proceedings.”); *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 598 (6th Cir. 1982) (“Unlike equitable estoppel, judicial estoppel may be applied even if detrimental reliance or privity does not exist. This distinction reflects the difference in the policies served by the two rules. Equitable estoppel protects litigants from less than scrupulous opponents. Judicial estoppel, however, is intended to protect the integrity of the judicial process.”). In syllabus point 2 of *Robertson* we set out the following test for establishing judicial estoppel:

Judicial estoppel bars a party from re-litigating an issue when: (1) the party assumed a position on the issue that is clearly inconsistent with a position taken in a previous case, or with a position taken earlier in the same case; (2) the positions were taken in proceedings involving the same adverse party; (3) the party taking the inconsistent positions received some benefit from his/her original position; and (4) the original position misled the adverse party so that allowing the estopped party to change his/her position would injuriously affect the adverse party and the integrity of the judicial process.

See Grove v. State ex rel. Black, No. 17-0083, 2018 WL 2174128, at *4–5 (W. Va. May 11, 2018) (Memorandum Decision) (“We conclude that the doctrine of judicial estoppel is not applicable here because all of the required elements are not satisfied.”).

The general test for establishing judicial estoppel that we outlined in *Robertson* ... does not preclude further consideration of the doctrine. It has been correctly noted by the United States Supreme Court that “the circumstances under which judicial estoppel may appropriately be invoked are not reducible to any general formulation.” *New Hampshire v. Maine*, 532 U.S. 742, 743, 121 S.Ct. 1808, 1810, 149 L.Ed.2d 968, 973 (2001). ...

by and between Bison and Antero with respect to issues involving *inter alia* the Ash Lease and Clark lease:

(a) This instant litigation is not essentially a "do-over", as Bison adamantly asserts, for Antero to re-litigate a matter that had been (or that could and should have otherwise been) adjudicated to finality upon the merits in prior legal proceedings in state and/or federal court.

(b) Antero's initiation of this Civil Action, in furtherance of substantive litigation suggested as footnoted and without any formal ruling or pleadings otherwise thereon, under Order entered July 20, 2018 in Civil Action No. 15-C-124-1, is not an attempt to abandon and/or reverse Antero's prior declarations and admissions in prior litigation or that is wholly inconsistent with that Civil Action.

(c) Similarly put, this instant Civil Action is not 'a second bite of the apple' for Antero and not a re-litigation but, a final declaratory action for determining a particular issue that was neither fully considered nor previously adjudicated to finality with regard to any Bison entitlement to overriding royalties to Antero's production from Marcellus shale depths within and underlying the 900-foot bore holes of the Ash Well #1 and Clark Well #1 as further identified and defined in their respective Leases, Assignments and referenced Turnkey Drilling Agreements specifically containing plain and unambiguous, depth limitation language.

Rulings

Accordingly, particularly as to the respective parties' pending motions and requested relief, this Court hereby **ORDERS** that:

1. Defendant, CGAS Properties, L.C.'s, request that they be dismissed from this civil action be and is **GRANTED**. As such and upon further rulings herein being made *infra*, CGAS be and is **DISMISSED** from any further proceedings herein.

CGAS, as a party litigant and again having heretofore declared and confirmed, by Agreed Orders entered in Harrison County Civil Action No. 15-C-124-1 and with responsive pleadings herein, that it has no ownership, interest or claim in any disputed overriding royalty interests or payments thereon as to any Marcellus Shale production by Antero on or under the 900-foot radius of either the Clark #1 Well (i.e.; Clark Lease) or the Ash #1 Well (i.e.; specific portion of Ash Lease).

2. Defendant *Bison Interests, L.L.C.'s Motion To Dismiss / Motion For Summary Judgment* be and is **DENIED** as presented.

3. Plaintiff *Antero Resources Corporation's Motion For Summary Judgment* be and is **GRANTED** as presented and further addressed herein.

Having so ruled upon Bison's and Antero's respective motions, this Court further hereby **ORDERS** and **DECLARES** that:

1. **JUDGMENT** in favor of Plaintiff, Antero Resources Corporation, L.L.C., and against Defendant, Bison Interests, L.L.C. be and is **GRANTED**.

2. As a matter of law, Bison be and is **NOT ENTITLED** to any overriding royalties (arising from the 2012 Assignment including the Ash Lease and the Clark Lease) to Antero's production from Marcellus Shale depths within and underlying the respective 900-foot radii of the subject Ash #1 Well and Clark #1 Well boreholes.

3. Bison's claims against Antero for overriding royalty interest in production from Marcellus Shale depths within and underlying the 900-foot radius of the Ash # 1 Well and the Clark #1 Well boreholes, be and are **DISMISSED, WITH PREJUDICE**.

Having all so ruled, this Court *sua sponte* **ORDERS** that the respective parties be and are each **GRANTED** any objection and exception they deem necessary for purposes of further proceedings thereon.

Thereupon, this Court hereby **ORDERS** that the previously scheduled Pre-Trial Scheduling Conference set for Thursday, May 9, 2019 be and is **CANCELLED**.

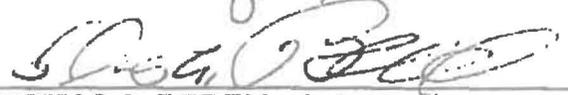
Further, this Court hereby **ORDERS**, pursuant to Rule 54(b) of the *West Virginia Rules of Civil Procedure*, entry of this Order be and is a final Order upon an express determination that there is no just reason for delay and upon an express direction for the entry of **JUDGMENT**, as a matter of law, herein declared *supra*.

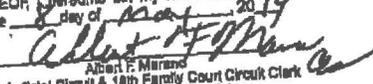
Finally, this Court further **DIRECTS** the Clerk of this Court to retire this Civil Action from its active docket after sending or otherwise providing a certified copy of this Order to each of the following:

W. Henry Lawrence, Esq.
Steptoe & Johnson PLLC
400 White Oaks Boulevard
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Counsel for Plaintiff Antero

Frank E. Simmerman, III, Esq.
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254 East Main Street
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Counsel for Defendant Bison

Timothy M. Miller, Esq.
Babst Calland, P.C.
300 Summers Street, Suite 1000
Charleston, WV 25301
Counsel for Defendant CGAS

ENTER: May 8, 2019

THOMAS A. BEDELL, Judge

STATE OF WEST VIRGINIA,
COUNTY OF HARRISON, TO-WIT:
I, Albert F. Mirano, Clerk of the 15th Judicial Circuit and the
18th Family Court Circuit of Harrison County, West Virginia, hereby
certify the foregoing to be a true copy of the ORDER entered in the
above styled action on the 8 day of May, 2019
IN TESTIMONY WHEREOF, I hereunto set my hand and affix the
Seal of this Court this the 8 day of May, 2019

Albert F. Mirano
18th Judicial Circuit & 18th Family Court Circuit Clerk
of Harrison County, West Virginia