IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

CASE NO. 25-ICA-100

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WINGED FOOT MINERALS, LLC,
an Oklahoma Limited liability company, et al.,
PETITIONERS,

v.

SWN PRODUCTION COMPANY, LLC,
a Texas Limited liability company, et al.,
RESPONDENTS

PETITIONERS' JOINT REPLY BRIEF

On Appeal from the Circuit Court of Marshall County, West Virginia
Civil Action No. 22-C-83
(Honorable Jason A. Cuomo)

/s/ Edmund L. Wagoner
Edmund L. Wagoner (WVSB #10605)
Matthew B. Hansberry (WVSB #10128)
Hansberry & Wagoner, PLLC
265 High Street, 3rd Floor
Morgantown, WV 26505
(304) 470-2056
eddie@hanswag.com
matt@hanswag.com
Counsel for Petitioners, Corita Prendergast, Mary Lou Buckman, Grace Hoyt, Connie Sue Gandee, Eugene Prendergast, Frank Prendergast, Melissa Ulik, Lori Gulling, Elizabeth Prendergast, Julya Prendergast, Dawn Miruka and Paul Prendergast

/s/ John R. Whipkey
John R. Whipkey (WVSB #10033)
Clark Hill, PLC
1290 Suncrest Towne Centre
Morgantown, WV 26505
(304) 233-5599
jwhipkey@clarkhill.com
Counsel for Petitioner, Winged Foot Minerals, LLC

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I. BRIEF STATEMENT OF FACTS

The facts in this case are few, generally undisputed and bookended by two events, the death of Joseph Nolte, Sr. in 1920 and the tax sale to Petitioners' predecessor, James Prendergast, in 1991. The salient facts are:

1. Prior to 1920, Joseph Nolte, Sr. owned the surface and 100% of the oil and gas underyling a 363.81-acre tract in Meade District Marshall County. PA 68-74.

2. In his lifetime, Nolte, Sr.'s interest was covered by a single tax assessment in his name. PA 192.

3. Nolte, Sr. died in 1920 and his will severed the oil and gas from the surface and subdivided his surface into various tracts. PA68-74.

4. From 1921 to 1971, Joseph Nolte, *Jr.* owned the surface and one-fourth of the oil and gas underlying a 227.48-acre portion (the "Subject Lands") of Joeph Nolte, *Sr.'s* 363.81 acres. PA 55, 68-74.

5. From 1921 to 1939, Teresa Wiegand, Joseph Wiegand, Jr., Mary Miller, and Christina Baker owned the other three-fourths of the oil and gas underlying the Subject Lands (the "Subject Interest"). PA458-459.

6. After the death of Teresa Wiegand in 1939, the class of owners of the Subject Interest continually expanded, such that by 1991, over 20 owned a portion of the Subject Interest. PA458-459.

7. From 1921 to through the 1992 tax sale, the surface and one-fourth oil and gas interest remained together and a surface assessment remained on the land books in the surface owners name or names. PA192-193, 283.

8. Though they owned three-fourths of the oil and gas under the Subject Lands, no assessment was ever created in the names of Teresa Wiegand, Joseph Wiegand, Jr., Mary Miller, and Christina Baker, or any of their successors in the Subject Lands between 1921 and the present millennium.

9. Between 1933 and 1936 and again from 1946 through 1972, a separate *group* oil and gas assessment was on the land books in Marshall County in the name of Joseph Nolte, Sr. Heirs for "Royalty Oil" or "Roy" (the "Nolte Heirs Assessment"). PA248, 250, 277-278.

10. Between 1946 and 1971, the Joseph Nolte, Sr. Heirs continuously paid the taxes on this group assessment. *Id.*

11. In 1971 Joseph Nolte, Jr. died and his executor sold his surface and one-fourth oil and gas interest in the Subject Lands to R. Robinson Chance.

12. In 1972 the Nolte Heirs, a/k/a the Respondents or their predecessors, failed to pay their taxes, the Nolte Heirs Assessment went delinquent, R. Robinson Chance redeemed it in 1974 and had thereafter had the group assessment billed to him. PA280-283.

13. In 1982, R. Robinson Chance sold his interest in the Subject Lands but continued paying the group assessment through 1990. PA291, 310.

14. In 1990, the group Nolte Heirs Assessment went delinquent, none of the Respondents or the predecessors redeemed it, and the Petitioners' predecessor purchased it at a 1991 tax sale, culminating in a 1993 tax deed. PA81-91.

15. The Respondents did not have their interests separately assessed until the 2000s and the Marcellus leasing boom and at no point, between 1921 and 2000 were any

assessments ever created covering the Respondents' interests, other than the group Nolte Heirs Assessment.

II. ARGUMENT

This is a remarkably simple case, complicated by shotgun briefing. The Court must decide who, as between Respondents and Petitioners, own the Subject Interest. The Respondents undisputably did not pay any taxes on the Subject Interest between 1972 and almost two decades after the 1991 tax sale in issue. If you take them at face value, the Respondents, and their myriad predecessors between 1920 and the present millennium, never even bothered to have their interest assessed for taxes. The correct outcome is as simple as it appears: Respondents, or their predecessors, failed to pay the taxes on their interests and lost those interests as a result.

The Respondents argue that the Nolte Heirs Assessment is void, unnecessary, duplicative, and every other adjective that could possibly relieve them of the consequence of the choices they have made: a group assessment, not paying their taxes, not separately entering their property at any time, and not redeeming the interest on either of the two occasions it went delinquent. Though many, their arguments substantively boil down to two: (1) the group Nolte Heirs Assessment is invalid as a duplicate assessment because the Petitioners, and the State from whom they take title, cannot explain why the Marshall County Assessor did what he or she did in arriving at the values to be placed on the respective assessments; and (2) the group Nolte Heirs Assessment was invalid because it was later in R. Robinson Chance's name. Both have been addressed in Petitioners' brief. The former fails because the "statutory taxation scheme exists to ensure the payment of taxes, not to protect owners who fail to do so" and "there is a presumption that valuations for taxation purposes fixed by an assessor are correct." *Collingwood Appalachian Minerals III, LLC v. Erlewine*, 248 W. Va. 615, 622, 889 S.E.2d 697, 704 (2023); Syl. pt. 2, *Western*

Pocahontas Properties v. Wetzel County Comm'n, 189 W. Va. 322, 431 S.E.2d 661 (1993). The latter fails because West Virginia law explicitly authorizes group assessments and "every citizen is presumed to have known that his land was taxable . . . that it was his duty to timely pay his taxes [and] that if he failed to do so his land would be offered for sale and resale at a time and place specified in the statutes." ." W. Va. Code § 11A-1-9, *Shaffer v. Mareve Oil Corp.*, 157 W. Va. 816, 827, 204 S.E. 2d 404, 411 (1974) (citations omitted).

What the Respondents are really asking, is for the Courts to reallocate the burdens imposed by the legislature's tax scheme and to shift the consequences of the choices made pursuant to that legislation. In so doing, the Respondents will, if successful, upend the tax scheme in this State with two directly foreseeable consequences. First, all tax sales stemming from group assessments will be subject to review to determine whether the person to whom the tax bill was sent had the authority of *all* of the stakeholders covered thereby. Second, all tax sales of severed mineral interests will be subject to review to determine whether the surface assessment, at the time the mineral assessment was entered, reflected a dollar-for-dollar reduction for the amount of the mineral assessment, regardless of how remote in time either was created or assessed. On the other hand, reversing that decision, as Petitioners request, places the consequences of the group assessment choice on the owners who made it; allows tax purchasers security in the validity of their title, regardless of subjective intent by the assessor; and permits the State to recover delinquent property taxes at full value. To the extent the Respondents raised any new points in their responses, they will be succinctly rebutted, but none of their arguments alters the truism that failing to pay your taxes may result in forfeiture.

A. The Nolte Heirs Group Assessment Was Valid and Requested *by* the Nolte Heirs

SWN Production Company, LLC ("SWN") *et al.* (the "SWN Respondents") argue that a group assessment is only valid where requested, no such group assessment was requested here, and therefore the Nolte Heirs group assessment is invalid. (SWN Respondents' Brief, Pp. 13, "black letter law requires parties to specifically request . . . a group assessment . . . . and [no] factual or legal support [that they did]"; 18 "there is no evidence that the Nolte Descendants requested a group or joint assessment . . . ." This argument ignores all facts in evidence. This group assessment was valid when created and valid when sold.

The West Virginia taxation scheme exists first and foremost to collect taxes. In furtherance of this aim, group assessments are authorized and "any person having an interest in the land . . . shall be allowed to pay the whole, but not a part of the taxes assessed thereon") Va. Code § 11A-1-9 (1941). A co-owner is also entitled to redeem the interests of other co-owners. W. Va. Code § 11-4-9 (1935). If a property owner subject to a group assessment wishes to be taxed separately, they must "have the group assessment split and must secure from the assessor and present to the sheriff a certificate setting forth the changes made in the assessment." W. Va. Code § 11A-1-9. Once the group assessment is created, the burden is therefore on the taxpayer to change the manner of assessment.

Choosing a group assessment carries with it a benefit and a burden: there is only one tax bill *but* everyone in the group is dependent on one person to actually pay the taxes. The fact that the person so tasked has "shuffled off this mortal coil" does not relieve the other owners of their duty to pay their taxes or obligate the assessor to seek out the next volunteer for group assessment duty.

In 1933, the Nolte Heirs "Royalty Oil" assessment appeared on the land books and was paid for a few years. It reappeared in 1946 as "Nolte Joseph Heirs Roy" and thereafter was continuously paid for the next 24 years. One or more of the Respondents' predecessors requested this group assessment or, at minimum, accepted it in lieu of individual assessments as evidenced by the continuous payment. We do not know why the taxes on the Nolte Heirs Assessment went delinquent in 1972 (possibly the death of Nolte, Jr.). The why is, however, irrelevant. Whoever was paying the taxes either failed to pay them due to inability (*i.e.* death) or neglect. Regardless, there were three potential consequences: (1) a tax sale; (2) someone else accepted responsibility; or (3) the Respondents (or their predecessors) would have their interests separately assessed. They chose to forego option (3) and thereby would lose their interests, unless option (2) was exercised.

R. Robinson Chance chose option (2) and assumed responsibility for the taxes. When he redeemed the Nolte Heirs Assessment, he owned an interest in the land and was entitled to redeem the Respondents' interests and was entitled to pay the taxes owed by the Respondents (or their predecessors) thereafter. The Respondents, or their predecessors, had the same opportunity and right to redeem and pay, but they chose not to. Rather, they chose to continue to rely on the payment of all interests under the group assessment that they had previously elected. The foreseeable consequence of this choice was that at some point the person tasked with paying the taxes might again neglect to do so.

B. The SWN Respondents Conflate Record Title With Taxed Interests

The SWN Respondents repeatedly argue that R. Robinson Chance did not own the interest that the Petitioners now claim. In so doing, the SWN Respondents conflate two separate concepts: (1) the means by which real estate is conveyed and (2) the means by which the State collects and enforces taxes on that real estate. There is no dispute, that as of the death of Joseph

Nolte, Sr., the oil and gas underlying the Subject Lands was severed and that thereafter, the owner of the surface, including R. Robinson Chance between 1972 and 1982, only owned one-fourth of the oil and gas thereunder. This has no impact, however, on the Respondents, or their predecessors', obligations to pay their taxes on the other three-fourths, or the consequences when the taxes on those interests, were not paid.

It is true that in West Virginia, an interest in real estate can only be voluntarily conveyed by will (to devisees), deed (to grantees) or inheritance (to heirs). *See e.g.* W. Va. Code § 36-1-1 ("no estate of inheritance or freehold . . . may be taken . . .unless by deed or will"), W. Va. Code § 42-1-2 ("any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs"). It is also, true, as the SWN Respondents contend, that a tax deed purchase is "only vested with 'all such right, title and interest in and to the real estate as was, at the time of the execution and delivery of the deed, vested in or held by the state." (SWN Respondents' Brief at P. 13, quoting W. Va. Code § 11A-4-33). These two points of law are separate and distinct.

In 1993, when James Prendergast acquired the Subject Interest by tax deed, R. Robinson Chance had no interest in the Subject Lands to convey. But this is not dispositive. In 1946, when the Nolte Heirs Assessment was entered for the first time, the "Nolte Heirs" likewise had no interest to convey. Joseph Nolte, Sr. never had "heirs" as he had a will. Moreover, the class of owners with an interest covered by the assessment, included not just Joseph Nolte, Sr.'s *devisees*, but also the nine *devisees* of Theresa Wiegand, some of whom were two generations removed from Joseph Nolte, Sr. and none had the surname "Nolte." The same is true of almost all group assessments in this State. They are often in a name similar to John Doe Estate or Jane Doe Heirs. The existence of an estate with an appointed executor or administrator, or the absence

of a will, *i.e.* proof of the existence of "Heirs" or an "Estate" does not dictate the validity of the assessment or the obligations thereunder. Likewise, group assessments are often maintained in the name of a single, deceased individual, who as a matter of law, has no interest to convey.

So, whether "Joseph Nolte, Sr. Heirs", "R. Robinson Chance", or anyone else to whom the group assessment was sent, owned anything at the time of sale is irrelevant. The assessment was a valid group assessment when created. R. Robinson Chance was authorized to pay the taxes on the group assessment because he owned an interest in the land. When it went delinquent, the State did not acquire R. Robinson Chance's interest, but the interests *covered* by the assessment—*i.e.* the Subject Interest.

C. The Petitioners' Address the Validity of the R. Robinson Chance Assessment in Their Brief

In the Mary Elizabeth Alexander *et al.* (the "Alexander Respondents") brief, they argue that the Petitioners failed to raise the issue of the validity of the assessment in R. Robinson Chance's name. This is not a case like those cited by the Alexander Respondents, where Petitioner failed to list *any* assignments of error or omitted *an entire claim*. *See Hamon v. Morris*, 2021 W. Va. LEXIS 551 (W. Va. 2021)(memorandum decision)(Petitioner failed to plead lack of informed consent in trial court and failed to include informed consent issue as assignment of error). While not raised as a specific assignment of error, the validity of the R. Robinson Chance assessment was part and parcel of the decision appealed and well addressed in the Petitioners' brief to this Court.

At Page 12 of the Petitioners' brief, they explain that:

> When the Nolte Heirs Assessment *first* went delinquent in 1972, R. Robinson Chance, Jr. owned one-fourth (1/4th) of the oil and gas under the Subject Lands. He was therefore entitled to redeem the Nolte Heirs Assessment and pay the taxes thereon pursuant to W. Va. Code § 11-4-9 and W. Va. Code § 11A-1-9. The fact that the

> Nolte Heirs Assessment was placed in his name per his request by the Assessor does not render the assessment invalid or erroneous.

The Petitioners go on to explain that the land books are replete with group assessments in the name of entities or estates that never owned an interest in the property assessed, let alone owned an interest at the time the interest was sold. This was, in fact, the situation presented in both the *Bonacci* and *L & D* cases. *Orville Young, LLC v. Bonacci,* 246 W. Va. 26, 30–31, 866 S.E.2d 91, 95–96 *(2021)* (group assessment in the name of one of many long-deceased cotenants); *L&D Invs. Inc. v. Mike Ross, Inc.*, 241 W. Va. 46, 49, 818 S.E.2d 872, 875 (2018) (oil and gas "in place" group assessment in the name of one of many long-deceased cotenants). As in those cases, the Respondents, or their predecessors, chose a group assessment, and the fact that they would not be provided notice of the sale, *in their name* or *to their address*, is the foreseeable consequence of that choice.

D. The *Cunningham* Case is Inapplicable to a Group Assessment

The Alexander Respondents cite *Cunningham v. Brown*, 39 W. Va. 588, 20 S.E. 615 (1894) in arguing that because the Nolte Heirs group assessment was in R. Robinson Chance's name, it was invalid. A group assessment is, by definition, not in the name of each specific owner and *Cunningham* is therefore inapplicable.

In Cunningham, property was conveyed from John Cunningham to Elizabeth Cunningham in 1881 and entered in her name as for taxes as 34 acres the following year. *Id.* at 590, 20 S.E. at 616. She paid the taxes for 1882. *Id.* In 1883, the assessor mistakenly put the interest back in the name of John Cunningham, listed the property as 65 acres, and omitted any assessment of Elizabeth Cunningham's interest. *Id*. According to the Court, this assessment was invalid because it was "made without her knowledge or consent in another name and with a different description." *Id.* at 598-599, 20 S.E. at 619.

The *Cunningham* case is therefore easily distinguishable from the present. In *Cunningham*, the property owner had done what the law had required—had her interest appropriately assessed and paid the taxes thereon. The consequences of the assessor's clerical error could not therefore be rightfully taxed to her. Here, the Respondents, or their predecessors *chose* a group assessment. When that group assessment first went delinquent in 1972, they were given the very notice they now claim was required—to the "Nolte Joseph Heirs." They could have redeemed their interest and had their interests separately assessed. They did not. They chose to retain the group assessment, under the name of R. Robinson Chance. This was a choice, and one with the foreseeable potential consequence that only one person was tasked with paying all of the taxes.

E. The *LT Realty* and *Snodgrass* Cases Are not Applicable

The Alexander Respondents argue that the *Snodgrass* and *LT Realty* cases mandate that a tax sale purchaser demonstrate a dollar-for-dollar reduction of a surface assessment in order to prove the nonexistence of a duplicate assessment. This reliance is misplaced as the cases are clearly distinguishable and the burden of demonstrating payment of taxes elsewhere, in fact rests on the delinquent taxpayer, not the purchaser.

The *LT Realty* case dealt with a mineral interest that was *never* separately assessed. *Northeast Natural Energy, LLC v. LT Realty Unlimited, LLC*, 250 W. Va. 500, 503, 905 S.E.2d 179, 182 (W. Va. App. 2024). The tax purchasers of a separately assessed *coal* interest claimed to have acquired the oil and gas through the coal sale due to the oil and gas's automatic forfeiture to *the State* for non-entry. *Id.* at 505, 905 S.E.2d at 184. The *LT Realty* case, therefore dealt with non-entered, not delinquent lands, and whether the property was presumptively acquired automatically by the State under the prior statutes, not an advertised tax sale. This Court stated that "[o]ur

caselaw clearly establishes that when a mineral estate *has never been separately* assessed, it is presumed to be with the surface . . . ." *Id.* at 505, 905 S.E.2d at 184.

In *Snodgrass*, Price conveyed 53 acres to Higgins in 1900, reserving one-sixteenth oil and gas. *Snodgrass v. Jolliff*, 59 W. Va. 292, 293, 53 S.E. 151, 151 (1906). Price then conveyed 1/32nd oil and gas to Jolliff *et al. Id.* Higgins is assessed with the 53 acres, and pays taxes, at the same rate as Price was prior to the severance. *Id.* Price is assessed with, and pays taxes on, 1/16th of the oil and gas. *Id.* Jolliff *et al.* are assessed with 1/16th also, but fail to pay their taxes for 1901 and the assessment was sold. *Id.* The Court held that payment of either the *unreduced* surface (and 15/16th oil and gas) assessment to Price *or* the *unreduced* 1/16th oil and gas assessment paid for Jolliff *et al.*'s 1/16th interest. *Id.* at 295, 53 S.E. at 152.

Here, unlike in *LT Realty*, the oil and gas was separately assessed, in the Nolte Heirs Assessment, and sold due to delinquency. Also, in contrast to *LT Realty*, this is not an automatic forfeiture to the State for nonentry case, rather it is a forfeiture by advertised sale for nonpayment after several decades of continuous payment. *LT Realty* is therefore wholly inapplicable to the facts presented. *Snodgrass* is likewise inapplicable for several reasons. In *Snodgrass*, in addition to the unreduced surface assessment, there were two mineral assessments, both for 1/16th, covering a single 1/16th interest. It was therefore apparent, on its face, that the taxes on both were paid, regardless of the surface assessment. Moreover, unlike in *Snodgrass*, the surface assessment on the Subject Lands *was reduced* between the time of the severance and the time the Nolte Heirs Assessment was entered. This is not a case where the Subject Interest is clearly covered by a separate assessment. The Alexander Respondents want to eliminate the "presumption that valuations for taxation purposes fixed by an assessor are correct" in furtherance of "the statutory taxation scheme [that] exists to ensure the payment of taxes, not to protect owners who fail to do."

Syl. pt. 2, *Western Pocahontas Properties v. Wetzel County Comm'n*, 189 W. Va. 322, 431 S.E.2d 661 (1993); *Collingwood Appalachian Minerals III, LLC v. Erlewine*, 248 W. Va. 615, 622, 889 S.E.2d 697, 704 (2023). They want to replace it with a presumption that "the assessor is presumed incompetent" in order to "protect those who fail to pay their taxes." This is a wholesale departure from the letter and spirit of this State's statutory tax scheme, which should not be adopted.

F. The Nolte Heirs Assessment is Sufficiently Descriptive

Though not part of the Circuit Court's decision below, the SWN Respondents argue that the Nolte Heirs Assessment was invalid for lack of a sufficient description. This ignores the practical realities of property assessments. These assessments, at best, include a recitation of the name of the owner (or group), an acreage recitation, and perhaps a local body of water. In all instances, the only way to locate the actual property, is to locate the source of title. Here, Jopeph Nolte Sr.'s will was recorded, identified the location of the property, and would have been the first document reviewed by any title researcher. Furthermore, anyone wishing to ascertain the interest when in the name of R. Robinson Chance, could easily work back to the first entry in his name, which includes the notation "see Joseph Nolte Heirs"—likely for the express purpose of aiding such a researcher. There is simply not insufficiency in the description of this assessment. If there were, why did Respondents (and their predecessors) pay it for so long? If there were, why does everyone involved in this case know exactly what piece of property we are fighting over.

III. CONCLUSION

Despite all the paper in this file, this remains a simple case. The Respondents (or predecessors) chose a group assessment, and their taxes were paid on that group assessment until they were not. The logical and legally dictated consequence of the group assessment choice and the failure to pay that assessment was the 1993 tax deed. There is no reason to deviate from the

outcome so clearly dictated by the facts and law presented. This Court must overturn the Circuit Court's decision and grant summary judgment in favor of Petitioners.

Submitted this 11th Day of July 2025.

/s/ Edmund L. Wagoner
Edmund L. Wagoner (WVSB #10605)
Matthew B. Hansberry (WVSB #10128)
Hansberry & Wagoner, PLLC
265 High Street, 3rd Floor
Morgantown, WV 26505
(304) 470-2056
eddie@hanswag.com
matt@hanswag.com
Counsel for Petitioners, Corita Prendergast, Mary Lou Buckman, Grace Hoyt, Connie Sue Gandee, Eugene Prendergast, Frank Prendergast, Melissa Ulik, Lori Gulling, Elizabeth Prendergast, Julya Prendergast, Dawn Miruka and Paul Prendergast

/s/ John R. Whipkey
John R. Whipkey (WVSB #10033)
Clark Hill PLC
1290 Suncrest Towne Centre
Morgantown, WV 26505
(304) 233-5599
jwhipkey@clarkhill.com
Counsel for Petitioner, Winged Foot Minerals, LLC

CERTIFICATE OF SERVICE

I certify that, on July 11, 2025, the foregoing "Petitioners' Reply Brief" was filed with the File and Servexpress system and served upon the Respondents' counsel of record via email and upon the *pro se* Respondents by placing a true and correct copy in the United States Mail, addressed as follows:

<table>
<tr>
<td>Timothy M. Miller, Esquire
Robert M. Stonestreet, Esquire
Tiffany M. Arbaugh, Esquire
Babst, Calland, Clements & Zomnir, P.C.
300 Summers Street, Suite 1000
Charleston, WV 25301
tmiller@babstcalland.com
rstonestreet@babstcalland.con
tarbaugh@babstcalland.con
Counsel for Defendants, SWN Production Company, LLC & Equinor USA Onshore Properties, Inc.</td>
<td>Andrew G. Jenkins, Esquire
Jenkins Legal Group
77 South Washington Street
Waynesburg, PA 15370
andrew@jenkinslegalgroup.com
Counsel for Defendants, Mineral Acquisition Company I, L.P. & Mac I(YC)L.P.</td>
</tr>
<tr>
<td>Jeffery D. Kaiser, Esquire
Andrew R. Thalman, Esquire
Phillips, Gardill, Kaiser & Altmeyer, PLLC
61 Fourteenth Street
Wheeling, WV 26003
jeffkaiser@pgka.com
andrewthalman@pgka.com
Counsel for Defendants, Lynn E. Cook, Mary K. McKeets, Frances J. Pucharich, Amy C. Murray & Suzanne Thompson</td>
<td>O. Gay Elmore, Jr., Esquire
121 Summers Street
Charleston, WV 25301
elmorelaw@aol.com
Counsel for Defendant, Sue E. Johnson</td>
</tr>
<tr>
<td colspan="2">Christian E. Turak, Esquire
Gold, Khourey & Turak, L.C.
510 Tomlinson Avenue
Moundsville, WV 26041
cet@gkt.com

S. David Wilharm, Esquire
Rokisky, McCune, Wilharm & Blair, PLLC
3200 Main Street
Weirton, WV 26062
dwilharm@rokiskylaw.com

Daniel J. Guida, Esquire
Guida Law Offices
3374 Main Street
Weirton, WV 26062
guidalaw@comcast.net

Counsel for Defendants, Mary Elizabeth Alexander, Mary A. Barkley, Kevin Blatt, individually and as Trustee of the Blatt Family Irrevocable Trust Dated April 1, 2011, Thomas Blatt, Paul E. Blatt, Lawrence E. Blatt, Jr., Joseph J. Blatt, William J. Blatt, Jr., Richard P. Blatt, Michael J. Blatt, Steven Blatt, Teresa Church, Laura M. Dolan, Patrick A. Frohnapfel, Lisa Frohnapfel, David P. Frohnapfel, Lynn Frohnapfel, Christina M. Frohnapfel, Mary Ann Goddard, Joseph</td>
</tr>
</table>

A. Hohman & Mary L. Hohman, Trustees of the Hohman Revocable Living Trust Dated August 8, 2014, Bertha Klug, Nancy Koontz, Lisa M. Lantz, Edna McCombs, Constance S. Miller, Mark H.J. Miller, Matthew Louis Nicholas Miller, Margaret Julia Agnes Miller, Kevin Mysliwiec, Mary Josephine Nice, Barbara Pancake, Linda Ruckman, Mary Stine, Robert Francis Villers, Kenneth A. Wiegand, Leonard L. Wiegand, Robert L. Wiegand, Charles A. Wiegand, David Paul Wiegand, John G. Wiegand, Margaret Wilson, David L. Wilson, Mary Catherine Miller Wright, Robert F. Yeager, Michael P. Yeager, Michael Young, and Rosemary Lewis	
Joseph Canestraro, Esq. Marshall County Prosecuting Attorney 600 7th St. Moundsville, WV 26041 jcanestraro@marshallcountywv.gov *Counsel for Marshall County Sheriff as Conservator for Brenda Garcia*	Master Mineral Holdings I, L.P. c/o CT Corporation System 5098 Washington Street West, Suite 407 Charleston, WV 25313-1561
Abigail I. Burkey 14560 Hatfield Road Rittman, OH 44270	Vemuri Home & Garden, LLC PO Box 6154 Wheeling, WV 26003
Nancy Lipscomb 1334 Lola St. Akron, OH 44305	Agnes Haskins 785 East Pleasant Home Wooster, OH 44691
Jeffrey W. Silchuk 797 Denshire Drive NW Canal Fulton, OH 44614	Catherine Laier 5416 Peninsula Dr. NW Canton, OH 44718
Rosemary Lewis 16685 Lake Circle Drive, Unit 1017 Fort Myers, FL 33908	Judy Wiegand 5931 Freitag Street NW Canton, OH 44718

/s/ Edmund L. Wagoner
Edmund L. Wagoner (WVSB #10605)