THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 21-1004

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

vs.

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.

On appeal from the Order of the Circuit Court of Marshall County, West Virginia, on cross-motions for summary judgment, entered on November 10, 2021, in Consolidated Case Numbers 18-C-227 and 18-C-220

REPLY IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION

K&L GATES LLP

Thomas C. Ryan (WVSB No. 9883)
thomas.ryan@klgates.com
Travis L. Brannon (WVSB No. 12504)
travis.brannon@klgates.com
Emily C. Weiss (WVSB No. 12908)
emily.weiss@klgates.com
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222
Tel: (412) 355-6500
Fax: (412) 355-6501

Counsel for Petitioners

Date: February 7, 2022

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

I. INTRODUCTION

In opposing Tug Hill's Petition,[1] Venable focuses on third-party contracts and disputed factual issues that are not dispositive of the legal issues presented to the Court. The issues before the Court are whether Tug Hill's royalty calculation complies with the express lease language and whether the Circuit Court properly interpreted the scope of a lessee's implied duty to market. Rather than address these questions and argue in support of the Circuit Court's definition of "market" and "marketable condition," Venable focuses on the Circuit Court's interpretation of Tug Hill's conduct through the lens of Tug Hill's third-party sales contracts, which are not a proper basis for considering the royalty calculation. Despite Venable's insincere attempts to diminish the sweeping impact of these issues on the oil and gas industry, the Petition is necessary to correct the Circuit Court's expansion of the implied duty to market, as it prevents the valid sale of unprocessed gas anywhere in the state.

Venable fails to meaningfully address Tug Hill's Petition for three main reasons.

First, Venable misrepresents what it refers to as "settled law" in West Virginia regarding the marketable product rule and the definitions of "market" and "marketable condition." In doing so, Venable overlooks the Circuit Court's novel redefining and broadening of those terms, making the Petition fundamentally necessary and important to the oil and gas industry and mineral interest owners.

Second, Venable's argument that Tug Hill's royalty calculation breaches the leases rests on its belief that there is no sale to the third-party buyer. This position, and the reliance on Tug Hill's third-party sales contracts to support it, is wrong and ignores a key point in the Petition—that the Circuit Court ignored the express language of the leases.

---

[1] Unless otherwise noted, all defined terms herein have the same meaning as set forth in Tug Hill's Petition for Writ of Prohibition (the "Petition").

Third, contrary to Venable's argument, the Circuit Court did not invalidate Tug Hill's royalty calculation because there was no "sale" to a third party; instead, the Circuit Court held that no sale of unprocessed gas is valid in West Virginia. Further, Venable's attempt to use disputed facts derived from Tug Hill's third-party relationships and contracts to defeat the Petition is improper and any reliance on those facts by the Circuit Court constitutes an error of law.

As described further below, this Court should ignore Venable's digressions and (a) grant the Petition, (b) direct the Circuit Court to reverse the grant of Venable's Motion for Summary Judgment, (c) direct the Circuit Court to reverse the denial of Tug Hill's Cross-Motion for Summary Judgment, and (d) remand to the Circuit Court to award any additional relief that the Court deems appropriate in accordance with this Court's opinion.

II. ARGUMENT

A. Venable's assertion that the Circuit Court applied "settled law" to define the implied duty to market is inaccurate and obscures the Circuit Court's unprecedented definitions of "market" and "marketable condition."

It cannot be understated that the Circuit Court's erroneous expansion of West Virginia law has far-reaching implications. The Petition takes issue with the Circuit Court's application of West Virginia law to find that "the gas that Defendants purport to sell at these meters *is not a marketable product*" and "the Corley and Burch Ridge meters *are not markets* under the implied marketing covenant because these meters are merely pipeline transfer points on a closed proprietary gathering system . . . ."[2]

In the Response, Venable states that the Circuit Court simply applied the marketable product rule according to "settled" law, going so far as to assert that the Circuit Court applied the same law Tug Hill references in its Petition based on *Wellman v. Energy Resources, Inc.*[3]

---

[2] APP0005, ¶¶ 18-19 (emphasis added).
[3] 210 W. Va. 200, 202, 210-11, 557 S.E.2d 254, 256, 264-65 (W. Va. 2001); Response, at 5-6.

However, Venable fails to acknowledge that the Circuit Court created and applied novel definitions for "market" and "marketable condition" not found in *Wellman* or in any other West Virginia authority.[4]

Specifically, the Court in *Wellman* stated only that "the duty to market embraces the responsibility to get the oil or gas in marketable condition and actually transport it to market."[5] The Circuit Court, on the other hand, imposed the following definitions:

> **Market**: "a place where multiple active sellers and buyers exchange title to gas and gas products that are in 'marketable condition'"[6] in an "open commercial market."[7]
>
> **Marketable Condition:** a quality having "commonly accepted commercial uses,"[8] such that unprocessed gas "with entrained liquids and contaminants . . . is not in marketable condition[.]"[9]

There is nothing "settled" about these novel and unprecedented requirements for a market or marketable condition, as no jurisdiction has imposed similar requirements on the number of "active sellers and buyers" or on the quality standard that "substantial gathering, processing, fractionation and transportation must occur before this low-pressure gas becomes a marketable product," which the Circuit Court held as a matter of law.[10]

As described in the Petition, the Circuit Court's overexpansion of the definitions of "market" and "marketable condition" is inconsistent with prior decisions of the same circuit and

---

[4] *See* APP0005-0006, ¶19; APP0013, ¶ 19; APP0023, ¶ 72, 74; APP0029, ¶ 4-7; APP0030, ¶ 11-12.
[5] 210 W. Va. at 202, 210-11, 557 S.E.2d at 256, 264-65.
[6] APP0023, ¶ 72.
[7] APP0029, ¶ 5.
[8] APP0029, ¶ 6.
[9] APP0026, ¶ 90.
[10] *Compare* APP0023, ¶ 72; APP0026, ¶ 90; APP0029, ¶ 5, *with W.W. McDonald Land Co. v. EQT Prod. Co.*, 983 F. Supp. 2d 790, 800 (N.D.W. Va. 2014) (holding "[t]he market . . . is the first place downstream of the well where the gas can be sold to any willing buyer and title passed to that buyer"); *Imperial Colliery Co. v. Oxy USA Inc.*, 912 F.2d 696, 701-02 (4th Cir. 1990) ("market value is computed by ascertaining the price that a willing buyer would pay a willing seller in a free market . . ."); *Fawcett v. Oil Producers, Inc. of Kan.*, 352 P. 3d 1032, 1042 (Kan. 2015) (holding that gas is marketable when it is "in a condition acceptable to the purchaser in a good faith transaction").

is contrary to persuasive precedent,[11] making the errors of law the type of "clear error" that constitute grounds for a writ of prohibition.[12] That is, Tug Hill does not seek to "make new law" as to the marketable product rule, as Venable claims.[13] Tug Hill's interpretation of the "market" as the first sale to a third-party purchaser in an arm's-length transaction and of "marketable condition" as the condition in which a third-party purchaser is willing to buy the gas provides a reasonable, unambiguous scope of a lessor's duty to market in West Virginia.[14] Further, the definitions supported by Tug Hill are consistent with other decisions in the Circuit Court of Marshall County and other West Virginia courts.[15]

While Venable claims that "no statement in Defendants' three Questions Presented suggests that the Circuit Court acted without jurisdiction or exceeded its legitimate powers,"[16] it is well-established under West Virginia law that a lower court may exceed its legitimate powers where its order is clearly erroneous as a matter of law, even where that order is interlocutory.[17]

---

[11] *See Huey v. EQT Prod. Co.*, No. 17-C-43, at 17 (W. Va. Cir. Ct. Wetzel Cnty. July 17, 2018) (Cramer, J.) (provided for reference at APP0623-0639); *W.W. McDonald*, 983 F. Supp. 2d at 800.

[12] *See* Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 14-15, 483 S.E.2d 12, 14-15 (1996).

[13] Response, at 22, 39.

[14] *See Huey*, No. 17-C-43, at 17 ("[T]he sales price upon which Plaintiffs' royalties should be based is the . . . first sale of natural gas and related products to an unrelated and unaffiliated third-party purchaser.") (provided for reference at APP0623-0639); *Columbia Gas Transmission, LLC v. SWN Prod. Co., LLC*, No. 18-C-265 (Cir. Ct. Marshall Cnty. W. Va. Feb. 15, 2021) (Hummel, J.) (provided for reference at APP0640-0654) (holding that requiring a lessor to reach past the point of sale to "add back in all 'costs' incurred by non-party purchasers . . . is an absurd result and is not the law in any state"); *W.W. McDonald Land Co.*, 983 F. Supp. 2d at 800 (holding "[t]he market . . . is the first place downstream of the well where the gas can be sold to any willing buyer and title passed to that buyer"); *Richards v. EQT Prod. Co.*, 1:17-cv-50, 2018 WL 3321441, at *4-5 (N.D.W. Va. Jul. 5, 2018) (stating the fact "[t]hat a downstream market exists, however, does not mean that 'markets' do not also exist at other potential points of sale. . . .").

[15] *See id.*

[16] Response, at 21.

[17] *See* Syl. Pt. 4, *Hoover*, 199 W. Va. at 14-15, 483 S.E.2d at 14-15; *Ellis v. King*, 184 W. Va. 227, 231, 400 S.E.2d 235, 239 (1990) (granting writ of prohibition to overturn a summary judgment order); *State ex rel. Golden v. Kaufman*, 236 W. Va. 635, 649, 760 S.E.2d 883, 897 (2014) (granting writ to vacate a legally erroneous summary judgment order); *State ex rel. W. Va. Consol. Pub. Ret. Bd. v. Nibert*, 235 W. Va. 203, 210, 772 S.E.2d 609, 616 (W. Va. 2015) (granting writ where the circuit court's order denying the motion for summary judgment was "clearly erroneous as a matter of law").

Tug Hill's Petition clearly outlines why each factor for a writ of prohibition exists here.[18] In analyzing these factors, "the third factor, the existence of clear error as a matter of law, should be given substantial weight."[19] Tug Hill's Petition seeks reversal of the Circuit Court's three clear errors of law, each of which are not only inconsistent with West Virginia jurisprudence, but are also to the detriment of all oil and gas lessors and lessees seeking certainty in interpreting their leases. In stating that this case involves a mere "15 Leases in Marshall County," Venable fails to acknowledge the full reach of the Circuit Court's decision. In fact, a lessor brought a class action based on the same lease language at issue here in the United States District Court for the Northern District of West Virginia, and the named plaintiff in that case has already filed a "Notice of Filing Supplemental Authority," attaching the Circuit Court's order.[20] Further, issues as to the growing uncertainty regarding the interpretation of oil and gas royalty provisions are pending before the Court, certified at the request of the Northern District Court.[21] Clearly, the Circuit Court's order has much broader implications than Venable represents.

Accordingly, this Court should consider the Petition and grant the relief requested.

B. Venable attempts to dodge the lease interpretation issues at the heart of this case by focusing on the facts surrounding the mechanics of Tug Hill's third-party sales rather than the language of the Circuit Court's holding.

Venable's arguments rely heavily on the assertion that the Circuit Court "concluded . . . Defendants do not sell unprocessed gas at Corley and Birch [*sic*] Ridge," but that assertion is misguided.[22] To support this argument, Venable provides a prolonged explanation of Tug Hill's

---

[18] *See* Petition, at 12-15.
[19] Syl. Pt. 4, *Hoover*, 199 W. Va. at 14-15, 483 S.E.2d at 14-15.
[20] *See* Response, at 1; *see also S. Country Farms, Inc. v. TH Expl., LLC*, No. 5:21-cv-84, *Complaint*, Dkt. No. 1, *Notice of Filing Supplemental Authority*, Dkt. No. 39 (N.D.W. Va.).
[21] *See Kellam v. SWN Prod. Co., LLC*, No. 5:20-CV-85, 2021 WL 4621067 (N.D.W. Va. Sept. 13, 2021).
[22] Response, at 21, APP0023, ¶ 73; APP0029-0030, ¶¶ 8-11.

third-party sales contracts.[23] In doing so, Venable fails to address the primary point of the Petition—that the Circuit Court ignored well-established West Virginia law by disregarding the express language of the leases.

This is an action for breach of the royalty provisions of oil and gas leases. The leases state that the market value of the oil and gas is "in no event to exceed the net proceeds received by Lessee. . . ."[24] Yet, with a conclusory dismissal of the "in no event to exceed" language as ambiguous, the Circuit Court held that the "implied covenant to market . . . may require Defendants to pay royalties on values that exceed Defendants' actual proceeds from sales."[25] The Circuit Court offers no West Virginia law to support disregarding the express lease language; instead, it attempts to gap-fill the leases with an implied duty, which is also contrary to West Virginia contract law.[26] In its Response, Venable attempts to fill the gap in the Circuit Court's own analysis by using the Tug Hill third-party sales contracts to refute the application of the express lease language. Tug Hill's third-party sales contracts are irrelevant to this lease interpretation issue and fail to

---

[23] *See* Response, at 21, 23-24, 34-37.

[24] APP0009-0010, ¶ 2. Venable's argument that the "market value" language of the royalty provision means "Defendants may have to pay royalties on prices higher than their own net proceeds" is another red herring where, as here, Tug Hill is paying royalties based on its proceeds *from a market sale*. *See* Petition, at 3-6, 25. The cases Venable cites in support of this argument are easily distinguishable, as they involved sales at long-term, below-market rates and the leases at issue did not contain the "in no event to exceed" express language present here. *See Imperial Colliery Co.*, 912 F.2d at 699-700 (examining a lease that defined "market value" as "the prevailing purchase price currently paid at the well by purchasers of gas" and holding that gas "dedicated to interstate commerce by the terms of a 1948 sales contract" were sold at a price below "fair market value"); *Tex. Oil & Gas Corp. v. Vela*, 429 S.W. 2d 866, 871 (Tex. 1968) (holding the "gas which was marketed under the long-term contracts in this case [from the 1930's] was not 'being sold' at the time the contracts were made but at the time of the delivery to the purchaser," so the contract price was not a "prevailing market price"); *Union Pac. Res. Grp., Inc. v. Hankins*, 111 S.W. 3d 69, 75 (Tex. 2003) (holding only that analysis of the duty to market under market value versus proceeds leases involves distinct issues that defeat commonality in a class action). Again, neither of these cases addresses the hybrid lease language of "market value . . . in no event to exceed the net proceeds received by Lessee." West Virginia law does not support Venable's contention that the market value cannot be based on the market for unprocessed gas in West Virginia, as discussed further in Section C.1.

[25] APP0030, ¶ 14; *see also* APP0031, ¶ 15.

[26] *See id.; see also Leggett v. EQT Prod. Co.*, 239 W. Va. 264, 275, 800 S.E. 2d 850, 861 (W. Va. 2017).

address the Circuit Court's disregard for the express language of the leases. Third-party agreements entered well after the leases, by different parties, for the sale of the oil and gas cannot inform the interpretation of the leases' royalty provisions or a lessee's obligations to a lessor, and Venable's attempt to use them as parol evidence to aid that interpretation fails.[27] Because the Circuit Court disregarded the express language of the leases, this Court should consider the Petition and grant the relief requested.

C. Venable misrepresents the Circuit Court's findings with respect to Tug Hill's third-party sales contracts and Venable's reliance on them creates disputed facts inappropriate for summary judgment.

1. Venable misrepresents the Circuit Court's findings with respect to Tug Hill's third-party sales contracts.

Venable not only misuses the third-party contracts to explain the interpretation of the leases, Venable also overstates the Circuit Court's alleged conclusion regarding the third-party contracts by arguing repeatedly that the Circuit Court concluded there is no sale by Tug Hill to an unaffiliated, third-party buyer at Corley and Burch Ridge. To the contrary, the Circuit Court not only referred to those transactions as "gas purchases" and to WER as a "purported buyer," but it also held that Tug Hill was "selling" oil and gas to an unaffiliated buyer, such as WER.[28]

Regardless of the precise language used by the Circuit Court, it is clear that it did not reach its determination regarding the validity of the arm's-length transaction for unprocessed gas at

---

[27] *See Kanawha Banking & Trust Co. v. Gilbert*, 131 W. Va. 88, 101-02, 46 S.E.2d 225, 233 (1947) (holding a written contract "must speak for itself, by its terms, without the aid of extrinsic evidence," and "parol evidence . . . is the same as extrinsic evidence which, as to any writing, is such as is not furnished by the document itself but derived from outside sources"); *Cotiga Dev. Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 490,128 S.E.2d 626, 632 (1962) (stating a "valid contract expressing the intent of the parties in unambiguous language will be applied and enforced according to such intent, and without resort to matters extrinsic to such contract").

[28] APP0005-0006, ¶ 19; APP0013, ¶ 19; APP0023, ¶ 73; APP0029-0030, ¶¶ 8-12 (stating that "[i]f sales have occurred at Corley and Burch Ridge," not concluding as a matter of law that no such sales have occurred).

Corley and Burch Ridge based on the sales contracts. Venable's shaky premise that there was no sale is an obfuscation of, rather than a response to, the questions presented in the Petition. Rather, the Circuit Court based its holding on the faulty conclusion that unprocessed gas is not marketable.[29]

As discussed above in Section A, the Petition's questions presented arise from the Circuit Court's findings that "the Corley and Burch Ridge meters are not points of sale under the implied marketing covenant because the gas Defendants purport to sell at these meters *is not a marketable product*" and "the Corley and Burch Ridge meters *are not markets* under the implied marketing covenant because these meters are merely pipeline transfer points on a closed proprietary gathering system . . . ."[30] In other words, the Circuit Court ultimately did not hold that Tug Hill breached the leases and the implied duty to market because it failed to effectuate a sale, as Venable would now rewrite the Circuit Court's order to conclude. Rather, the Circuit Court held that unprocessed ("wet") gas is not marketable and, therefore, a point of sale cannot exist prior to a market for *processed gas* under West Virginia law.[31]

Even more striking, as the Circuit Court's order currently stands, *no contract* would be sufficient to sell gas in Marshall County, regardless of the express terms of the sales contracts between the producer and buyer, if the gas is unprocessed. The Circuit Court held that unprocessed gas "is not yet rendered into marketable products," and "[i]f sales have occurred at Corley and Burch Ridge, then such sales would have involved un-marketable gas at points that are not

---

[29] *See* APP0005, ¶¶ 18-19; APP0026, ¶ 92; APP0030, ¶¶ 11-12.
[30] APP0005, ¶¶ 18-19 (emphasis added).
[31] *See* APP0013, ¶¶ 20-21; APP0023, ¶ 74; APP0026-0027, ¶¶ 90, 92-93; APP0029-0030, ¶¶ 8-9 ("Merely selling gas and condensate in an unprocessed, unusable form to an unaffiliated buyer, such as the Marketer, does not satisfy West Virginia law requiring a lessee to bear all costs necessary to render marketable products and to bring those marketable products to a market").

markets."[32] Therefore, the Court needs to consider the Circuit Court's unprecedented holding that a sale of unprocessed gas is invalid as a matter of law, regardless of any argument Venable makes regarding the factual validity of the sale.

Thus, Venable's emphasis on the sales contracts and argument that Tug Hill does not sell the oil and gas via its own contracts is a diversion from the order's significant legal errors discussed in Sections A and B: (a) that there cannot be a market for unprocessed gas, because it can never be in marketable condition as a matter of law, and (b) that the implied duty to market can override express lease language.[33]

Because these findings present overarching errors of law that affect the entire oil and gas industry, not just the parties to the leases and sales contracts in this matter, this Court should take up the Petition to correct these errors.

2. Tug Hill's third-party sales contracts are not relevant to the issues presented and Venable's reliance on them creates disputed facts, inappropriate for summary judgment.

Finally, Venable cannot defeat the Petition by arguing that Tug Hill did not sell gas at Corley and Burch Ridge without creating a disputed issue of fact. Preliminarily, Tug Hill reiterates that there are no disputed facts as to whether or not a sale occurred. Put simply, Tug Hill introduced evidence that both it and WER treated the transaction as a sale, and Venable did not introduce any evidence from WER to refute that point.[34] Nevertheless, even if the Court were to believe Venable's argument that there was not a valid sale to WER, the only possible outcome for the Court in response to the Position is that the Circuit Court's interpretation of the sales contracts and

---

[32] APP0005-0006, ¶¶ 18-19; APP0030, ¶¶ 11-12.

[33] *See id.*

[34] Tug Hill refutes any attempts by Venable to rely on the argument that there is no title transfer to WER to attempt to prove that there is no sale to WER. Venable produced no evidence to dispute Tug Hill's evidence that title did transfer, and, therefore, the only other possible conclusion by the Circuit Court could be that a question of fact exists, not that title of gas failed to transfer to WER. *See* APP0574-0576, at 503:7-510:14.

evaluation of Tug Hill's marketing efforts were improper because they were based on disputed issues of fact that the Circuit Court did not have authority to decide on summary judgment.[35]

However, at this point, regardless of whether or not there is a disputed issue of fact, no trier of fact—whether it be the Circuit Court or a jury—could effectively apply West Virginia law without further clarity. As a result of the Circuit Court's order, the role of the implied duty to market in relation to express lease provisions and the definitions of "market" and "marketable condition" under *Wellman* suffer from the inconsistencies and contradictions explained in the Petition and this Reply.[36] As such, Tug Hill urges this Court to take the opportunity to clarify these important issues and take up the Petition. At a minimum, the Circuit Court's finding and reliance upon a disputed fact supports granting Tug Hill's Petition and reversing the Circuit Court's summary judgment decisions.

---

[35] *See* Syl. Pt. 1, *Ashland Oil, Inc. v. Donahue*, 164 W. Va. 409, 409, 264 S.E.2d 466, 466 (1980) ("It is the peculiar and exclusive province of the jury to weigh evidence and resolve questions of fact when the testimony of witnesses is conflicting or when the facts, although undisputed, are such that reasonable men may draw different conclusions from them." (internal citations omitted)).

[36] While a trier of fact could arguably apply the Circuit Court's definitions of "market" and "marketable product" as it currently stands, that would be a waste of time and resources when those improper definitions would ultimately come before this Court after issuance of a final decision. Despite Venable's protestations, waste of time and resources is a valid factor this Court frequently considers when determining whether to take up a writ of prohibition. *See, e.g., State ex rel. Frazier v. Hrko*, 203 W. Va. 652, 658, 510 S.E.2d 486, 492 (1998) (allowing a writ of prohibition because there was a "high likelihood of reversal on appeal" and the "unreasonableness of the delay and expense is apparent."); *Ellis*, 184 W. Va. at 231, 400 S.E.2d at 239 (allowing a writ of prohibition because the error was "clear-cut and substantial[,]" and the writ promoted "economy of the lawyers' time, the litigants' efforts, and judicial resources").

III. CONCLUSION

Tug Hill respectfully requests that this Court grant the relief requested in the Petition for Writ of Prohibition.

Respectfully submitted this 7th day of February, 2022

Thomas C. Ryan (WVSB No. 9883)
thomas.ryan@klgates.com
Travis L. Brannon (WVSB No. 12504)
travis.brannon@klgates.com
Emily C. Weiss (WVSB No. 12908)
emily.weiss@klgates.com
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222
Tel: (412) 355-6500
Fax: (412) 355-6501

Counsel for Petitioner

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 21-1004

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

vs.

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.

On appeal from the Order of the Circuit Court of Marshall County, West Virginia, on cross-motions for summary judgment, entered on November 10, 2021, in Consolidated Case Numbers 18-C-227 and 18-C-220

REPLY IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION

VERIFICATION

I, Thomas C. Ryan, counsel for Petitioner, being first duly sworn upon oath, state that I have read the foregoing **"Reply in Support of Petition For Writ of Prohibition"** and believe that the factual information contained therein are true and accurate to the best of my belief and knowledge.

Thomas C. Ryan (WV Bar No. 9883)

THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 21-1004

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

vs.

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.

On appeal from the Order of the Circuit Court of Marshall County, West Virginia, on cross-motions for summary judgment, entered on November 10, 2021, in Consolidated Case Numbers 18-C-227 and 18-C-220

REPLY IN SUPPORT OF PETITION FOR WRIT OF PROHIBITION

CERTIFICATE OF SERVICE

I, Thomas C. Ryan, counsel for Petitioners TH Exploration II, LLC and Tug Hill Operating, LLC, hereby certify that on this day, February 7, 2022, I served a true and correct copy of the foregoing ***"Reply in Support of Petition For Writ of Prohibition"*** upon those listed below via overnight FedEx, postage prepaid:

James Holmes
Andrea Seldowitz
HOLMES PLLC
2001 Bryan Street, Suite 2125
Dallas, Texas 75201

Mark A. Kepple
BAILEY & WYANT, PLLC
1219 Chapline Street
Wheeling, WV 26003

John McCuskey
SHUMAN, MCCUSKEY & SLICER, PLLC
1411 Virginia Street East, Suite 200
Charleston, WV 25301

James D. Thompson, III
Brock R. Skelley
Benjamin D. Betner
VINSON & ELKINS LLP
1001 Fannin Street, Suite 2500
Houston, TX 77002

W. Henry Lawrence
STEPTOE & JOHNSON PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330

Ben McFarland
STEPTOE & JOHNSON PLLC
1233 Main Street
Wheeling, WV 26003

The Honorable Jeffrey D. Cramer
Circuit Court of Marshall County
Marshall County Courthouse
600 Seventh Street
Moundsville, WV 26041

Thomas C. Ryan (WV Bar No. 9883)