IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

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JOSEPH E. OLEJACKI

FRANK A. BONACCI AND
BRIAN F. BONACCI,

Petitioners,

v.

Civil Action No. 18-C-16 C
Honorable Jeffrey D. Cramer

ORVILLE YOUNG LLC,
a Florida Limited Liability Company,
ROLACO LLC,
a Florida Limited Liability Company,
LOUISE S. COULLING,
CLARK H. COULLING,
HEIDI SCHENK BRUHN,
MARY SCHENK HAMILTON,
GARY P. HAMILTON,
KAREN SCHENK SLIGAR,
TERRY B. SLIGAR,
WHITE HORSE FARM, LLC, a
West Virginia Limited Liability Company,

Respondents.

ORDER GRANTING PETITIONERS' MOTION FOR SUMMARY JUDGMENT

On a prior day came the Petitioners, Frank A. Bonacci and Brian F. Bonacci (collectively, "Petitioners" or "Bonaccis"), by counsel, and submitted their Motion for Summary Judgment in relation to their Complaint wherein the Petitioners (1) seek a declaratory judgment, pursuant to West Virginia Code § 55-13-1, et seq., declaring the rights and legal relations with respect to the oil and gas that is the subject of this action and (2) seek an order quieting title with respect to the oil and gas that is the subject of this action. Respondents Orville Young LLC and Rolaco LLC (collectively, "Respondents"), by counsel, submitted a response in opposition to the Motion.

Petitioners filed a Reply in support of their Motion.[1] The Court conducted a hearing on April 26, 2019, on the filings. By Order entered on May 6, 2019, the Court ordered the Parties to submit supplemental briefs in relation to the Motion. Petitioners and Respondents subsequently submitted their supplemental briefs. The Court has reviewed the filings submitted by the Parties and has considered the arguments presented by Counsel at the hearing. After careful consideration of the issues and the applicable law, the Court herby GRANTS the Petitioners' Motion for Summary Judgment and makes the following findings of fact and conclusions of law.

Findings of Fact

1. Frank Bonacci and Brian Bonacci are brothers. Their great-great-grandfather, Albert M. Schenk, owned property in Marshall County, West Virginia, including the property interests at issue in this civil action.

2. By deed dated June 5, 1906, and recorded in the office of the Clerk of the County Commission of Marshall County, West Virginia, on July 21, 1906, in Deed Book 113, at page 263, Henry A. Nolte and C.E. Morris, Special Commissioners, pursuant to authority granted by the Circuit Court of Marshall County, West Virginia, conveyed to Albert M. Schenk three (3) tracts of land containing (i) 204 acres, 2 roods and 37 poles; (ii) 176 acres, 14 poles; and (iii) 177 acres, 26 poles, respectively, and which contains the 202-acre tract that is at issue in this action. Said deed did not contain any reservation of oil and gas, and there were no prior reservations or conveyances of said oil and gas.

[1] Louis S. Coulling, Clark H. Coulling, Heidi Schenk Bruhn, Mary Schenk Hamilton, Gary P. Hamilton, Karen Schenk Sligar, Terry B. Sligar, and White Horse Farm LLC are also named respondents. They are descendants of Albert M. Schenk and, as such, their legal interests are aligned with the Bonaccis' legal interests. Louis S. Coulling, Heidi Schenk Bruhn, Mary Schenk Hamilton, and Karen Schenk Sligar are the sisters of the Bonaccis' late mother, Kathleen Schenk Bonacci. All have been properly served in this action, but none have filed appearances in this action.

3. Albert M. Schenk died testate a resident of Ohio County, West Virginia, in or around July 1930. Pursuant to his Last Will and Testament dated September 27, 1928, and probated September 3, 1930, and recorded in the office of the Clerk of the County Commission of Ohio County, West Virginia, in Will Book 16, at page 560, and of record in the office of the Clerk of the County Commission of Marshall County, West Virginia, in Will Book 18, at page 222, Mr. Schenk devised and bequeathed the residue of his estate in trust, including the property interests at issue, and directed that his trustees turn over all of the assets remaining in trust to Albert Schenk, III, (identified therein as Albert Schenk, 3d), at such time as he attained the age of 40 years.

4. Hilton H. Mann and Wheeling Dollar Savings & Trust Co., Trustees under the Last Will and Testament of Albert M. Schenk, by deed dated June 12, 1957, and recorded in the Marshall County Clerk's office in Deed Book 322, at page 433, conveyed to Albert Schenk, III, three (3) tracts of land, the first of which contained 539.321 acres, more or less, which contains the 202-acre tract that is at issue in this action.

5. Albert Schenk, III, also known as Albert F. Schenk, III, also known as Albert F. Schenk, died testate a resident of Marshall County, West Virginia, on June 18, 1995. Pursuant to his Last Will and Testament, dated February 10, 1993, and recorded in the Marshall County Clerk's office in Will Book 62, at 270, Albert Schenk, III, devised all of his interests in real property to his wife, Kathleen Mary Schenk.

6. The Appraisement of the Estate of Albert Schenk, III, of record in the aforesaid Clerk's office in Appraisement Book 186, at page 112, lists real property, commonly known as "Elm Knoll," which is situated on Big Wheeling Creek Road in Marshall County, West Virginia, containing in the aggregate 698.8254 acres, more or less, being the same property conveyed to

Albert Schenk, III, by Hilton H. Mann and Wheeling Dollar Savings & Trust Co., Trustees, as referenced above. Said real property contains the 202-acre tract that is the subject of this action.

7. By deed dated April 4, 2000, and recorded in the Marshall County Clerk's office in Deed Book 619, at page 370, Kathleen Mary Schenk conveyed to Kathleen Schenk Bonacci, her daughter, the following interests in real property: (i) a tract of land consisting of 162.78 acres, more or less, situate on the Northerly side of Sorghum Ridge Road; (ii) an undivided 1/6 interest in a tract of land consisting of 204.29 acres, more or less, commonly known as the Schenk Preserve; and (iii) a tract containing 1.537 acres, which includes a right of way for Big Wheeling Creek Road. The real property described in said deed constitutes a portion of the 202-acre tract that it is the subject of this action.

8. By deed dated March 16, 2011, and recorded in the Marshall County Clerk's office in Deed Book 727, at page 7, Kathleen Schenk Bonacci conveyed to the Bonaccis as tenants in common the 162.78 acre tract situate on the Northerly side of Sorghum Ridge Road.

9. By deed dated September 8, 2012, and recorded in the Marshall County Clerk's office in Deed Book 776, at page 79, Kathleen Schenk Bonacci conveyed to the Bonaccis as tenants in common, all of her right, title, and interest in and to the Schenk Preserve and Schenk Drive, which had previously been conveyed to Kathleen Schenk Bonacci by deed dated April 4, 2000.

10. By deed dated June 25, 2015, and recorded in the Marshall County Clerk's office in Deed Book 868, at page 381, Frank A. Bonacci and Brian F. Bonacci conveyed to Frank A. Bonacci a tract of land consisting of 81.39 acres, more or less, essentially leaving each of the Bonaccis with a 81.39-acre tract of land, or one-half (1/2) of the 162.78 acre tract referenced above.

11. On or about May 23, 1919, Albert M. Schenk and Emma Schenk, his wife, entered into an oil and gas lease with James Wilson covering 202 acres, more or less, situate in Union District, Marshall County, West Virginia, bounded substantially on the North by Big Wheeling Creek, on the East by lands of William Happy and J.D. Black, on the South by lands of McConnell Heirs and Anna Sebright, and on the West by lands of Anna Sebright and A.M. Schenk, which oil and gas lease is of record in the aforesaid Clerk's office in Deed Book 160, at page 185.

12. The 202-acre tract is part of the real property conveyed to Albert M. Schenk by the Special Commissioners' Deed dated June 5, 1906.

13. It is the oil and gas in and under said 202-acre tract that it is the subject of this action.

14. Petitioners assert that the title to the oil and gas estate respecting the 202-acre tract was never severed from the title to the surface estate of said real property and that there exists no recorded deed evidencing any severance of the oil and gas estate from the 202-acre tract.

15. Despite the fact that there was never a severance of the oil and gas estate from the surface estate, the land books of Marshall County, West Virginia, for the years 1935 through 1938 contained an entry in the name of A. M. Schenk for "202 A Royalty Wells #629-630 Nat Gas Co WVA."

16. This entry is absent from the land books for the years 1940 through 1946.

17. For the year 1947, the land books of Marshall County again contain an entry in the name of the A.M. Schenk Estate for "202 A Roy Well 629-630 Nat Gas Co WVA (1936)."

18. For the year 1948, said land books contain a similar entry for the A.M. Schenk Estate for "202 A Roy Well #629-630 Nat Gas Co WVA (1936)."

19. For the year 1949, the land books contain a similar entry for the A.M. Schenk Estate; however, the entry has a line drawn through it and written thereon is the notation "To Everett F. Moore DB 265, p. 272."

20. For the year 1950, the land book entries for the A.M. Schenk Estate do not contain any reference regarding the 202 acres; however, the land book entries for Everett F. Moore for that year contain an entry "202 A Roy Well 629-630 Nat Gas Co WVA (1936)" with a notation of "From State of WV DB 265 P 272 (Schenk)."

21. For all times relevant to this Complaint, all *ad valorem* taxes assessed against the subject real property in its entirety have been paid in full by Albert M. Schenk, the trustees under his Last Will and Testament, or his family members who were successors in title. That is, at the time the "202 A Royalty Wells #629-630 Nat Gas Co WVA" entry appeared in the Marshall County land books in 1935, Albert M. Schenk (or the trustees under his Last Will and Testament) was being assessed, and had been paying since 1919, taxes against the fee interest in the 527.76-acre tract of land on Wheeling Creek which contained the 202 acres that were subject to the oil and gas lease with James Wilson.

22. The Marshall County land records demonstrate that taxes were consistently assessed against the 527.76-acre tract (in various configurations) in the name of Albert M. Schenk or his estate beginning in 1919 through 1950, and in the name of Albert Schenk III in 1982. Property tax receipts attached to and made a part of the Appraisement of the Estate of Albert Schenk III, which is of record in the Marshall County Clerk's office in Appraisement Book 186, beginning at page 112, show that that the property taxes assessed against the subject

real property were paid in full for tax year 1996. Records from the Marshall County Sheriff's website show that the Bonaccis' real property taxes are paid current through tax year 2018.

23. Based on the above-described chain of title and recordings, Petitioners maintain that they own an interest in the oil and gas under the 202-acre tract that it is the subject of this action.

24. In the latter part of the 1970s, Orville Young, a/k/a O.W. Young, a/k/a Orville W. Young ("Mr. Orville Young") began purchasing oil and gas interests at tax sales. Mr. Young lived in Kanawha County, West Virginia, but purchased delinquent oil and gas interests at tax sales in Marshall, Tyler, Pleasants, Putnam, and Kanawha Counties.

25. By 2013, Mr. Orville Young was a permanent and full-time resident of Bonita Springs, Florida. When Mr. Orville Young's health deteriorated, an entity named "Orville Young LLC" was purportedly created in Florida in January 2013 and registered with the Florida Secretary of State on March 28, 2013. The three members of Orville Young LLC were and continue to be Mr. Orville Young's children: Ronald Young, Charles Young, and Jeffrey Young. Mr. Orville Young was never a member of Orville Young LLC. The purpose of Orville Young LLC was to receive Mr. Young's real property interests in West Virginia.

26. In March 2013, Mr. Orville Young quitclaimed dozens of Marshall County properties and/or property interests to Orville Young LLC. As a result of these transactions, all of the West Virginia property and/or property interests Mr. Orville Young claimed to own were quitclaimed to Orville Young LLC. No attorneys prepared the deeds relating to these conveyances. Orville Young LLC did not conduct any title searches in relation to these conveyances. The quitclaim deeds' signatures were notarized by Ronald Young's daughter, Latisha Davis. No money was exchanged in relation to any of these conveyances.

27. Mr. Orville Young passed away on August 9, 2013. The quitclaim deeds between Mr. Orville Young and Orville Young LLC were not recorded in the Marshall County Clerk's Office until October or November of 2013, after Mr. Orville Young had passed away and after Ronald Young found the unrecorded deeds at his father's residence without any clerk's stamp on them.

28. One of the deeds between Mr. Orville Young and Orville Young LLC, dated March 2, 2013, purports to convey the oil and gas in and under said 202-acre tract that it is the subject of this action.

29. On November 25, 2013, Rolaco LLC became registered with the Florida Secretary of State. The three members of Rolaco LLC were and have continued to be Ronald Young, Charles Young, and Jeffrey Young, the same three individuals who are the members of Orville Young LLC. Ronald Young has always been the managing member of both limited liability companies. Both limited liability companies claim as their address of 1210 SW 52nd Terrace, Cape Coral, Florida, which is Ronald Young's personal residence.

30. By quitclaim deed dated January 2, 2018, Orville Young LLC purported to convey to Rolaco LLC the oil and gas in and under said 202-acre tract that it is the subject of this action. The quitclaim deed was not recorded in the Clerk's Office until February 28, 2018.

31. Similar to the conveyance between Mr. Orville Young and Orville Young LLC, no attorneys prepared the deed relating to the purported conveyance between Orville Young LLC and Rolaco LLC. No attorneys or tax accountants were hired to assist with the conveyance. Rolaco LLC did not conduct any title search in relation to this purported conveyance. Ronald Young's signature on the quitclaim deed was notarized by his daughter, Latisha Davis. No money was exchanged in relation to this conveyance.

32. Respondents assert that Rolaco LLC owns all of the interest in the oil and gas underlying the 202-acre tract based upon the following chain of title:

a. By deed dated September 13, 1949, and recorded in the aforesaid Clerk's office in Deed Book 265, at page 272, Thomas E. Wilkinson, Deputy Commissioner of Forfeited and Delinquent Lands for Marshall County, West Virginia, purportedly conveyed to Everett F. Moore "all of the oil and gas within and underlying" the 202-acre tract described above, "being all the oil and gas under the land described in a lease granted by A.M. Schenk, et ux, to James Wilson, bearing date the 23rd day of May, 1919, and recorded in the office of the Clerk of the County Court of Marshall County in Deed Book No. 160, at page 185."

b. Everett F. Moore died on or about January 1, 1965. The Appraisement of Mr. Moore's estate lists an interest in "202 ac nat gas co of WVA Roy O&G Well 629-630."

c. By deed dated May 20, 1997, and of record in the aforesaid Clerk's office in Deed Book 596, at page 268, Norma G. Cline, Clerk of the County Commission of Marshall County, West Virginia, purportedly conveyed to Orville W. Young the oil and gas beneath the 202-acre tract referenced above, the taxes purportedly assessed against such oil and gas having gone delinquent in the name of the Everett F. Moore Heirs.

d. By quitclaim deed dated March 2, 2013, but not recorded with the Clerk of the Marshall County Commission until October 31, 2013, in Deed Book 808, at page 190, Orville W. Young, a/k/a O.W. Young, a/k/a Orville Young, quitclaimed to Orville Young LLC all of his purported right title and interest in and to the oil and gas within and beneath the 202-acre tract referenced above.

e. By quitclaim deed dated January 2, 2018, but not recorded with the Clerk of the Marshall County Commission until February 28, 2018, in Deed Book 961, at page 452,

Orville Young LLC quitclaimed to Rolaco LLC all of its purported right title and interest in and to the oil and gas within and beneath the 202-acre tract referenced above.

33. On January 31, 2018, the Bonaccis initiated the instant civil action to assert their legal and rightful ownership over a portion of the oil and gas within and beneath the 202-acre tract. The Bonaccis contend that they are collectively the rightful owners of an undivided 100% interest (each owning an undivided 50% interest) in the oil and gas beneath the surface of a 162.78-acre tract of land (of which each owns an 81.39-acre surface tract), which comprises a portion of the 202-acre tract that is the subject of this litigation. Further, the Bonaccis contend that numerous other descendants of Albert M. Schenk are the rightful owners of the oil and gas within and underlying the remaining portion of the 202-acre tract. Those descendants have been named as indispensable parties in this action. The Bonaccis also contend that Rolaco LLC does not own any interest in the oil and gas within and beneath the 202-acre tract.

34. The Bonaccis (1) seek a declaratory judgment, pursuant to West Virginia Code § 55-13-1, et seq., declaring the rights and legal relations with respect to the oil and gas that is the subject of this action and (2) seek an order quieting title with respect to the oil and gas that is the subject of this action.

Summary Judgment and Declaratory Judgment

35. Rule 56 of the West Virginia Rules of Civil Procedure provides that summary judgment is proper when "the pleadings, depositions, answers to Interrogatories, and admissions on file, together with the affidavits, if any, 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." W.Va. R. Civ. P. 56(c) (West. 2014); *see also e.g.*, *George v. Blosser*, 157 W.Va. 811, 204 S.E.2d 567 (1974);

Hines v. Hoover, 156 W.Va. 242, 192 S.E.2d 485 (1972) (a summary judgment proceeding is not a substitute for a trial of an issue of fact, but is a determination that, as a matter of law, there is no issue of fact to be tried).

36. When analyzing evidence under this standard, the court must draw any permissible inferences in the light most favorable to the non-moving party and, in assessing the factual record, the court must grant the non-moving party the benefit of inferences, as credibility determination, the weight of the evidence, and the drawing of legitimate inferences from fact are jury functions, not those of a judge. *McKenzie v. Cherry River Coal & Coke Co.*, 195 W.Va. 742, 746, 466 S.E.2d 810, 814 (1995).

37. The question on a motion for summary judgment is not whether the plaintiff has met the burden of proof on the material aspects of his claim, but whether a material issue of fact exists on the basis of the factual record developed to that date. *See Lengyel v. Lint*, 167 W.Va. 272, 280 S.E.2d 66 (1981). The 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. *See Law v. Monongahela Power Co.*, 201 W.Va. 549, 558 S.E.2d 349 (2001); *Cavender v. Fouty*, 195 W.Va. 94, 464 S.E.2d 736 (1995); *Poling v. Belington Bank, Inc.*, 207 W.Va. 145, 529 S.E.2d 856 (1999); *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 459 S.E.2d 329 (1995); *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994).

38. W.Va. Code § 55-13-1 provides, "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."

39. "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." W.Va. Code § 55-13-2.

Conclusions of Law

40. Albert M. Schenk owned the surface and oil and gas estates in and to the 527.76-acre tract.

41. It is clear from the evidentiary record that there was never a severance of the oil and gas estate from the surface estate to the 527.76-acre tract. Marshall County assessed taxes against Albert M. Schenk's surface interest in the 527.76-acre tract, which included the oil and gas estate.

42. Taxes were regularly assessed against the property on a per acre, *ad valorem* basis from 1919, the year in which the subject oil and gas lease was made and recorded, up through the present.

43. Beginning in the Marshall County land books for 1935, the Assessor added an entry in the name of A.M. Schenk for "202 A Royalty wells #629-630 Nat Gas Co WVA." The description of the interest being assessed as "royalty" is significant in this case, as such designation indicates that it was entered on the land books as the result of production reports received under the 1919 oil and gas lease. *See Lone Pine*, 2016 WL 6819787 at *1 ("The duplicative assessments describe the property as "Leased" to designate that they were created from the production reports rather than from a deed, will, or court order.")

44. In *Lone Pine*, the property at issue was the oil and gas interest in approximately 364 acres in Harrison County that were part of a tract of 1,300 acres that had been leased for

production beginning in 1899. In 1988, the Harrison County Assessor created duplicate assessments for the mineral interests in the names of William L. Mitchell, Suzan Sigmond, and Genevieve Rapp based upon production reports "because the assessor was not able to match the 1,300 acres leased with the actual 376 ½ acres mineral assessments." *Id.* at *2. In 1989, Mitchell received the tax assessment for the entire oil and gas interest, which he paid. However, Mitchell did not pay the duplicate assessment in his name or that of Rapp, his aunt, whose interest he had inherited. The mineral interests on the duplicate assessments in the names of Mitchell and Rapp were purportedly acquired by the petitioners through a delinquent tax sale resulting in a tax deed issued to them in 1994. In 2010, Mitchell, who was unaware of the delinquent tax sale, sold the same interests to Lone Pine Operating Company, which also obtained Sigmond's interest. In 2011, the petitioners filed suit against Lone Pine Operating Company seeking to quiet title and obtain distribution of the oil and gas royalties. *Id.* The circuit court granted summary judgment to Lone Pine Operating Company, finding among other things that there was "no dispute that all taxes had been paid on the two Mitchell assessments as to the 376 ½ [sic] acres of oil and gas for all periods through 2010 when they were sold to respondent [Lone Pine Operating Company]." *Id.* at *3.

The Supreme Court affirmed the circuit court's decision, citing with approval the circuit court's finding that

> the duplicative 'Leased' assessments, purchased by petitioners [did] not, and ha[d] never, represented the ownership of any interest in property, minerals or oil and gas. Because the duplicative 'Leased' assessments did not represent any interest in the oil and gas or other minerals, and because Mitchell paid the tax in full on the actual 376 ½ [acre] mineral assessments, the sale by [the Deputy Commissioner of Forfeit[ed] and Delinquent Lands] to [p]etitioners did not convey any ownership interest to [p]etitioners and did not divest William Mitchell, Jr. from his rightful ownership interest in the oil and gas.

Id. at *3. As a result, the circuit court concluded that the assessor's attempt to assess Rapp, Mitchell, and Sigmond all for the interest they owned in the 376-1/2 acres of oil and gas and *again for the royalties therefrom* was a duplicative assessment of the same property, so the assessment was void. *Id.* Essentially, the circuit court found, and the Supreme Court agreed, that the sale of a lien securing taxes owed on a "royalty-based tax" assessment does not convey an ownership interest in the oil and gas in place.

45. In the instant civil action, the production or royalty-based assessment at issue -- not an assessment based upon a severance of the surface estate from the mineral estate by deed, will, intestate succession, or court order -- is precisely the type of assessment with which the Court in *Lone Pine* was concerned and which the Court in that case determined did not, and had never, represented ownership of the oil and gas in place. *See Lone Pine*, 2016 WL 6819787 at *3.

46. Here, the Marshall County assessor's attempt to assess A. M. Schenk for the interest he owned in the 527.66-acre tract and again for the royalties therefrom is a duplicative assessment of the same property and, thus, is void. Therefore, the 1949 Deputy Commissioner's Deed to Everett F. Moore from which Rolaco LLC purports to derive its ownership in the subject oil and gas is void, as such sale was based upon a void, duplicative assessment. Moreover, neither can such Deputy Commissioner's Deed work to divest the successors in interest of Albert M. Schenk who rightly acquired their interest in the oil and gas by a deed or a will.

47. The 202-acre tract subject to the 1919 oil and gas lease was part of the 527.76-acre tract. Logically, this is so, because the Marshall County land books for Union District for 1919 show only the 527.76-acre tract on Wheeling Creek and a 0.75 acre tract on McConnell Road in the name of Albert M. Schenk. Thus, logically, the 202-acre tract *must* be part of the

527.76-acre tract. Mr. Schenk owned no other real property in Union District that he could have leased.

48. Two Attorney General's Opinions also provide authority in this matter.

49. On April 20, 1948, the West Virginia Attorney General[2] issued an opinion in response to the following inquiry from the prosecuting attorney of Harrison County:

> "On January 1, 1928, 'A' owned a tract of land in Harrison County and was charged on the land books with '100 Acres - Fee.'
>
> "In July, 1928, he sold the coal within and under said 100 acres to 'B'.
>
> "In 1929 'B' was charged upon the land books with '100 Acres - Coal.'
>
> " 'A' was charged in 1929 on the land books with '100 Acres - Surface,' and the land has been carried on the land books ever since as '100 Acres - Surface' and taxes paid thereon as such.
>
> "Now, the land has become valuable for oil and gas. Does charging the 100 acres upon the land books as '100 Acres - Surface' prevent a forfeiture to the State for non-entry of the oil and gas estate, or does the entry 'surface' include the oil and gas so as to void a forfeiture as to it for non-entry on the land books?"

42 W. Va. Op. Atty. Gen. 309, 1948 WL 31589 at *1 (W.Va.A.G. Apr. 20, 1948).

In answering the question posed above, the Attorney General observed and stated as follows:

> It cannot reasonably be presumed that persons entering lands on the books as "surface", after the coal has been conveyed away, do so with an intent to withhold part of their interest from taxation. It is the more reasonable presumption that the word "surface" is employed with the intent to report the entire remaining taxable interest. The amount of the assessment would not be varied by entering lands as "surface plus oil and gas" or "fee less coal." The entire taxable interest is in fact assessed on the entry "surface." If the entire interest is in fact assessed we do not

[2] The Attorney General of the State of West Virginia is the State's chief legal officer, which status carries the constitutional responsibility for providing legal counsel to State officials and State entities. *State ex rel. McGraw v. Burton*, 212 W.Va. 23, 31-32, 569 S.E.2d 99, 107-108 (2002). Among the duties of the office is to advise the several prosecuting attorneys in matters relating to the official duties of their office. W.Va. Code § 5-3-2. Among the duties of prosecuting attorneys is to "advise, [or] attend to ... all matters ... in which [the] county [in which he or she is elected and qualified] ... is interested." W.Va. Code § 7-4-1.

believe that there should be a forfeiture on the theory that part of the interest has not been presented for taxation.

Id. at *3.

Further, the Attorney General concluded:

> *Until there has been a severance of an estate in minerals there is no authority for a separate assessment of the mineral interest.* Conversely there is no authority to omit from assessment an unsevered estate in minerals. Could the owner of the fee in land have the land assessed as "surface less oil and gas?" We think not. *There is no authority for the separate assessment of unsevered interests in land.*
>
> *Id.* (emphasis added).

50. In 1966, the West Virginia Attorney General issued an opinion in response to an inquiry from the prosecuting attorney of Hardy County that was based upon a set of facts nearly identical to those presented in the case at bar. The Attorney General concluded that:

> Where land is owned and there has been no severance of an estate in the gas mineral from such land, but there is known natural gas within and underlying such land (regardless of whether or not gas royalties are being paid to the owner thereof pursuant to the terms of a lease), such land should be assessed annually for ad valorem taxation purposes at its "true and actual value", taking into consideration all pertinent indications of value, including, among any others, reliable estimates, gas production reports, and royalties paid to the landowner. *Until there has been a severance of an estate in the gas mineral, there is no authority for a separate assessment of the gas underlying such land. There cannot be any separate assessment of unsevered interests in land.*

52 W. Va. Op. Att'y Gen. 135 (1966), 1966 WL 87441 at * 5 (W.Va.A.G. Oct. 27, 1966) (emphasis added). Most importantly, with respect to the assessor's second entry on the Hardy County land books for 1966 designated "Gas Royalties for 1965," the Attorney General announced very clearly that such assessment "*is erroneous, contrary to law, and therefore void, and should not be repeated by entry thereof in the land book for any future year.*" *Id.* (emphasis added).

The material facts with which the 1966 opinion was concerned were as follows:

> That A, on and before March 21, 1960, being the owner in fee simple of a farm (consisting of three tracts aggregating 228 acres) situate in Hardy County, on said date leased the farm for the production of oil and gas for a term of ten years and as long thereafter as gas and oil operations continued on the premises; that A now is, and from and after March 21, 1960, continuously has been, the owner in fee simple of the farm; that between January 1, 1965, and July 1, 1965, A received from the holder (lessee) of said lease gas royalty money in the sum of approximately $10,075.00; that the farm is entered in the land books for the tax year 1966, in two classes of entry, that is to say:
>
> (1) One entry for each of three tracts, valued separately for taxation, the aggregate valuations of which are as follows: land $2,925; buildings $2,400, with total for the land and buildings $5,325;
>
> and also as
>
> (2) a second entry in the same year, 1966, designated "Gas Royalties, Class 3, valuation $32,500."

1966 WL 87441 at * 1.

51. Here, similarly, Albert M. Schenk owned the surface and oil and gas estates with respect to a 527.66-acre tract of land formerly owned by Charles A. Seabright, situate in Union District, which Schenk had acquired pursuant to the 1906 Deed.[3] Pursuant to the 1919 Lease, Schenk leased the land for oil and gas production, upon the same terms as the fee owner in the 1966 Attorney General's opinion (for ten years and as long thereafter as oil and gas is produced from the land).

52. From and after June 5, 1906, until his death in July 1930, Albert M. Schenk was the owner of the surface and oil and gas estates with respect to the 527.66-acre tract. Under the terms of his Last Will and Testament, his interests in the 527.66-acre tract were to be held in trust for the benefit of his wife, Emma Y. Schenk, and his son, Albert F. Schenk. Thus,

[3] The original aggregate acreage described in the 1906 Deed was 558 acres, more or less; Schenk conveyed a 30.06-acre tract to the Wheeling Coal Railroad Company in 1916, which deed is recorded in the Marshall County Clerk's office in Deed Book 148, at page 442.

following Mr. Schenk's death, the trustees appointed under Mr. Schenk's will (the "Trustees") owned the surface and oil and gas estates with respect to the 527.66-acre tract.

53. At some point, presumably between January 1 and July 1, 1934, the Trustees began receiving royalty money from the holder (lessee) of the 1919 Lease, resulting in an entry penciled in the Marshall County land books for 1935 of "202A Royalty Wells #629-630 Nat Gas Co WVA." That entry was carried on the Marshall County land books for the years 1936 through 1938, and then appeared again in the Marshall County land books for the years 1947 through 1949. The 1949 land book entry contains the penciled-in notation of "To Everett F. Moore 265/272," which corresponds to the book and page reference at which the purported 1949 tax deed is recorded.

54. In arriving at his conclusion in 1966, the Attorney General cited favorably the 1948 Attorney General opinion, stating succinctly that the term "surface" in entry for assessment purposes is employed with the intent to report on the land books the owner's entire remaining taxable interest in the land. 1966 WL 87441 at * 1.

55. Thus, applying the Attorney General's pronunciation to the facts at bar, because neither Mr. Schenk nor the Trustees ever severed the oil and gas estate from the surface estate, the assessments for Mr. Schenk's interest in the "surface" of the 527.66-acre tract necessarily should have included his interest (and that of the Trustees) in the surface *and* oil and gas estates.

56. Because Schenk, and following his death, the Trustees, was vested with full ownership of both the surface and oil and gas estates regarding the subject land, and no estate in the oil and gas was ever severed, the entirety of the 527.66-acre tract, *including the oil and gas in place*, should have properly been assessed for a *single entry* on the Marshall County land books for the years at issue, and should be assessed but once, with a value for tax purposes that

reflected the true and actual value of the lands and buildings thereon, *including the value of the natural gas known and proven to be embodied within and underlying the lands embraced within the 527.66 acres. See* 1966 WL 87441 at *3; W.Va. Code §§ 11-4-7; 11-4-17.[4] It necessarily follows that the separate entry for the 202-acre "royalty" interest first appearing in 1935, in addition to the entry of the surface of the land for the years at issue, is erroneous, contrary to the law, and therefore, void. 1966 WL 87441 at *3.

57. As the Attorney General correctly observed in 1948 and 1966, there is no authority for a separate assessment of a mineral interest (which would include an oil and gas interest) when there has been no severance of the mineral estate (or oil and gas estate, as the case may be) from the surface: "There is no authority for the separate assessment of unsevered interests in land." 1966 WL 87441 at * 1; 1948 WL 31589 at *3.

58. Therefore, inasmuch as title to the oil and gas has never been severed from the title to the surface of the 527.66-acre tract, the purported assessment of Mr. Schenk's estate for a 202-acre royalty interest based on the 1919 Lease is erroneous, contrary to law, and therefore void; thus, the 1949 tax deed to Everett F. Moore which is based upon the erroneous and unlawful assessment is VOID, and all subsequent purported deeds and conveyances that flow from and depend on the validity of the 1949 deed are likewise VOID.

59. In addition, the 1919 oil and gas lease was merely that — a lease. A lease that was only in effect for a certain amount of time. There was never a severance of the oil and gas from the surface, and ownership of the oil and gas beneath the surface of the subject tract never passed to any other party. Therefore, the land book entries pertaining to the 202-acre tract could not, and did not, represent any undivided interest in the oil and gas estate in said land that was

[4] Copies of W.Va. Code §§ 11-4-7 and 11-4-17 as in effect during the relevant period are attached hereto as Exhibit CC.

separate and apart from the surface interest in the 527.76-acre tract assessed in the name of Albert M. Schenk. Thus, such an attempt to assess Albert M. Schenk both for the surface interest that he owned in the subject real property, and again for the oil and gas beneath the surface of said real property is a duplicative assessment of the same property rights, and is void.

60. Additionally, the payment of the taxes on the "whole" of the land meant that taxes were never delinquent on the oil and gas estate in said land, because such interest is not separate and distinct from the fee interest; therefore, the purported tax sale of such interest is void as a matter of law.

61. West Virginia law provides that taxes on the "whole" of the land defeats any statutory ability to sell. Specifically, "[w]here there is privity of title, one payment is sufficient and full satisfaction, whether the land is charged in the name of one as a whole, or the various interests separated and charged to the respective owners, dividing the valuation equitably between or among them . . . . Payment of the taxes by the owner, or by any one entitled to make it, is an absolute defeat and termination of any statutory power to sell." *State v. Low*, 46 W.Va. 451, 33 S.E. 271, 274 (1899). In addition, the law provides that "[t]he state is not entitled to double taxes on the same land under the same title . . . . In case of two assessments of the same land under the same claim of title for any year, one payment of taxes under either assessment is all the state can require . . . . Payment of taxes upon an assessment of a tract of land as a whole nullifies a tax sale of a parcel which has been conveyed therefrom and separately assessed for the same year." Syl. pts. 1, 2 and 3, *State v. Allen*, 65 W.Va. 335, 64 S.E. 140 (1909). The West Virginia Supreme Court has also stated in *Allen*:

> By proceeding to sell land for nonpayment of taxes, the state is simply proceeding to enforce its lien on the land for those taxes. If the taxes have in fact been received by the state, even upon some other assessment of the same land, which it

> has made or at least recognized by receipt of the taxes thereunder, the lien has been relinquished. And where there is no lien there can be no valid sale.

Id. at 335, 142. In other words, payment of the taxes assessed against the fee estate prevents or voids the sale of any purported interest in any estate in land included within the fee simple.

62. In this civil action, with respect to the oil and gas at issue, the State could require only one payment for the subject mineral estate. That payment was made, in whole, when the taxes were paid on the 527.76-acre tract. Consequently, any purported tax sale of such oil and gas was void as a matter of law.

63. It is well-settled in West Virginia that "[a] tax sale under a void assessment . . . and a deed made pursuant to such sale are void." Syl. Pt. 4, in part, *Bailey v. Baker*, 137 W.Va. 85, 68 S.E.2d 74 (1951); *see also* Syl. Pt. 4, *Blair v. Freeburn Coal Corp.*, 163 W.Va. 23, 253 S.E.2d 547 (1979) ("A deed made pursuant to a tax sale under a void assessment is void.").

64. Because, as discussed above, the 1949 Deputy Commissioner's deed to Everett F. Moore is founded upon an erroneous, duplicative, and therefore, void, assessment, such deed purporting to convey the oil and gas beneath the subject 202-acre tract is also void.

65. Moreover, all subsequent deeds that purport to convey such oil and gas are also void. "Once void, always void." *Leslie Equipment Company v. Wood Resources Company*, 224 W.Va. 530, 543, 687 S.E.2d 109, 122 (2009) (Ketchum, J., concurring).

66. Because the 1949 Deputy Commissioner's deed and all subsequent deeds that flow therefrom are also void, there is no applicable statute of limitations. While W.Va. Code §§ 11A-4-1, *et seq.*, enacted a three-year statute of limitations on voidable deeds created by procedural irregularities, there is no statute of limitations regarding void deeds. *L&D Investments, Inc. v. Mike Ross, Inc.*, 241 W.Va. 46, 818 S.E.2d 872 (2018).

67. Moreover, it is black letter law in West Virginia that a grantee acquires nothing more than the grantor owns and can convey. *Wellman v. Tomblin*, 140 W.Va. 342, 344, 84 S.E.2d 617, 619 (1954).

68. The tax assessment at issue, which the Bonaccis contend is duplicative and void, was for 202 acres "ROY WELLS #629-630 NAT GAS CO W VA." That is, the duplicative tax assessment at issue listed a royalty interest, not a mineral estate interest.

69. Yet, the 1949 deed between Thomas E. Wilkinson, deputy commissioner of forfeited and delinquent lands for Marshall County, West Virginia, and Everett F. Moore, purchaser, conveyed "unto Everett F. Moore, grantee, his heirs and assigns forever, all of the oil and gas within the underlying that certain parcel or tract of land situate in Union District, Marshall County, West Virginia, . . . containing 202 acres more or less" and "[b]eing all the oil and gas under the land described in a lease granted by A. M. Schenk, et ux, to James Wilson, bearing the date the 23rd day of May, 1919 . . . ."

70. Clearly, the 1949 deed, upon which Rolaco LLC erroneously bases its ownership of an oil and gas estate, purports to convey an entire mineral estate even though the duplicative tax assessment only assessed a royalty interest.

71. Although the Bonaccis contend -- and the Court agrees -- that the 1949 deed is void, if the 1949 deed conveyed any type of interest, that interest at most could only have been the royalty interest to a 1919 shallow well lease, which no longer is in effect.

72. In West Virginia, an oil and gas royalty is considered to be personal property and can only be taxed in accordance with the general provisions of law covering other classes of personal property. *Cole v. Pond Fork Oil & Gas Co.*, 127 W.Va. 762, 770, 35 S.E.2d 25, 29 (1945).

73. Royalty interests are created by contract. "The word 'royalty,' as used in connection with oil, gas, and mineral leases, means an agreed return paid for the oil, gas, and minerals, or either of them, reduced to possession and taken from the leased premises." *Robinson v. Milam*, 125 W. Va. 218, 24 S.E.2d 236, 237 (1942). "The general rule as to oil and gas leases is that such contracts will generally be liberally constructed in favor of the lessor, and strictly against the lessee." Syl. pt. 1, *Martin v. Consolidated Coal & Oil Corp.*, 101 W.Va. 721, 133 S.E. 626 (1926).

74. "W.Va.Code 36-4-9a [1994] creates a rebuttable legal presumption that if a lessee fails to produce and sell (or produce and use for the lessee's own purposes) oil or gas from the leased premises, pursuant to an oil and gas lease, for a period greater than 24 months, then the lessee shall be deemed to have intended to abandon any oil or gas well situated on the premises." Syl. pt. 3, *Howell v. Appalachian Energy, Inc.*, 205 W. Va. 508, 510, 519 S.E.2d 423, 425 (1999).

75. The evidentiary record is completely void of any evidence that the shallow wells to the 1919 lease have produced any oil or gas in the last 24 months.

76. On the contrary, the 2013 Affidavit of Frank Bonacci stated that there were no producing oil and gas wells on the property at issue at that time. Moreover, West Virginia Department of Environmental Protection records show the plugging of wells 4-630 and 3-629, which were located on the farm of Albert M. Schenk (described as containing 204 acres in the Well Location Map).

77. In addition to refuting Petitioners' chain of title claims, Respondents also assert that Petitioners' claims fail because Petitioners have failed to establish the location and boundaries of the 202 acre tract at issue.

78. Respondents cite the Arkansas case of *Robertson v. Lees*, 87 Ark. App. 172, 189 S.W.3d 463 (2004) to support their contention. However, *Roberts* concerns a boundary dispute among neighbors. Here, the Bonaccis do not bring a boundary dispute and do not ask the Court to determine the boundaries between their property and some adjacent property. Here, the Bonaccis ask the Court to find that the Respondents' claim to the oil and gas within and beneath in the 202 acre tract is null and void. *Roberts* does not provide any help to this Court in its determination of the instant facts.

79. Additionally, unlike in *Roberts*, the Petitioners have produced significant evidence to support their claim of ownership.

80. While Petitioners agree that no map, plat, survey, or drawing of record depicts the specific surface boundaries of the 202-acres of oil and gas at issue, Petitioners assert that such information is certainly ascertainable by referencing historical maps and documents.

81. The 1919 oil and gas lease between Albert M. Schenk and his wife, Emma, as lessors, and James Wilson, as lessee, recorded in the office of the Clerk of the County Commission of Marshall County, West Virginia, in Deed Book 160, at Page 185 (the "1919 Lease") describes the 202-acre tract as being bounded substantially as follows:

on the North by the lands of Big Wheeling Creek;

on the East by lands of William Happy & J. D. Black;

on the South by lands of McConnell Heirs & Ann Sebright;

on the West by lands of Anna Sebright & A. M. Schenk.

82. Petitioners have produced a map maintained by the Library of Congress. The map contains a farm line map of Marshall County, which depicts various properties in Marshall County near the turn of the 20th century. From this map, one can see that the approximately

558-acre tract once owned by Charles A. Seabright, a/k/a C.A. Seabright -- which was acquired by Albert M. Schenk by deed dated June 5, 1906, and recorded in the aforesaid Clerk's office in Deed Book 113, at page 263 (the "1906 Deed") and which contains the 202 acres at issue in this action -- is bordered on the North by Big Wheeling Creek, on the East by lands of J. Black, and on the South by lands of M. McConnell, all of which correspond substantially with the borders described in the 1919 Lease. Additionally, as the 1919 Lease did not encompass the entirety of the acreage owned by Schenk, it stands to reason that the 202-acre tract subject to said lease would be bordered on the West by other lands owned by Schenk.

83. Further lending itself to the conclusion that the 202-acre tract comprises the eastern portion of the approximately 558-acre tract acquired by Schenk and formerly owned by Seabright is the plat of the Lizzie Happy Farm located in Union District, which is of record in the aforesaid Clerk's office in Deed Book 267, at page 222. That deed, dated October 30, 1920, from Lizzie Happy to Nelson C. Hubbard, of record in the aforesaid Clerk's office in Deed Book 161, at page 399, indicates that Lizzie Happy is the widow of William Happy, who is referenced as owning land located to the east of the 202-acre tract in the 1919 oil and gas lease.

84. The Lizzie Happy Farm plat appears to depict that boomerang-shaped piece of land formerly owned by J. Black that follows the contours of Big Wheeling Creek and is located immediately to the east of the Seabright property as shown on the Library of Congress farm line map.

85. In comparing the turn-of-the-century farm line map to the map of the Schenk Farm originally prepared in 1957 and the Marshall County Assessor's Tax Map 3 of Union District, dated October 7, 2011, one gains a clearer sense that the surface of the 202-acre tract described in the 1919 Lease is owned, at least in part, by Plaintiffs.

86. Also, a nearly identical well location map dated December 2, 1938 (the "1938 Well Location Map"), is contained among the DEP records pertaining to that certain well bearing API number 47-051-30090.

87. These records also contain an Affidavit of Plugging and Filling Well dated January 26, 1939, which states the work to plug and fill Well No. 4-630, located on the A. M. Schenk Farm, was completed on January 9, 1939.

88. Additionally, DEP records show that Well No. 3-629 was abandoned at some point prior to September 5, 1939. The initials "ABD" to the left of the date stamp on the 1939 Well Location Map indicates that Well No. 3-629 had been abandoned. Also, the Well Record bearing Permit No. 106-A is indicative of the DEP's practice of adding an "A" to the end of a permit number to designate abandonment filings.

89. Additionally, DEP records pertaining to well bearing API number 47-051-30563 contain a well location map dated August 1, 1975 (the "1975 Well Location Map"), showing a reference to "Seabright Well No. 630" being located on land belonging to "Shank" [sic] with a reference to "(322/433)." This can reasonably be interpreted as showing the location of Well 4-630 on the property formerly owned by Albert M. Schenk and conveyed to Albert Schenk III by deed dated June 12, 1957, by Hilton H. Mann and Wheeling Dollar Savings & Trust Co., trustees under the will of Albert M. Schenk, deceased, which deed is recorded in the Marshall County Clerk's office in Deed Book 322, at Page 433. Tract One is described in said deed as containing 539.321 acres, more or less, 538.571 of which is the remainder of the three (3) tracts of land conveyed to Albert M. Schenk by the 1906 Deed. Both of said deeds are in Petitioners' chain of title to the property at issue.

90. In viewing the information and documents described above in their totality, especially the 1938 and 1939 Well Location Maps, it becomes clear that the location of the 202-acre tract at issue is ascertainable to a degree allowing this Court to craft an order quieting title to the oil and gas within and underlying the same.

91. Respondents also assert that this Court should not grant summary judgment because the Petitioners are not the real parties in interest, as is required by Rule 17 of the West Virginia Rules of Civil Procedure. Respondents do not assert that the Bonaccis have no colorable claim to any of the acreage at issue. Rather, Respondents assert that several other parties related to Respondents may own part of the oil and gas within and beneath the 202 acres in question along with the Bonaccis and that those parties must be named as petitioners in this action, not as respondents.

92. Essentially, Respondents assert that this Court cannot declare the validity of certain recorded documents because Petitioners do not claim to own all of the property contained in each document.

93. Respondents' argument lack reason. Again, as stated in *Leslie Equipment Company*, 224 W.Va. at 543, 687 S.E.2d at 122, "once void, always void." If Respondents' purported deed is invalid as it relates to the oil and gas owned by the Bonaccis, then the purported deed will also be invalid as it relates to the oil and gas owned by the others. Those others have been named and properly served in this action, thus satisfying both Rule 17 and Rule 19 of the West Virginia Rules of Procedure.

94. The Petitioners have sought declarations as to their rights and status under the 1949 Deputy Commissioner's Deed to Everett F. Moore from which Rolaco LLC purports to

derive its ownership in the oil and gas within and beneath the approximately 202-acre tract of land in Marshall County, West Virginia.

95. The Petitioners are seeking a determination as to the validity of the 1949 Deputy Commissioner's Deed and the purported chain of title emanating from the Deed as it relates to the Petitioners' rights affected by that Deed.

96. The issue regarding the 1949 Deputy Commissioner's Deed and Petitioners' interests in the property are proper subject for declaratory judgment.

97. There exist no issues of material fact.

98. The applicable law relating to the facts is clear.

99. The Deputy Commissioner's Deed dated September 13, 1949, and recorded in the Clerk's Office in Deed Book 265, at page 272, from Thomas E. Wilkinson, Deputy Commissioner of Forfeited and Delinquent Lands for Marshall County, West Virginia, to Everett F. Moore is VOID.

100. The Deed dated May 20, 1997, and of record in the Clerk's Office in Deed Book 596, at page 268, from Norma G. Cline, Clerk of the County Commission of Marshall County, West Virginia, to Orville W. Young is VOID.

101. The Quitclaim Deed dated March 2, 2013, and of record in the Clerk's Office in Deed Book 808, at page 190, from Orville W. Young, a/k/a O.W. Young, a/k/a Orville Young, to Orville Young LLC is VOID.

102. The Quitclaim Deed dated January 2, 2018, and of record in the Clerk's Office in Deed Book 961, at page 452, from Orville Young LLC to Rolaco LLC is VOID.

103. The Bonaccis are the rightful owners of an undivided 100% interest (each owning an undivided 50% interest) in the oil and gas beneath the surface of a 162.78-acre tract of land

(of which each owns an 81.39-acre surface tract), which comprises a portion of the 202-acre tract at issue in this action.

104. The rightful owners of the remaining oil and gas within and beneath the remainder of the 202-acre tract at issue in this action are the descendants of Albert M. Schenk that own the oil and gas within and underlying said remainder.

105. An order quieting title as to the oil and gas within and beneath the 202-acre tract at issue in this action is proper.

106. All objections and exceptions are noted and preserved.

THEREFORE, Frank A. Bonacci and Brian F. Bonacci's Motion for Summary Judgment is GRANTED.

It is so ORDERED.

The Circuit Clerk shall transmit a copy of this Order as follows: Gerald E. Lofstead, III, W. Eric Gadd, and Christina S. Terek, Spilman Thomas & Battle, PLLC, 1233 Main Street, Suite 4000, P.O. Box 831, Wheeling, WV 26003; William J. Leon, William J. Leon LC, 1200 Dorsey Avenue, Suite III, Morgantown, WV 26501; Louis S. Coulling, 207 Elm Knoll Drive, Wheeling, WV 26003; Clark H. Coulling, 207 Elm Knoll Drive, Wheeling, WV 26003; Heidi Schenk Bruhn, 31 Kay Drive, Wheeling, WV 26003; Mary Schenk Hamilton, 312 Cabin Lake Drive, Wheeling, WV 26003; Gary P. Hamilton, 312 Cabin Lake Drive, Wheeling, WV 26003; Karen Schenk Sligar, 472 Cabin Lake Drive, Wheeling, WV 26003; Terry B. Sligar, 472 Cabin Lake Drive, Wheeling, WV 26003; White Horse Farm, LLC, c/o Edward Gompers, Agent, 2001 Main Street, Suite 401, Wheeling, WV 26003.

Entered this 16TH day of Dec., 2019.

The Honorable Jeffrey D. Cramer, Judge

A Copy Teste:
Joseph M. Rucki, Clerk
By Donna Crowe Deputy