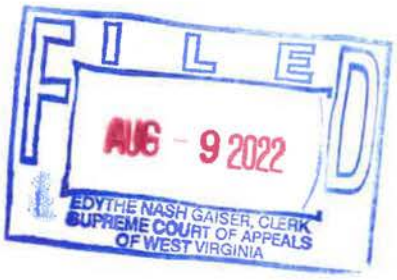
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

APPEAL NO. 21-1004



STATE OF WEST VIRGINIA EX REL. TH EXPLORATION II, LLC and TUG HILL OPERATING, LLC,

Petitioners,

v.

VENABLE ROYALTY LTD.; V14, LP; VENRO, LTD.; V2, LP; and THE HONORABLE JUDGE JEFFREY CRAMER, Judge of the Circuit Court of Marshall County, West Virginia,

Respondents.

AMICUS CURIAE BRIEF SUBMITTED BY THE GAS & OIL ASSOCIATION OF WEST VIRGINIA IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

I. TABLE OF AUTHORITIES....ii

II. STATEMENT OF INTEREST....1

III. RELEVANT FACTS AND PROCEDURAL HISTORY....2

IV. ARGUMENT....3

A. An Implied Duty to Market Cannot Supersede a Lease's Express Language....3

B. The Circuit Court's Redefining "Market" and Imposing New "Quality Standards" Forces the Entire Industry Into an Unpredictable Landscape....5

a. A "Market" Requires Only the Purchase by the First Unaffiliated Third-party Purchaser Downstream in an Arm's-length Transaction, Or That It is Based on a Proven, Independently Verified, Market Value....5

b. Unprocessed Gas that Meets the Specifications of a Third-party Purchaser is in a "Marketable Condition."....6

C. *Tawney* is Inapplicable because the Language of the Lease is Specific....8

a. A Clause Stating Royalties May Not Exceed Proceeds is Unambiguous....8

b. A Lessee is Permitted to Make Allowances and Deductions to Make the Gas Merchantable....9

IV. CONCLUSION....11

I. TABLE OF AUTHORITIES

CASES

SWN Production Company and Equinor USA Onshore Properties Inc. v. Kellam, No. 21-0729 (W. Va., June 14, 2022).....2,3,10,11

Cotiga Dev. Co. v. United Fuel Gas Co., 147 W. Va. 484, 128 S.E.2d 626 (1962).....3

Barn-Chesnut, Inc. v. cfm dev. Corp., 193 W. Va. 565, 457 S. E.2d 502 (1995).....3

Adkins v. Huntington Dev. & Gas Co., 113 W. Va. 490, 168 S.E. 366 (1932).....3

Games v. Chesapeake Appalachia, LLC, No. 5:17CV101, 2017 WL 5297948, at *4 (N.D.W. Va. 2017).....3

Imperial Colliery Co. v. OXY USA, Inc., 912 F.2d 696 (4th Cir. 1990).....4

Dunbar Fraternal Order of Police, Lodge No. 119 v. City of Dunbar, 218 W. Va. 239, 624 S.E.2d 586 (2005).....4

Moore v. Johnson Service Co., 158 W. Va. 808, 219 S.E.2d 315 (1975).....4

Leggett v. EQT Prod. Co., 239 W. Va. 264, 800 S.E.2d 850 (2017).....4,5,7

Richards v. EQT Production Company, 1:17-cv-50, 2018 WL 3321441 (N.D.W. Va. Jul. 5, 2018).....6

W.W. McDonald, 983 F.Supp. 2d 790, (S.D.W. Va. 2013).....5,6

Heritage Res., Inc., 939 S.W.2d 119 (Tex. 1996).....5

Wellman v. Energy Res., Inc., 210 W. Va. 200, 557 S.E.2d 254 (W. Va. 2001).....6

Rogers v. Westerman Farm Co., 29 P.3d 887 (Colo. 2001).....7

Cunningham Prop. Mgmt. Tr. v. Ascent Res. - Utica, LLC, 351 F. Supp. 3d 1056 (S.D. Ohio 2018).....8

Lutz v. Chesapeake Appalachia, L.L.C., No. 4:09CV2256, 2017 WL 4810703 (N.D. Ohio Oct. 25, 2017).....8

Canfield v. Statoil USA Onshore Properties Inc., No. CV 3:16-0085, 2017 WL 1078184 (M.D. Pa. Mar. 22, 2017).....8

Payne v. Weston, 195 W. Va. 502, 466 S.E.2d 161 (1995).....8

Shamblin v. Nationwide Mut. Ins. Co., 175 W. Va. 337, 332 S.E.2d 639 (1985).....8

Tawney v. Columbia Nat. Res., LLC, 219 W. Va. 266, 633 S.E.2d 22, (2006).....8,9,10,11

Kinney v. CNX Gas Company, LLC, 2017 WL 3774376 *4 (N.D.W. Va. Aug. 24, 2017).....9

Wellington Power Corp. v. CNA Sur. Corp., 217 W. Va. 33, 614 S.E.2d 680 (2005).....9

Young v. Equinor USA Onshore Prop., Inc., 982 F.3d 201 (4th Cir. 2020).....10,11

STATUTES and RULES

W. Va. R. App. P. 30(e)(5).....1

OTHER AUTHORITIES

Brian S. Wheeler, *Deducting Post-Production Costs When Calculating Royalty: What Does The Lease Provide?*, 8 Appalachian J.L. 1 (2008).....3

Scott Lansdown, *The Implied Marketing Covenant in Oil and Gas Leases: The Producer's Perspective*, 31 St. Mary's L.J. 297 (2000).....3,4

George Bibkos, *A review of the Implied Covenant of Development in the Shale Gas Era*, 115 W. VA. L. REV. 949 (2013).....4

Patrick H. Martin and Bruce M. Kramer, WILLIAMS & MYERS OIL & GAS LAW §§ 654.2; 858 (2021).....4, 8

Judith M. Matlock, *Royalty Calculation When the Producer/Lessee is Dealing With an Affiliated Entity,* Private Oil and Gas Royalties, Ch. 9, (2003).....5

II. STATEMENT OF INTEREST[1]

The Gas and Oil Association of West Virginia ("GO-WV") is a non-profit organization formed in 2020 when the Independent Oil and Gas Association of West Virginia and the West Virginiai Oil and Gas Association merged. GO-WV's mission is to support and advocate for its 600 member companies and their employees as they contribute to the growth and prosperity of West Virginia. This is achieved through promotion and protection of all aspects of the oil and gas industry in West Virginia, including exploration, drilling, production, gathering, processing, interstate transportation, local distribution, marketing and sale of oil, gas, and natural gas liquids ("NGLs"). GO-WV also works to promote and protect the use of natural gas for electric power generation, and the use of oil, natural gas, and NGLs as fuel sources and as raw materials in chemical and manufacturing processes. GO-WV educates people about the industry and the benefit it brings to the people of West Virginia, promotes opportunities for those seeking to work in the industry, and informs key-decision makers of the environmental and economic benefits of using oil, natural gas, and NGLs. Finally, GO-WV helps to advance and grow the oil and gas industry and protect fair-market prices.

GO-WV is interested in the issues before this Court in this matter because GO-WV members will be directly affected by the Court's decision. GO-WV members depend upon clear and rational legal decisions concerning the interpretation of laws related to production and sale of oil, gas and NGLs and the application in the case below of the implied duty to market. As a result, GO-WV has always advocated for the consistent application of clear laws and legal principles. Here, the Circuit Court's grant of summary judgment based on an implied duty to market that is

[1] Pursuant to W. Va. R. App. P. 30(e)(5), GO-WV states that no counsel for any party authored this amicus curiae brief, in whole or in part, and no party or its counsel made a monetary contribution specifically intended to fund the preparation or submission of this amicus curiae brief.

in direct conflict with the express terms of the lease creates legal standards for the calculation of oil and gas royalties that is at odds even with the states who follow the marketable product rule. The Court, through this decision, has the opportunity to reverse the erroneous ruling by the Circuit Court and provide clear guidance for the industry and legal practitioners and this case presents new and different points of law that were not addressed in the recently decided *SWN Production Company and Equinor USA Onshore Properties Inc. v. Kellam*, No. 21-0729, at *18 (W. Va., June 14, 2022).

GO-WV is particularly concerned with the Respondents' mischaracterization of the case identifying it as only affecting fifteen leases in Marshall County. On the contrary, this case has far reaching ramifications which have the potential to alter the landscape of oil and gas leases. The Circuit Court's disregard of the plain language of the lease and alteration of words so commonplace in lease language would have a broad effect on the entire industry. As a result, GO-WV requests this Court grant Petitioners' writ of prohibition, direct the Circuit Court to reverse the grant of the Respondents' Motion for Summary Judgment, and reverse the denial of the Petitioners' Cross-Motion for Summary Judgment.

III. RELEVANT FACTS AND PROCEDURAL HISTORY

GO-WV defers to and adopts the procedural history and factual background contained in the Statement of the Case section of Petitioners' Brief.

Of particular relevance is the recitation of the Order which led to this Writ. The Circuit Court found that despite the clear language in the lease there could not be a "point of sale" upstream of the location where published index prices for processed gas are determined at a plant-tailgate market for processed NGLs and the Court further disallowed post-production deductions occurring before these markets far removed from the leases in question or the wellheads. The Circuit Court also found the phrase "market value at the wells" to be ambiguous despite the fact

that it is a clearly stated location where gas is to be valued, and the sales contracts in this case provides for the sale of the unprocessed gas at the wellheads. More importantly, the Circuit Court ignored an express limitation in the lease that provided that in no event would royalties be calculated based on a price more than the proceeds received from the sale of the gas by the lessee. As a result, the Circuit Court held the Petitioners may be required to pay royalties on values that do not equal the actual proceeds from the sale. These conclusions create a new set of rules by which Petitioners must abide: (1) royalties cannot be based on the sale of unprocessed gas at a clearly identified and agreed point, (2) the only valid markets are the interstate pipeline and plant-tailgate, and (3) all of this despite the specific language of the lease. These new rules directly conflict with established West Virginia law.

IV. ARGUMENT

A. An Implied Duty to Market Cannot Supersede a Lease's Express Language.

Ignoring express contract language in favor of judicial interpretation is a plain error of law.[2] Just this year, this Court held an implied covenant to market cannot exist where the lease expressly addresses a subject.[3] Further finding the implied covenant of marketability inapplicable because "there is no gap for that implied covenant to fill."[4]

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[2] Syl. Pt. 1, *Cotiga Dev. Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 484–85, 128 S.E.2d 626, 628 (1962); *see Barn-Chesnut, Inc. v. cfm dev. Corp.*, 193 W. Va. 565, 457 S.E.2d 502, (1995); *see also* Syl. Pt. 1, *Adkins v. Huntington Dev. & Gas Co.*, 113 W. Va. 490, 168 S.E. 366 (1932).

[3] *SWN Production Company and Equinor USA Onshore Properties Inc. v. Kellam*, No. 21-0729, at *18 (W. Va., June 14, 2022); *see also* Brian S. Wheeler, *Deducting Post-Production Costs When Calculating Royalty: What Does The Lease Provide?*, 8 Appalachian J.L. 1, 10 (2008); Scott Lansdown, *The Implied Marketing Covenant in Oil and Gas Leases: The Producer's Perspective,* 31 ST. MARY'S L.J. 297, 306 (2000) ("[W]here parties have agreed in the lease to the marketing of production, the implied covenant to market should not be used to alter the agreement."); *see, e.g., Games v. Chesapeake Appalachia, LLC,* No. 5:17CV101, 2017 WL 5297948, at *4 (N.D.W. Va. 2017) ("Chesapeake is also correct that the implied duty to market claim would likewise fail even if sufficiently pled under *Twombly* because there is an express provision in the leases regarding any delay in marketing . . . *This Court cannot find that Chesapeake breached an implied duty to market when there is an express provision as to the duty to market in the parties' agreement, which Chesapeake satisfied.*" (emphasis added)).

[4] *Kellam, supra* note 3 at *18.

In general, a court may imply covenants, but it is only to do so "absent express language in the agreement."[5] Similarly, a court is not to treat words or clauses of an agreement as meaningless or discard them if, consistent within the entire contract, any reasonable meaning may be given to the words.[6] Additionally, implied covenants are supposed to be derived from the presumed intent of the parties and, understandably, are not used inconsistently with the express provisions of the lease.[7] Finally, this Court, in *Leggett*, in a statement of law that is not dicta, held that an implied covenant is a "tool utilized to resolve contractual ambiguities . . . to implement the parties intentions where not otherwise stated[.]"[8]

Despite all of this, the Circuit Court, with complete disregard for the express language of the lease, instituted an implied duty to market. Here, the lease specifically states that the market value at the well will not exceed the net proceeds received by the Lessee. Yet, the Circuit Court specifically stated that the lease may require the payment of royalties in excess of its proceeds. The Circuit Court uses *Imperial Colliery Co. v. OXY USA, Inc.* to justify its alteration of the definition of "market value."[9]

This body of caselaw is clear—not only are implied covenants not to be imposed when contracts are unambiguous, the law specifically found an implied duty to market is not to be implemented contrary to the express provisions of a lease—the exact scenario presented here. As if this weren't enough, this Court has also held, in several royalty case, that implied covenants are

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[5] George Bibkos, *A review of the Implied Covenant of Development in the Shale Gas Era*, 115 W. VA. L. REV. 949, 957 (2013).
[6] *Dunbar Fraternal Order of Police, Lodge No. 119 v. City of Dunbar*, 218 W. Va. 239, 244, 624 S.E.2d 586, 591 (2005) (quoting Syl. Pt. 3, *Moore v. Johnson Service Co.*, 158 W. Va. 808, 808, 219 S.E.2d 315, 317 (1975)).
[7] Lansdown, *supra* note 3, at 304–35; *see also* Patrick H. Martin and Bruce M. Kramer, WILLIAMS & MYERS OIL & GAS LAW § 858, at 423 (2021) ("implied covenants are displaced by inconsistent express lease provisions and . . . the chief difficulty in applying this rule is in determining whether an express provision conflicts with an implied obligation").
[8] *Leggett v. EQT Prod. Co.*, 239 W. Va. 264, 275, 800 S.E.2d 850, 861 (2017).
[9] 912 F.2d 696, 699–701 (4th Cir. 1990).

used to cure ambiguity and implemented in line with the parties' intentions.[10] Here, there is no ambiguity—the leases are clear—the Lessee is not to pay more that its proceeds received from the sale of the gas. Further, even if the Court somehow found ambiguity in that statement, it is impossible to conclude that an implied duty to market requiring the Lessee to pay in excess of its proceeds is what the parties intended. It is in the public interest that this Court maintain the long held and accepted meaning of contract interpretation and disallow the Circuit Court from imposing its will not only on this Petitioner, but on all future lessees in this state.[11] This holding will, in effect, mean that no matter how specific the terms of a contract, a court may implement an implied covenant to alter the express agreement of the parties to a contract. This is directly contrary to a mountain of this State's case law and such a ruling will have sweeping ramifications.

B. The Circuit Court's Redefining "Market" and Imposing New "Quality Standards" Forces the Entire Industry Into an Unpredictable Landscape.

a. A "Market" Requires Only the Purchase by the First Unaffiliated Third-party Purchaser Downstream in an Arm's-length Transaction, Or That It is Based on a Proven, Independently Verified, Market Value.

West Virginia law is clear, a "market" is where an unaffiliated[12] third-party purchaser is

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[10] *Leggett*, *supra* note 8; *Kellam*, *supra* note 3.

[11] The legal arguments presented by GOWV are based on bedrock, longstanding West Virginia precedent about interpretation of contracts. The principles are not variable depending on what type of industry or business one of the parties may be conducting. The application of heightened rules of drafting and construction applicable solely to oil and gas leases, without any allegations or factual record supporting any claim of unconscionability or mutual mistake of fact, creates an overly broad and erroneous set of "special rules" of contract interpretation which are not justified by the record.

[12] The Court in *W.W. McDonald* describes the third-party purchaser as "unrelated and unaffiliated." *W.W. McDonald*, 983 F.Supp. 2d 790, 804 (S.D.W. Va. 2013). And explains that sales between affiliates are invalid for risk of sale at nominal prices before selling in the open market at a higher price. *Id.* However, these qualifiers are overly broad and an incorrect statement of the standard that should be applied. "In the sale to an affiliate situation, courts also use a market value at the well analysis to evaluate whether the transfer price is fair and reasonable. [] The preferred and most common market value analysis is comparable arms' length sales in the sale field or area." Judith M. Matlock, *Royalty Calculation When the Producer/Lessee is Dealing With an Affiliated Entity,* Private Oil and Gas Royalties, Ch. 9, 9-13 (2003). By using a proper market value analysis, such as the comparability, a court is more than capable of determining whether a sale is comparable in time, quality, quantity, and availability of marketing outlets. *Heritage Res., Inc.*, 939 S.W.2d 119, 122 (Tex. 1996). If a court finds the transaction does not meet the comparability standard, ordinary breach of contract remedies apply. Matlock at 9-9. "Even if two entities are affiliates, the law has never presumed that ordinary commercial transactions between the two are not arm's-length." *Id.* The Court unnecessarily created an artificial blanket rule that any affiliated sale cannot be for market value. The test should be that any affiliated

willing to purchase oil and gas.[13]

Astonishingly, the Circuit Court concluded that a "market" also requires multiple active buyers and sellers or common carriers. More specifically, the U.S. District Court for the Northern District of West Virginia held in *Richards v. EQT Production Company* that just because downstream markets exist does not mean that markets do not exist at other potential points of sale.[14] In sum, in West Virginia, a lessee's duty to market is fulfilled once the oil or gas is sold to the first willing third-party buyer through an arm's-length sale.[15]

Without citation to any definitive authority, the Circuit Court decided that no lessee and lessor in West Virginia may contractually agree to base royalties on the sale of wellhead gas.[16] The Circuit Court has redefined the term "market" as it pertains to royalties in the State. This industry-wide, blanket statement is overly broad and will create conflicts regardless of what willing parties contract to and create a plethora of litigation on contracts which are otherwise undisputed. This Court must reverse the Circuit Court's summary judgment ruling on account of the clear error of law and the widespread effects this will have on all producers.

b. Unprocessed Gas that Meets the Specifications of a Third-party Purchaser is in a "Marketable Condition."

It is not the Court's place to determine as a matter of law whether or not the condition of

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sale bears a presumption that it is not arm's length which can be overcome by the lessee if it can prove that the sale to the affiliate is at terms as good or better than unaffiliated third party comparables or independent index prices.

[13] *W.W. McDonald, supra* note 12 at 800.

[14] *Richards v. EQT Production Company*, 1:17-cv-50, 2018 WL 3321441 (N.D.W. Va. Jul. 5, 2018).

[15] Syl. Pt. 1 *Wellman v. Energy Res., Inc.*, 210 W. Va. 200, 202 & 210, 557 S.E.2d 254, 256 & 264 (W. Va. 2001).

[16] There are multiple reasons a lessor may agree to a wellhead price or a cap on the market price at no more than the proceeds received by the lessee. In the negotiation of leases, there typically is a negotiated signing bonus, royalty rate, point of sale, proceeds or market value royalty pricing, allocation of costs, free gas rights, surface use agreements and limitations, rights to use water, and gas storage rights, to name a few variables. A lessor may desire a trade-off of one variable for more favorable terms on a different variable. These trade-offs are all points subject to agreement of the parties. The application of a blanket rule by the Circuit Court that a lessor and lessee may never select a point of sale other than one downstream of the wellhead at a distant transmission pipeline after enhancement of the gas in terms of quality and/or location ignores the free will of the parties to choose the terms of their contract.

gas is marketable.[17] In making the decision, the Circuit Court relies on a single case from Colorado;[18] which it claims this Court, in *Leggett*, approvingly cited to. However, this Court merely cited to the case as a survey of the jurisprudence of other jurisdictions—this Court did not in any way adopt or even approve of the holding.[19] Even if this Court had outwardly accepted the *Rogers* case in its entirety, it would still be irrelevant in coming to the conclusion of the Circuit Court.

Here, the Circuit Court concluded that until the gas is available to be consumed in a person's home, it is not marketable. This is not, however, the conclusion the *Rogers* court made. Instead, the *Rogers* Court held that the gas is marketable when it is acceptable to be sold in a commercial marketplace.[20] It further stated, and the Circuit Court conveniently ignores, that "a single purchaser, in a good faith purchase of gas, is evident that there is a market for that gas."[21] Even if *Rogers* was the law of the land in West Virginia, it still would not give rise to the radical conclusion of the Circuit Court. There is no justification for the conclusion that unprocessed gas is unmarketable. Whether it is marketable is purely a free-market determination. If there is a willing seller and buyer at a location, how can a court declare as a matter of law there is no market?

This Court should clarify the position in West Virginia. Being that is it a clear question of fact and that there is no existing West Virginia law on the matter, the Circuit Court's conclusion cannot be upheld. Even the law cited by the Circuit Court doesn't stand for such an extreme position. And to the extent that such an issue has been contemplated, similarly situated courts have balked at drawing a conclusion so severe. This too will wreak havoc on the industry, making

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[17] *See* note 16.
[18] *Rogers v. Westerman Farm Co.*, 29 P.3d 887, 905–06 (Colo. 2001).
[19] *Leggett, supra* note 8 at 859 n.13.
[20] *Rogers, supra* note 19 at 906.
[21] *Id.* at 910 (further stating that such a purchase does not necessarily establish a market).

producers further question the validity of their royalty calculations and, again, incentivizing lessors to sue lessees based on a valid contract which was negotiated in good faith.

Together, these conclusions of law make West Virginia an outlier in the area of royalty law in the Appalachian Basin.[22] This decision, without an outright denunciation of this Court, would open the floodgates of litigation on otherwise valid leases, disincentivizing oil and gas production, and imposing irreparable harm on an industry that is already under fire for providing a necessary commodity to consumers. Redefining what a "market" is and holding the industry to unattainable standards will inevitably harm the entire industry but will specifically damage the smallest of producers who must pay third-party gathering pipelines to take their gas to distant markets.

C. *Tawney* is Inapplicable because the Language of the Lease is Specific.

a. A Clause Stating Royalties May Not Exceed Proceeds is Unambiguous.

This lease clearly states royalties may not exceed proceeds received by the Lessee from the sale of the gas. This is an unambiguous statement. To be ambiguous, the term of the lease would have to pose the possibility of two meanings or reasonable minds may disagree about the meaning of the term.[23] *Tawney* deals with "at the wellhead" language without further qualification and therefore, this court determined the language was ambiguous.[24]

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22 The ultimate issue was whether the terminology used in the lease that referred to the well was sufficient to overcome the implied covenant to market, (citation omitted) . . . . [T]he court's conclusion that use of "wellhead" language was ambiguous leaves one scratching one's head as to whether the court was really looking at a bargain struck between the parties of just imposing what it perceived to be a "fair" and/or "equitable" result. For example, the court concluded that "wellhead" language lacks "definiteness" and is "imprecise." If anything, the term "wellhead" is very precise and definite because it is a clearly recognizable place which even laypersons can understand.

Williams & Meyers, *Oil and Gas Law*, § 654.2, at page 614.12(3). *See also*, *Cunningham Prop. Mgmt. Tr. v. Ascent Res. - Utica, LLC*, 351 F. Supp. 3d 1056, 1062 (S.D. Ohio 2018) (agreeing with the holding in *Lutz v. Chesapeake Appalachia, L.L.C.*, No. 4:09CV2256, 2017 WL 4810703, *7–*8, (N.D. Ohio Oct. 25, 2017) that "at the well" is unambiguous.); *Canfield v. Statoil USA Onshore Properties Inc.*, No. CV 3:16-0085, 2017 WL 1078184, at *19 (M.D. Pa. Mar. 22, 2017) (finding the lease unambiguously calculates royalties using the wellhead value).

[23] *Payne v. Weston*, 195 W. Va. 502, 507, 466 S.E.2d 161, 166 (1995) (quoting Syl. Pt. 1, *Shamblin v. Nationwide Mut. Ins. Co.*, 175 W. Va. 337, 332 S.E.2d 639 (1985)); *Tawney v. Columbia Nat. Res., LLC*, 219 W. Va. 266, 272, 633 S.E.2d 22, 28 (2006).

[24] *Tawney*, *supra* note 23 at 269–270.

Here, the lease term is specifically pointed to curb one particular issue with royalty payment. Unlike *Tawney*, the language is not used to define some overarching calculation of royalties. Rather, the language is used as a qualifier itself of the market value. The lease term is as specific as possible and, again, was thoroughly contemplated and agreed to by both parties. Even if basic contract principles are put aside, there is no legal basis for unnecessarily complicating lease language. Unlike *Tawney*, no other court has held language limiting royalties based on proceeds to be ambiguous. An analysis under *Tawney* is unnecessary in a case like this—*Tawney* is inapplicable.

Even if *Tawney* did apply, the clause would still be unambiguous. In determining whether a lease is unambiguous enough to satisfy *Tawney*, "(1) it must 'expressly provide' the lessor will bear some part of the costs incurred between the wellhead and the point of sale; (2) it must 'identify with particularity' the specific deductions the lessee intends to take; and (3) it must indicate the method of calculating the amount to be deducted from the royalty for such post-production costs."[25] More specifically, where a particular price is agreed to, the terms of the contract control.[26] A clause such as the one here is clearly unambiguous under this standard. Further, it is commonly recognized that the terms of the contract are paramount.[27]

A *Tawney* analysis is unnecessary in a case like this, but even if the Court decided to conduct one—the clause would still be unambiguous.

b. A Lessee is Permitted to Make Allowances and Deductions to Make the Gas Merchantable.

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[25] *Kinney v. CNX Gas Company, LLC*, 2017 WL 3774376 *4 (N.D.W. Va. Aug. 24, 2017).
[26] Syl. Pt. 3 *Wellington Power Corp. v. CNA Sur. Corp.*, 217 W. Va. 33, 614 S.E.2d 680 (2005) (finding it is important, as a matter of public policy, to honor the freedom of contract unless the contract violates a principle of greater importance to the general public.).
[27] *Kinney*, *supra* note 25 at *5 ("[P]erhaps most importantly, the parties freely contracted that the flat-rate deductions are 'actually incurred and reasonable.' This Court will honor that language.").

Beyond ambiguity, the Circuit Court erred in deciding leases don't allow allocation of post-production costs. The *Tawney* court also looked at this issue and determined that, so long as the lease contained specific language, post-production costs may be taken from the royalty amount.[28] The Fourth Circuit reviewed a detailed lease allocating post-production costs between the parties and made a clear statement that the stated intent of the parties must be upheld.[29] However, the Circuit Court completely ignored the Fourth Circuit reasoning and somehow concluded the specific lease language did not conform to the *Tawney* requirements.

More recently, this Court had the opportunity to opine on certified questions from the Northern District of West Virginia. In *Kellam*, this Court answered two certified questions: (1) is *Tawney* still good law? and (2) What level of specificity does *Tawney* require of an oil and gas lease to permit the deduction of post-production costs from a lessor's royalty payments, and if such deductions are permitted, what types of costs may be included?[30]

This Court held *Tawney* is good law, finding the legal underpinnings to be sound.[31] The Court further indicated its reluctance to answer the second question—as it believed the answer to be largely based on the facts of an individual case and best left to the finder of fact.[32] However, of particular relevance here, is how *Tawney* interacts with *Young*—a question the majority in Kellam did not address. *Young* provides rationale guidance for the necessary requirements to comply with calculating post-production costs—it is not inconsistent with the holding in *Tawney* and merely recognized that a very clear statement in a lease about how royalties are to be calculated does not need to be absurdly technical.[33] In doing so, the Fourth Circuit indicated the calculation need not

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[28] *Tawney, supra* note 23 at 274.
[29] *Young v. Equinor USA Onshore Prop., Inc.*, 982 F.3d 201, 208 (4th Cir. 2020).
[30] *See Kellam, supra* note 3.
[31] GO-WV does not agree *Tawney* is a correct or rational application of the law, and it is out of step with the rest of the states who have decided the issue, including our neighboring states of Pennsylvania, Ohio and Kentucky.
[32] *Kellam, supra* note 3.
[33] *Young, supra* note 29 at 208.

set out "Einsteinian proof" and, as an example, allowed the instant lease language to be validated.[34] In *Kellam*, this Court stated it could not create a hard and fast rule and simply reiterated the requirements of *Tawney*.[35]

Holding *Tawney* is still good law does not resolve the question presented in this case, nor does *Tawney*, as summarized by the majority in *Kellam*, provide precedent that an express statement in a lease that the lessor will in no case be paid more than the net proceeds received by the lessee from the sale of gas can be ignored by judicial fiat. The industry as a whole needs to know that specific, mutually agreed to lease terms control and are enough to avoid litigation. Clarity on the issue is a must, especially given what is now a confusing landscape. To truly put the issue to bed, the Court must establish a rule—even if not a bright line. The Fourth Circuit towed the line carefully—it did not state *Tawney* was bad law, but it also provided general guidance to the issue. This Court should use *Young* to establish general guidance for the calculation of royalties in West Virginia.

V. CONCLUSION

Allowing this case to be stopped at summary judgment does this area of law a disservice. West Virginia is already at odds with our surrounding states when it comes to royalty law, and without clarity from this Court, it will also become unnavigable. GO-WV, on behalf of all producers in the State, simply requests that the stated intent of parties to a contract be enforced. This Court has already stated as much in the context of numerous types of contracts, but it should be reiterated as applying to oil and gas leases, which are simply contracts: an implied duty to market cannot supersede the express terms of a lease. Further, judicially redefining what a "market" is and imposing new quality standards is an unprecedented move that will throw the

[34] *Id.*
[35] *Kellam*, *supra* note 3.

entire industry into turmoil. Finally, *Tawney* is inapplicable here, but even if it was, the holding in *Young* indicates that leases with language such as the one here are specific enough to withstand the *Tawney* requirements.

For all of these reasons, GO-WV asks this Court to (1) grant Petitioner's writ of prohibition, (2) direct the Circuit Court to reverse the grant of the Respondent's Motion for Summary Judgment, and (3) reverse the denial of the Petitioner's Cross-Motion for Summary Judgment.

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

APPEAL NO. 21-1004

STATE OF WEST VIRGINIA EX REL. TH EXPLORATION II, LLC and TUG HILL OPERATING, LLC,

Petitioners,

v.

VENABLE ROYALTY LTD.; V14, LP; VENRO, LTD.; V2, LP; and THE HONORABLE JUDGE JEFFREY CRAMER, Judge of the Circuit Court of Marshall County, West Virginia,

Respondents.

CERTIFICATE OF SERVICE

I, Austin D. Rogers, hereby certify that on the 9th **day of August, 2022,** a copy of the foregoing **"AMICUS CURIAE BRIEF SUBMITTED BY THE GAS & OIL ASSOCIATION OF WEST VIRGINIA IN SUPPORT OF PETITIONERS"** was mailed, postage prepaid, by First Class Mail to the following:

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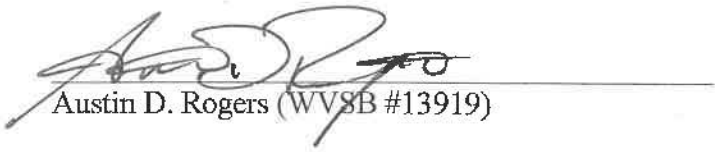

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