Case No. 20-3469

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ZEHENTBAUER FAMILY LAND LP, HANOVER FARMS LP, and EVELYN FRANCES YOUNG, SUCCESSOR TRUSTEE OF THE ROBERT MILTON YOUNG TRUST,

Plaintiffs-Appellants,

v.

CHESAPEAKE EXPLORATION, L.L.C., CHESAPEAKE OPERATING, INC.; CHK UTICA, L.L.C.; and TOTAL E&P USA, INC.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Ohio, Case No. 4:15-cv-02449-BYP

BRIEF OF PLAINTIFFS-APPELLANTS

Dennis E. Murray, Jr. (0038509)
dmj@murrayandmurray.com
Direct Dial: (419) 624-3126
William H. Bartle (0008795)
whb@murrayandmurray.com
Direct Dial: (419) 624-3012
MURRAY & MURRAY CO., L.P.A.
111 E. Shoreline Drive
Sandusky, Ohio 44870
Facsimile: (419) 624-0707

Scott M. Zurakowski (0069040)
szurakowski@kwgd.com
Terry A. Moore (0015837)
tmoore@kwgd.com
Gregory W. Watts (0082127)
gwatts@kwgd.com
Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A.
4775 Munson St. NW
P.O. Box 36963
Canton, Ohio 44735-6963
Direct Dial: (330) 244-2878
Main Phone: (330) 497-0700, ext. 173
Facsimile: (330) 497-4020
Counsel for Plaintiffs-Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. STATEMENT IN SUPPORT OF ORAL ARGUMENT

Plaintiffs-Appellants, landowners-lessors, respectfully request Oral Argument. Oral Argument will aid the Court in interpreting the parties' oil and gas leases in accordance with the parties' intent and Ohio law. This Court's standard of review is *de novo*.

II. STATEMENT OF JURISDICTION

The district court had diversity jurisdiction over this action under 28 U.S.C. § 1332. On March 30, 2020, the district court granted Defendants Chesapeake Exploration, L.L.C. ("CELLC"), Chesapeake Operating, L.L.C. ("COLLC"), and CHK Utica, L.L.C.'s ("CHK Utica") (collectively "Chesapeake") Motion for Summary Judgment and Defendant Total E&P USA, Inc.'s ("Total") Motion for Summary Judgment, and denied Plaintiffs' Motion for Partial Summary Judgment. This Court has jurisdiction under 28 U.S.C.A. § 1291.

III. STATEMENT OF ISSUES

Whether the district court properly granted Defendants' Motions for Summary Judgment.

IV. STATEMENT OF THE CASE – PRODECURAL HISTORY

This action was commenced in the Columbiana County Court of Common Pleas on 10-26-2015. It was removed to the Federal District Court for the Northern District of Ohio on 11-30-2015 (RE#1, Page ID# 1-8).

On 7-20-2018, the district court granted Plaintiffs' Motion for Class Certification in part (RE 123). The Sixth Circuit Court of Appeals later granted discretionary review and thereafter unanimously affirmed the decision of the district court. Case. No. 18-4139 (August 15, 2019).

On 7-22-2019, Plaintiffs filed a Motion for Partial Summary Judgment on the issue of whether taking deductions was in violation of Plaintiffs' Gross Royalty Leases as to all Defendants (RE 168, Page ID 4936-4938), and a brief in support (RE 168-1, Page ID 4939-4976). On 8-21-2019, Chesapeake and Total filed Cross-Motions for Summary Judgment and Opposition to Plaintiffs Motion and briefs in support (RE 177, Page ID 5774-5776; RE 178, Page ID 5777-5802; RE 179, Page ID 5803-5806; RE 179-1, Page ID 5807-5835). Defendants Jamestown Resources, L.L.C. and Pelican Energy, L.L.C., joined in the motion of the Chesapeake Defendants (RE 180, Page ID 5884-5887). Plaintiffs filed Oppositions to Defendants' Motions and Replies in Support of Plaintiffs' Motion on 9-20-2019 (RE 183, Page ID 5894-5923; RE 184, Page ID 5924-5956). Defendants filed Replies in Support of Defendants' Motion for Summary Judgment (RE 186, Page ID 5977-5985; RE 187, Page ID 5986-6002; RE 188, Page ID 6008-6010).

On March 30, 2020, the district court granted Defendant Chesapeake's Motion for Summary Judgment and Defendant Total's Motion for Summary

Judgment, and denied Plaintiffs' Motion for Partial Summary Judgment (RE 202, Page ID 6154-6191; RE 203, Page ID 6192).

V. STATEMENT OF FACTS

A. Gross Royalty Leases.

On or about 12/23/2010, plaintiff, Hanover Farms LP, entered into an oil and gas lease with Buckeye Energy, LLC, the predecessor to CELLC. Plaintiff, Zehentbauer Family Land LP, entered into its oil and gas lease on or about 1/11/2011. Plaintiff, Robert Milton Young Revocable Trust, entered into an oil and gas lease on or about 3/14/2012. The three leases are collectively referred to as the "Gross Royalty Leases." *See* Compl. ¶¶ 15–17, RE 1-1, Page ID 19-20; Zehentbauer Lease, RE 1-1, Page ID 44; Hanover Farms Lease, RE 1-1, Page ID 66; Young Lease, RE 1-1, Page ID 88.

B. Pertinent Lease Language.

Paragraph 5 of the Zehentbauer Family Land LP and the Hanover Farms Limited Partnership Gross Royalty leases are identical and state in pertinent part:

> **ROYALTIES.** Lessee covenants and agrees:
>
> b. Gas Royalty. To pay to the Lessor seventeen and one half percent (17.5%) royalty based upon the **gross proceeds** paid to the lessee for the **gas marketed and used off the leased premises**, including casinghead gas or other gaseous substance, and produced from each well drilled thereon, computed at the wellhead from the sale of such gas substances so sold by Lessee in an arms-length transaction to an unaffiliated *bona fide* purchaser, or if the sale is to an affiliate of Lessee, the price upon which royalties are based shall be comparable to that which could be obtained in an arms length transaction (given the quantity and quality of the gas available for sale from

> the leased premises and for a similar contract term) **and without any deductions or expenses** except for Lessee to deduct from Lessor's royalty payments Lessor's prorated share of any tax, severance or otherwise imposed by any government body. For purposes of the Lease, "**gross proceeds**" **means the total consideration paid for oil, gas, associated hydrocarbons, and marketable by-products produced from the leases premises**. (Emphasis added.)

Paragraphs 9 and 44 of Evelyn Young's Gross Royalty Lease states in pertinent part:

> 9. **ROYALTIES**. Lessee covenants and agrees:
>
> b. Gas Royalty. To pay to the Lessor TWENTY percent (20.0%) royalty based upon the **gross proceeds** paid to the lessee for the **gas marketed and used off the leased premises**, including casinghead gas or other gaseous substance, and produced from each well drilled thereon, computed at the wellhead from the sale of such gas substances so sold by Lessee in an arms-length transaction to an unaffiliated bona fide purchaser, or if the sale is to an affiliated of Lessee, the price upon which royalties are based shall be comparable to that which could be obtained in an arms-length transaction (given the quantity and quality of the gas available for sale from the leased premises and for a similar contract term) **and without any deductions or expenses**. For purposes of this Lease, **"gross proceeds" means the total consideration paid for oil, gas, associated hydrocarbons, and marketable by-products produced from the leased premises without deductions of any kind** except as provided in paragraph 44. (Emphasis added.)[1]
>
> 44. AD VALOREM TAXES. Lessor and Lessee each shall pay their respective share of all Ad Valorem taxes, Lessor's share to be equal to the percentage of royalty paid to Lessor. Despite anything to the contrary, Lessee shall be responsible for all severance taxes associated with production of oil and gas under this Lease. Lessee agrees to pay for any CAUV recoupment incurred by Lessor as a result of Lessee's operations under this Lease, but any such payment shall be based only upon the acreage actually disturbed by Lessee.

[1] The oil royalty provision likewise is based on "gross proceeds."

Plaintiffs' gas royalty provisions require the Lessee to pay a royalty based on gross proceeds, defined as includes the total consideration paid for oil, gas, and marketable by-products marketed off the leasehold without any deductions.

C. Deductions From Gross Proceeds.

Chesapeake admitted that deductions and expenses were taken from the Plaintiffs' royalties. For example, Chesapeake's answer to Interrogatory No. 4, stated in pertinent part:

> a Chesapeake affiliate sells the hydrocarbons produced from the named Plaintiffs' wells to third parties and receives prices based on those third-party sales, and royalties are paid based on the terms of the lease and based on such sales to third parties. The royalty calculation uses the third party sales prices as the starting point and **uses the netback method to adjust for pro rata postproduction expenses** in order to determine the wellhead value of the hydrocarbons, which is the sales price received by the Chesapeake lessee entity at the wellhead. The sales price used in calculating royalties owed to the named Plaintiffs is therefore **also based upon third-party sales prices**. As further explanation, Chesapeake lessee entities transfer the hydrocarbons at the wellhead to another Chesapeake entity, namely Chesapeake Energy Marketing, L.L.C. ("CEMLLC") (formerly known as Chesapeake Energy Marketing, Inc.), and the Chesapeake lessee receives a price that is based on third-party sales prices. CEMLLC **uses the netback method to derive the price paid to the Chesapeake lessee entities** for sales of hydrocarbons, i.e., CEMLLC **adjusts the third-party sales price it receives to include actual post-production expenses** to determine the price it pays to the Chesapeake lessee entities at the wellhead.
>
> (Responses and Objections of Chesapeake Defendants to Plaintiffs' First Set of Interrogatories and Request for Production of Documents, Response to Interrogatory No. 4, RE 99-2, Page ID 1170-1172).

Total purchased an undivided twenty-five percent (25%) working interest in plaintiffs' wells. (Total's Answer to Interrogatory No. 1, RE 99-1, Page ID 1128). Total takes the natural gas and sells it to Total Gas & Power North America, Inc. ("TGPNA") based on "an arithmetic formula" that is "adjusted for TGPNA's costs of compression, dehydration, treating, gathering, fractionation, processing, and transportation" costs. (Third paragraph of Total's answer to Interrogatory No. 10, RE 99-1, Page ID 1133.) Total provides COLLC with this information. (Total's answer to Interrogatory No. 4, RE 99-1, Page ID 1130).

In other words, the "gross value" stated by Defendants on the Plaintiffs' royalty statements is actually the net value received from a putative affiliate, Chesapeake Energy Marketing, L.L.C. ("CEMLLC") (formerly known as Chesapeake Energy Marketing, Inc.) and Total, after deductions for post-production expenses by Defendants, Defendants' affiliate purchaser(s), and/or their agents.

Regardless, no actual sale of hydrocarbons occurred from CELLC or CHK Utica to CEMLLC. CEMLLC acted as the agent for CELLC and/or CHK Utica pursuant to a written and executed agency agreement.

VI. SUMMARY OF ARGUMENT

The issue before this Court is whether the district court correctly ruled that the Plaintiffs-Appellants/lessors bear the burden of post-production costs (those

costs associated with transporting, processing, compressing, and treating oil, gas, and associated hydrocarbons). The Plaintiffs state that the royalties to be paid the lessors are based on the gross proceeds (without deduction of post-production costs), and not based on the net proceeds (after the deduction of post-production costs) contrary to the district court's holding in its 3-30-2020 Memorandum Opinion And Order (RE 202, PageID 6154).

The district court improperly adopted an "at the well" rule which defeated the express lease terms and allowed the deduction of post-production costs resulting in a net royalty. The district court's decision conflicts with the Ohio Supreme Court which rejected the adoption of an "at the well" rule. *See Lutz v. Chesapeake Appalachia, L.L.C.*, Slip Opinion No. 2016-Ohio-7549 (Nov. 2, 2016). Ohio recognizes that oil and gas leases are contracts and the rules of contract construction apply to determine their meaning. *Harris v. Ohio Oil Co., 57 Ohio St. 118, 129, 48 N.E. 502 (1897)*; Lutz, 2016-Ohio-7549, ¶¶ 2, 9, 10. Following the legal principles set forth in the *Lutz* and *Harris* decisions, it is clear the parties' intended that royalty payments be calculated on gross proceeds when the lease is read in its entirety.

As set forth in *Lutz*, this Court should apply the basic rules of contract interpretation to determine whether the payment of royalties was intended to be based on the net proceeds or gross proceeds paid for the oil, gas, associated

hydrocarbons, and marketable by-products marketed off the leased premises. There is no reason for this Court to determine whether "at the well" language is a magical incantation that surreptitiously allows deductions of post-production costs resulting in a net royalty where the lease language specifically addresses whether deductions are allowed and whether the royalty is to be based on gross proceeds. In Ohio, "at the wellhead" language does not trump "gross proceeds" language, as it does in Texas (which follows the "at the well" rule). No gap filler is necessary. Gross Royalty Leases are not silent, and specifically prohibit deductions and expressly provides the royalty is based on gross proceeds, pointedly stated as the total consideration paid for marketable by-products marketed off the leased premises.

Further, it was improper for the district court to ignore the circumstances surrounding the negotiation of the Gross Royalty Leases, when it held Plaintiffs' evidence was extraneous and irrelevant (RE 202, Page ID 6172). When a contract is unclear or ambiguous, or when circumstances surrounding the agreement give special meaning to the plain language, extrinsic evidence is admissible to ascertain the intent of the parties. *Savedoff v. Access Group, Inc.*, 524 F.3d 754, 763 (6th Cir. 2008). Therefore, it was improper for the district court to ignore Chesapeake's 2010-2011 Standard Ohio Form Oil and Gas Lease (which expressly allows deductions of postproduction costs) (RE 168-11, PageID 5072; RE 168-12, PageID 5086), which the Gross Royalty Leases were negotiated in place of. The

Defendants knew how to put language in royalty provisions when they wanted to take deductions. This is further supported by plaintiff, Richard Zehentbauer's testimony with respect to the parties' intent – it was a primary motivation to lease that the royalties were to be determined without deductions. (Richard Zehentbauer Depo., 120:23-121:10, 123:3-8, 124:2-11, RE 100-1, PageID 1354, 1355, 1357, 1358).

This error was compounded by the district court not considering Chesapeake's previous determination in the Christensen matter (which involved identical royalty language) in which Chesapeake's key upper management and its in-house law department agreed with Plaintiffs' royalty interpretation (Declaration of William G. Williams, RE 168-15, PageID 5163-5169). Chesapeake's determination, after months of internal review, is not inadmissible hearsay, as the statements were party admissions against interest. Fed. R. Evid. 801(d)(2). This is material, and directly relevant and admissible.

This direct evidence shows the circumstances surrounding the negotiation of the Gross Royalty Lease, including the parties' intent, understanding and knowledge with respect to the meaning of the royalty provision, which was admissible and properly before the court. Even Texas courts recognize that royalties to be "paid on the gross value received" is "the opposite of market value at the well." *BlueStone Nat. Res. II, LLC v. Randle*, No. 02-18-00271-CV, 2019

WL 1716415, at *18 (Tex. App. Apr. 18, 2019). The District Court's decision that the term "computed at the wellhead", by itself, indicated just the opposite, that the royalty is to be based solely on its value at the wellhead. The District Court's conclusion results in an inherent, irreconcilable conflict between the language "gross proceeds," "marketed and used off the leased premises," "total consideration paid for . . . marketable by-products," "without any deductions or expenses", and the four words "computed at the wellhead," which conflict renders the gas royalty language ambiguous. *BlueStone Nat. Res. II, LLC v. Randle*, (Court of Appeals of Texas, Second District, Fort Worth, April 18, 2019, Delivered) 2019 Tex. Ap. LEXIS 3167. If ambiguous, the aforementioned evidence clearly shows the parties' intent to have a gross proceeds lease with no deductions of any postproduction expenses which should have been considered by the district court.

Lastly, the district court erred in finding a valid sale from the Chesapeake Defendants to CEMLLC. The court ignored that the Gas Sales Contract was unsigned, a defect under its very terms (RE 168-16, PageID 5174). The district court erroneously relied on two decisions in which the agency agreement was never raised. Self-serving testimony was accepted from Devon Bowles, Accounting Manager at COLLC (not CELLC or CEMLLC) who stated that CELLC and CEMLLC operated pursuant to the essential terms of (an unexecuted) putative Gas Sales Contract (Affidavit of J. Devon Bowles, RE 179-5, PageID

5882). However, the parties' conduct was also entirely consistent with the executed Agency Agreement between CELLC and CEMLLC which the court ignored (RE 182-1, PageID 5892). There could not be a "sale" to its own agent.

VII. ARGUMENT

THE DISTRICT COURT'S DECISION SHOULD BE REVERSED

A. The District Court's Decision is Contrary to Ohio Supreme Court's 2016 Ruling in *Lutz v. Chesapeake Appalachia*.

The district court erred in relying upon numerous non-Ohio cases from jurisdictions that have adopted the "at the well" rule. Under Texas law (an "at the well" state), amount realized or proceeds language can be negated by "at the well" language, preempting all other language, and renders a prohibition on post-production deductions meaningless and mere surplusage. *Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 123 (Tex. 1996). This is the exact opposite of Ohio law. The Ohio Supreme Court rejected the adoption of an "at the well" rule. *See Lutz v. Chesapeake Appalachia, L.L.C.*, 2016-Ohio-7549, 148 Ohio St. 3d 524, 71 N.E.3d 1010. Contrary to rendering language as meaningless and mere surplusage, Ohio law mandates that "[a] court 'must give meaning to every paragraph, clause, phrase and word, omitting nothing as meaningless, or surplusage.'" *Van Ligten v. Emergency Servs., Inc.*, 2012 WL 2517552, at *6 (Ohio Ct. App. June 29, 2012) (quoting *Affiliated FM Ins. Co. v. Owens-Corning Fiberglas Corp.*, 16 F.3d 684, 686 (6th Cir. 1994).

The plain and ordinary meaning of the word "gross" means the overall total, exclusive of (without) deductions. Merriam-Webster defines "gross" as "consisting of an overall total exclusive of deductions <gross income> — compare net." *See* http://www.merriam-webster.com/dictionary/gross (website visited October 27, 2016). Similarly, "gross income" is defined by Black's Law Dictionary as "[t]otal income from all sources before deductions, exemptions, or other tax reductions. INCOME, Black's Law Dictionary (10th ed. 2014). Conversely, "net income" is defined as "[t]otal income from all sources minus deductions, exemptions, and other tax reductions." *Id.*

The leases not only call for payment of royalties based upon gross proceeds received by the lessee, but additionally include the words "without any deductions or expenses." (Zehentbauer/Hanover lease, paragraph 5(b); Young lease, paragraph 9(a) and (b)), followed by words establishing one specific exception – a prorated share of governmentally imposed taxes.)

Contrary to the district court decision that the leases only contemplate royalty on raw products at the well, the leases actually provide for gross proceeds on "marketable by-products," such as processed and treated natural gas liquids consisting of propane, methane, ethane, etc.

> For purposes of this Lease, "gross proceeds" means the **total consideration paid for** oil, gas, associated hydrocarbons, and **marketable by-products** produced from the leased premises.

Merriam-Webster Dictionary defines "by-product" as "something produced in a usually industrial or biological process in addition to the principal product // a chemical byproduct of the oil-refining process." https://merriam-webster.com/dictionary/by-product. Likewise, Black's Law Dictionary (11th ed. 2019), defines "byproduct" as "1. Something additional that is produced during a process, either natural or industrial; a secondary or additional product or material made in the course of manufacturing the principal product or material." Both of these definitions expressly contemplate additional processing – i.e., postproduction costs, and the gross proceeds being payable on the sale of that byproduct off the leasehold.

B. Calculation Of The Royalties Upon The Gross Proceeds Paid Does Not Conflict With Or Ignore The "Computed At The Wellhead", Or The "Affiliate Sale" Lease Language.

A royalty clause may require the royalty to be calculated based either (1) upon the market value at a specified location or (2) the dollar proceeds paid. The Gross Royalty Leases clearly state that their gas royalty is to be based upon "the gross proceeds paid to (the) Lessee for the gas marketed and used off the leased premises, . . ." The leases further specifically define gross proceeds as meaning the total consideration paid for oil, gas, associated hydrocarbons, and marketable by-products produced from the leased premises.

The Leases' royalties are not to be computed on the basis of market value at a specified location (wellhead). Instead, the Leases provide for a gas royalty calculated on the basis of the gross proceeds paid for the gas marketed and used off the leased premises (i.e., downstream) without any deductions or expenses. The wellhead is located on leased premises in the well's unit. The Leases' gas royalty provision does not allow royalty to be calculated at the wellhead. Because the Leases already identified a valuation point, the actual proceeds from the sale without any deductions, it was improper for the district court to create an artificial valuation point at the wellhead.

The "computed at the wellhead" language references the computations necessary to determine the volume or amount of gas upon which the lessors' royalty should be computed. The well's meter and charts for the measurement of the volume of gas are always located at the wellhead. The wellhead is the surface location where the well's pipe comes above ground. Interpreting "computed at the wellhead" to refer to volume is consistent with the remainder of the royalty provision. Interpreting the phrase to import a valuation point creates an internal conflict in the royalty provision rendering it inconsistent and ambiguous. *See BlueStone Nat. Res. II, LLC v. Randle*, No. 02-18-00271-CV, 2019 WL 1716415, at *18 (Tex. App. Apr. 18, 2019) (royalties to be "paid on the gross value received" is "the opposite of market value at the well").

The district court opinion also does not correctly analyze the Leases' "affiliate sale" language. The affiliate sale language requires that the price upon which royalties are based shall be comparable to that which could be obtained in an arms length transaction and without any deductions or expenses. The court interpreted this language as requiring a sale at the wellhead, despite the other royalty language to the contrary. The court's holding misses the point. The affiliate sale language must be read and interpreted in conjunction with the calculation of the royalties based upon the gross proceeds paid without deductions of any kind. This reading allows the gross proceeds without deductions of any kind language to have relevance and meaning, otherwise, there is no reason for its inclusion.

The district court ignored the "without any deductions or expenses" language at the end of the "so-called" affiliate sales clause even though Chesapeake and Total expressly deducted expenses to calculate the price. The transaction confirmations expressly note the price is the downstream price (weighted average sales prices) minus CELLC's proportionate share of any costs for compression, dehydration, gathering, transportation, treating and processing.

Contract Price: 97% of the applicable CEMI weighted average sales prices (WASP) for each Delivery Point, minus Seller's proportionate share of any applicable fees incurred by CEMI in marketing such production, including, but not limited to, fees for compression, fuel and gas lost-and-unaccounted-for, dehydration, gathering, transportation, treating and processing.

(Transaction Confirmation, RE 167-3, PageID 4661).

Likewise, Total's Transaction Confirmation provides the price is less all fixed costs under all Downstream Agreements.

> **Contract Price:** The Contract Price for the sale and purchase of Gas at each Delivery Point shall be equal to the weighted average of the "Average Monthly Netback Price" and the "Average Daily Netback Price" at such Delivery Point, plus any net additional liquids value, if any, less the fixed costs incurred under all Downstream Agreements (including reservation and demand fees) expressed in U.S. Dollars per MMBtu for the total Contract Quantity at such Delivery Point.

(Transaction Confirmation, RE 172-4, PageID 5450). Downstream Agreements is defined to mean all post-production costs.

> Schedule "2" – Downstream Agreements. "Downstream Agreements" means all agreements relating to the compression, dehydration, gathering, transportation, treating, fractionation or processing of Gas sold and purchased under this Transaction Confirmation. Schedule "2" shall be revised from time to time as mutually agreed by the parties.

(Id., PageID 5451). However, the Gross Royalty Leases provide for payment based on that sales price but without deductions.

Additionally, the lower court failed to discuss the express definition of "gross proceeds" which included payment for the marketable by-products – not raw material at the well.

The lower court erroneously relied upon a number of cases from "at the well" states despite Ohio not being an "at the well" state, including *EQT Prod. Co. v. Magnum Hunter Prod., Inc.*, (United States Court of Appeals for the Sixth Circuit, April 10, 2019, Filed) 768 Fed. Appx. 459, as support. In fact, the Sixth Circuit distinguished *EQT Prod. Co.*, *supra*, in its 8-15-2019 Class Action Decision in *Zehentbauer Family Land, LP v. Chesapeake Expl., L.L.C.*, (United States Court of Appeals for the Sixth Circuit, June 19, 2019, Argued; August 15,

2019, Decided and Filed) 2019 U.S. App. LEXIS 24289, limiting its application to jurisdictions in which the "at the well" rule applies.

The Sixth Circuit found that since Kentucky was a jurisdiction which adopted the "at the well" rule, the royalty should be applied to the fair market value of gas at the well, allowing the deduction of post-production expenses. This is not Ohio law, and the district court's reliance on decisions from at the well states is contrary to the Ohio Supreme Court's decision in Lutz.

C. The Significance And Application Of "Computed At The Wellhead."

Proper meaning to each word of the royalty clause is necessary pursuant to *Lutz*. The district court's conclusion to value the gas at the wellhead ignores the lease language that the royalty was to be based upon gross proceeds paid to lessee for the gas marketed off the leased premises and that "for purposes of this lease", "gross proceeds" was specifically defined to mean the total consideration paid for oil, gas, associated hydrocarbons, and marketable by-products produced from the leased premises. The lease language clearly contemplates the gross (dollar) proceeds accruing "off the leased premises" and being paid for the "marketable byproducts" which don't exist as saleable products at the wellhead, but only after processing and treating. The district court's decision ignores this critical language.

The district court decision negates the entire language of the gas royalty clause by concluding that "computed at the wellhead" does not refer to volume

(which would be consistent with the rest of the language in the royalty provision as well as the industry's location of the gas measurement meter) but rather modifies "gross proceeds" on which royalties are to be paid, which impermissibly creates a second valuation point rendering the lease language contradictory and ambiguous. The lower court's interpretation renders most of the words in the royalty clause superfluous in violation of Ohio contract interpretation. *Van Ligten v. Emergency Servs., Inc.*, 2012 WL 2517552 (must omit nothing as meaningless, or surplusage). The "computed at the wellhead" language is only in the gas royalty provision and not in the oil royalty clause. Why is that? Oil is stored in storage tanks and picked up by trucks. Oil does not travel through a meter to measure its quantity while the volume of gas is computed (measured) at the wellhead where the gas meter is located. Therefore, the logical reading of "computed at the wellhead" means measuring the production of gas, especially when read in conjunction with the remainder of the gas royalty provision as well as its omission from the oil royalty clause.

Contrary to the district court's decision, "computed" does not reach farther back in the sentence to modify "gross proceeds". If that were the case, the royalty clause would have to read something like "gross proceeds computed at the wellhead" or "market value at the well," but it does not. Therefore, "computed at the wellhead" refers to volume and modifies the words gas marketed and used, a

perfectly natural requirement given the royalties will be calculated by multiplying the price times the volume. "Specifying that the volume on which a royalty is due must be determined at the wellhead says nothing about whether the overriding royalty must bear postproduction costs." *Chesapeake Expl., L.L.C. v. Hyder*, 483 S.W.3d 870, 874 (Tex. 2016).

D. Ohio Law Supports Royalties Based On Gross Proceeds.

The district court improperly ignored Ohio precedent because it was too old. In *Busbey v. Russell*, 10 Ohio C.C. 23 (1898), the Circuit Court of Ohio on a case on appeal from the Court of Common Pleas of Harrison County, interpreted a royalty provision to determine whether royalty was to be paid on "net proceeds" or "gross proceeds."

The court acknowledged that "income" may mean net or gross income. *Id.* at 25. However, the instrument to be construed was not of a commercial character between merchants, and therefore, the question was not to be determined by strict commercial usage, but by principles that take into consideration how and by whom the term was used, in determining the meaning of the parties in the use of that term. *Id.* Looking at it in that light, the court determined that it was clear the parties intended gross income, not net. *Id.* at 26. The court stated it is a matter of common observation that royalties on minerals are assessed on the marketable amount produced and it is fair to infer that when the lessor in this instance

stipulated for one-eighth of the income from the gas produced and sold, he intended, and it was understood to be, one-eighth of the gross income or receipts from the sale. *Id.* at 26-27. The court concluded:

> It was impracticable to deliver one-eighth of the gas itself to the lessor as was to be done with the oil, and it seems reasonable that he would stipulate for the same proportion of the receipts from the marketed gas, **instead of running the risk of no substantial return for the gas by reason of bad financial management and wasteful expenditures on the part of the lessees**. *Id.* (Emphasis added).

As noted by one commentator, "[t]his case recognizes that the proper calculation of royalty depends upon the wording of the applicable royalty clause and * * * the *Busbey* court emphasizes that *royalty clauses should not be construed by isolating and defining specific words, but by construing the entire royalty provision as a whole."* (Emphasis added.) Anderson, 37 Natural Resources J. at 593.

In *Busbey*, the Ohio appellate court found that even where the lease was unclear as to how to calculate the gas royalty (didn't specify net or gross), it was intended and understood to be gross based on the totality of the royalty provision, including that the oil royalty was free of expense. In this case, the Gross Royalty Leases are even more clear, expressly providing for payment on the gross proceeds in both the oil and gas royalty provisions, without deductions or expenses except government taxes.

The district court erred in ignoring Ohio law, and instead citing numerous cases from other jurisdictions, which were not binding in Ohio, and clearly inapplicable since they were from states following the "at the well" rule, which Ohio rejected.

E. The District Court Improperly Failed to Consider Material Evidence Regarding the Meaning of the Gross Royalty Leases.

In determining the meaning of language used in a contract, a leading treatise on the subject, Corbin on Contracts, states:

> The court will give legal effect to the words of a contract in accordance with the meaning actually given to them by one of the parties, if the other knew or had reason to know that he did so. In determining the meaning so given by the one and the fact of knowledge or reason to know by the other, the court will hear all relevant evidence of the surrounding circumstances, including the admissions of the parties, the negotiations and antecedent communications between them, and all current usages that might have affected their choice of the words. . . . These are among the relevant surrounding circumstances; and evidence of what they were is admissible.

Corbin on Contracts, Section 543 (1960 Ed.) (emphasis added).[2]

The Sixth Circuit Court of Appeals has adopted the position of §543: "[s]tatements by one party to the other as to the meaning of words or as to the terms of agreement, made in the course of their preliminary negotiation, are relevant and admissible to show what each of them had reason to understand by the

[2] The *Restatement (Second) of Contracts, §214* also reflects this view: "Agreements and negotiations prior to or contemporaneous with the adoption of the writing are admissible in evidence to establish . . . the meaning of the writing."

words eventually embalmed in the 'integration.'" *Van Dorn Plastic Machinery Co. v. N.L.R.B.*, 881 F.2d 302, 305 (C.A.6, 1989) (citing *Corbin on Contracts* § 543). In *U.S. v. Stuart*, 489 U.S. 353, 368, N.7 (1989), the United States Supreme Court acknowledged that, "[I]t is Hornbook contract law that the proper construction of an agreement is that given by one of the parties when 'that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party.'"

Ohio law is in accord. In *Rhodes v. Rhodes Indus., Inc.*, 71 Ohio App.3d 797, 804, 595 N.E.2d 441, 445 - 446 (Ohio App. 8 Dist., 1991), the court stated "[p]arol evidence which is not contradictory to the terms of a contract is admissible 'to illuminate the circumstances under which the contract was executed, and to explain the intent of the parties as reflected in the contract.'" The court cited to and relied on *Third National Bank of Cincinnati v. Laidlaw*, 86 Ohio St. 91 (1912), in which the Supreme Court of Ohio stated:

> [T]he language used is to be understood in its plain, ordinary sense, as read in the light of surrounding circumstances . . . evidence of the surrounding circumstances is competent, in order to arrive at the intention of the parties, as declared by the words employed, and, as in construing all contracts, the words employed by the parties will be construed in the light of these circumstances. . . . for the purpose of putting the court in possession of the circumstances under which the transaction occurred, so as to better enable it to arrive at the intention of the parties in the making and accepting of the [contract], and better to construe the language employed in it.

Id. at 100-101. See also *Besser v. Buckeye Pipe Line Co.*, 57 Ohio App. 341, 343-344 (1937), in which the court commented upon the admission of parol evidence to explain a written easement, stating:

> **[**A] prior or contemporaneous oral understanding may always be shown when such pertain to matters that induced its making or will disclose the understanding of the contracting parties of its terms at the time of its execution. Such proffered testimony, the matter of the line's depth, demand upon the company's agent that the line be lowered, which would establish knowledge thereof in the defendant, was competent and should not have been excluded.

Savedoff v. Access Group, Inc., 524 F.3d 754, 763 (6th Cir. 2008) (extrinsic evidence is admissible to ascertain the intent of the parties when circumstances surrounding the agreement give special meaning to the plain language).

Therefore, it was improper for the district court to ignore Chesapeake's Standard Ohio Form Oil and Gas Lease for the years 2010 and 2011 which were known to Plaintiffs (which expressly allows deductions of postproduction costs) (RE 168-11, PageID 5072; RE 168-12, PageID 5086). The Gross Royalty Leases royalty language was negotiated in place of Chesapeake's standard form and was clearly relevant to the circumstances and knowledge of the parties surrounding the drafting of the Gross Royalty Leases. Plaintiffs' Gross Royalty Leases provide for payment of royalties based on [1] gross proceeds [2] without any deductions or expenses. Chesapeake's standard oil and gas lease company form provides for payment of royalties based on [1] net proceeds [2] with deductions for post-

production costs, including cost to transport, gather, dehydrate, compress, market, meter, treat and process. The district court decision treats identically these completely contradictory lease terms. The Defendants clearly knew the language to put in royalty provisions when they wanted to take deductions. This is further supported by class representative, Richard Zehentbauer's testimony with respect to the parties' intent – the royalties were to be determined without deductions (Richard Zehentbauer Depo., 80:21-82:24, 120:20-121:10, 123:3-8, 124:2-11, RE 100-1, PageID 1314-1316, 1354-1355, 1357-1358), and class representative Evelyn Frances Young, as Successor Trustee of the Robert Milton Young Revocable Trust, was likewise privy to such an understanding as an undivided ½ interest in the same property that was already subject to an earlier net proceeds lease. *See* Young Net Lease, RE 168-13, PageID 5102-5106), Affidavit of Evelyn Frances Young, RE 168-13, PageID 5097-5098.

This error was compounded by the district court ignoring Chesapeake's own admission in the Christensen matter in which it agreed with Plaintiffs' interpretation of the Gross Proceeds leases (Declaration of William G. Williams, RE 168-15, PageID 5163-5169). Chesapeake's prior admission is not inadmissible hearsay, as the statements were party admissions against interest. Fed. R. Evid. 801(d)(2). This is material, and directly relevant and admissible.

Likewise, Chesapeake admitted (and the district court previously recognized) the "at the wellhead" rule would be inapplicable to leases such as the Class's, which specifically address the calculation of royalty and prohibit deductions.

> While the "at the well" language was used in that lease, the lease did not detail the method for calculating royalties, something the Chesapeake Exploration leases in the instant case attempts. *See Lutz*, Respondents' Merit Brief, No. 2015-0545, 2015 WL 6558230, at *15. There are no provisions in the *Lutz* lease discussing whether the royalty is to be based on the gross proceeds or net proceeds, nor does it include a provision discussing deductions. ECF No. 11 at PageID #: 214. Each of these provisions are found in the leases at issue with Chesapeake Exploration.

Memorandum and Opinion and Order, RE 43 at PageID #514; *See also Lutz v. Chesapeake Appalachia, L.L.C.*, Ohio Supreme Court Case No. 2015-0545, Chesapeake's Merit Brief, at 5 (Aug. 3, 2015) (wherein it concedes that post-production costs are shared "*unless the lease explicitly says otherwise*" (emphasis added.)); Brief of *Amicus Curiae* Bruce M. Kramer, at 5 (Aug. 3, 2015) ("references to the terms 'well' or 'wellhead' have, *in the absence of other express, contrary language in the lease . . . "* (emphasis added.)); Brief of *Amicus Curiae* American Petroleum Institute, at 7 (Aug. 3, 2015) ("[w]hen an oil and gas lease provides royalty is to be calculated based on value 'at the well,' * * * lessee is allowed to allocate to the lessor "his or her *pro rata* share of post-production costs,

"unless such allocation of costs is expressly prohibited in the lease."). The district court noted during the oral argument in *Lutz*:

> [B]oth parties made it clear that the certified question only applies when the lease in dispute is ambiguous or leaves unfilled gaps. Petitioner argued, "I want to be clear. This is a narrow question before the Court. It is not to rule on every lease." *Lutz*, Oral Argument, No. 2015-0545 at 04:12 in. Among those specific ones that get negotiated are "gross proceeds" valuations. *Id.* at 05:43 in."

As the district court initially recognized:

> The certified question before the Ohio Supreme Court does not apply to all Ohio oil and gas leases, but rather to leases that are identically vague in deciding how to calculate royalties and offer no decipherable intent of the parties. The contract terms between Plaintiffs and Defendants in the instant case appear to decide how to calculate royalties and demonstrate the parties' intent to calculate royalties in a specific manner.

See Memorandum and Opinion and Order, RE 43, PageID 514-515.

This evidence directly shows the circumstances surrounding the negotiation of the Gross Royalty Lease, including the parties intent, understanding and knowledge and is admissible whether the leases are ambiguous or not.

As stated above, royalties to be "paid on the gross value received" is "the opposite of market value at the well." *BlueStone Nat. Res. II, LLC v. Randle*, No. 02-18-00271-CV, 2019 WL 1716415, at *18 (Tex. App. Apr. 18, 2019). If the term "at the wellhead", by itself, means the royalty is to be on the value at the wellhead, then there is an inherent, irreconcilable conflict between the language "gross proceeds," "marketed and used off the leased premises," "total consideration paid

for . . . marketable by-products," "without any deductions or expenses"; and 'at the wellhead," which conflict renders the language ambiguous. *Id*. If ambiguous, the aforementioned evidence clearly shows the parties intent to have a gross proceeds lease with no deductions of any postproduction expenses and should have been considered by the district court.

F. Chesapeake's affiliate sale argument is not only irrelevant, it is false.

The district court's conclusion that CELLC purports to sell the oil & gas to CEMLLC at or near the well pad, completely ignores that the leases specifically provide if the sale is to an affiliate, the price shall be comparable to that obtained in an arm's length transaction except without any deductions or expenses. Appellees do the exact opposite, deducting post-production costs from the arm's length sale price. The Transaction Confirmation shows the third party sales price is less the costs of "Seller's proportionate of any applicable fees incurred by CEMI in marketing such production, including, but not limited to, fees for compression, fuel and gas lost-and-unaccounted for, dehydration, gathering, transportation, treating, and processing."


Contract Price: 97% of the applicable CEMI weighted average sales prices (WASP) for each Delivery Point, minus Seller's proportionate share of any applicable fees incurred by CEMI in marketing such production, including, but not limited to, fees for compression, fuel and gas lost-and-unaccounted-for, dehydration, gathering, transportation, treating and processing.

(Transaction Confirmation, RE 167-3, PageID 4661).

However, the Gross Royalty Leases, specify the comparable sales has to be without any deductions. Here, the comparable sale is with deductions in violation of the leases.

Regardless, Appellees do not actually sell the oil and gas to CEMLLC. Chesapeake relies on two documents to support its alleged sale to its affiliate: (1) Base Contract for Sale and Purchase of Natural Gas between CELLC and CEMLLC ("Gas Sales Contract") (RE 168-16) and (2) Oil Purchase and Sale Contract and amendments thereto ("Oil Sales Contract") (RE 168-17). However, the Gas Sales Contract is not signed, which is fatal under section 2.4 of that very agreement that states "Base Contract" "shall mean a contract executed by the parties." (RE 168-16, PageID 5174) (emphasis added). Likewise, the Oil Sales Contract states that it covers all Oil owned by Seller in the "Contract Areas" identified on Exhibit A, but Exhibit A fails to list Ohio. Therefore, both alleged contracts are defective on their face.

Conversely, there is a valid and executed Agency Agreement between CELLC and CEMLLC, that specifically states CEMLLC is Chesapeake's agent to market, contract, sell, and receive payment in CEMLLC's own name for CELLC's oil and gas. As CEMLLC is CELLC's agent, there is no sale at or near the well pads, and CELLC has no right to deduct their own post-production costs. Regardless, the court in *Chesapeake Expl., L.L.C. v. Hyder*, 483 S.W.3d 870, 873

(Tex. 2016), properly ignored the transfer to CEMLLC and held that a proceeds gas royalty lease does not bear postproduction costs and based the royalty owed on the price Chesapeake's affiliate actually received for the gas.

The district court improperly ignored the Agency Agreement on the basis that two prior court decisions had found the sale to CEMLLC is real. (Memorandum of Opinion and Order, RE 202, PageID 6183). However, in both of those cases the Agency Agreement was not raised or presented as an issue, and both cases did not challenge the "sale," in fact, they stipulated to it. *See Henceroth v. Chesapeake Exploration, L.L.C.*, No. 4:15CV2591, 2019 WL 4750661, at *2 (N.D. Ohio Sept. 30, 2019), aff'd sub nom. *Henceroth v. Chesapeake Expl., LLC*, No. 19-3942, 2020 WL 2569356 (6th Cir. May 21, 2020) (stipulated fact #14); *Gateway Royalty, L.L.C. v. Chesapeake Expl.*, 2020-Ohio-1311, 2020 WL 1671626, ¶ 5. Therefore, these cases were improperly relied on since evidence on agency presented herein was never presented and presumably withheld by Chesapeake in the other two cases cited by the district court.

Further the testimony of J. Devin Bowles that the Agency Agreement does not apply is self-serving, and contradicted by the very agreement itself that does not have any "area limitation," unlike the Oil Sales Contract, which, ironically, has an express area limitation and Defendants assert should be ignored, since it would not be beneficial.

VIII. CONCLUSION

For the reasons stated, the District Court's Decision should be reversed.

Respectfully submitted,

/s/ Gregory W. Watts
Scott M. Zurakowski (0069040)
szurakowski@kwgd.com
Terry A. Moore (0015837)
tmoore@kwgd.com
Gregory W. Watts (0082127)
gwatts@kwgd.com
Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A.
4775 Munson St. NW
P.O. Box 36963
Canton, Ohio 44735-6963
Direct Dial: (330) 244-2878
Main Phone: (330) 497-0700, ext. 173
Facsimile: (330) 497-4020

and

Dennis E. Murray, Jr. (0038509)
dmj@murrayandmurray.com
Direct Dial: (419) 624-3126
William H. Bartle (0008795)
bill@murrayandmurray.com
Direct Dial: (419) 624-3012
MURRAY & MURRAY CO., L.P.A.
111 E. Shoreline Drive
Sandusky, Ohio 44870
Facsimile: (419) 624-0707

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic system on this 25th day of June, 2020.

/s/ Gregory W. Watts
Gregory W. Watts (0082127)
Krugliak, Wilkins, Griffiths &
Dougherty Co., L.P.A.

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I hereby certify that the foregoing Brief complies with the type-volume limitations in Federal Rule of Appellate Procedure 5(c)(1). According to the word count feature of Microsoft Word, the Brief contains 6,940 words, excluding the exempted parts under Rule 32. The Brief has been prepared in a proportionally spaced typeface using Times New roman in 14-point size.

APPELLEES' DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Record Citations to *Zehentbauer Family Land LP, et al. v. Chesapeake Exploration, LLC, et al.* United States District Court, Northern District of Ohio Case No. 4:15-cv-02449-BYP			
Designation of Document	**Date Filed**	**Record Entry Number**	**Page Number**
Notice of Removal	11-30-2015	01	1-8
Class Action Complaint	11-30-2015	1-1	14-168
Zehentbauer Family Land LP Lease	11-30-2015	1-1	44-65
Hanover Farms Limited Partnership Lease	11-30-2015	1-1	66-87
The Robert Milton Young Rev. Trust Lease	11-30-2015	1-1	88-116
Memorandum and Opinion and Order	7-19-2016	43	511-517
Df Total's Objections and Answers to Pfs' Interrogatories and Request for Production of Documents	9-15-2017	99-1	1122-1163
Responses and Objections of Chesapeake Defendants to Plaintiffs' First Set of Interrogatories and Request for Production of Documents	9-15-2017	99-2	1164-1231
Richard Zehentbauer Depo	9-15-2017	100-1	1235-1468
Memorandum of Opinion and Order granting Plaintiffs' Motion for Class Certification	7-20-2018	123	3835-3852
Transaction Confirmation	7-22-2019	167-3	4661-4662

Plaintiffs Motion for Partial Summary Judgment	7-22-2019	168	4936-4938
Memorandum in Support of Motion for Partial Summary Judgment	7-22-2019	168-1	4939-4976
Affidavit of David J. Eigel	7-22-2019	168-11	5066-5082
Affidavit of Roger M. Romeo	7-22-2019	168-12	5083-5095
Affidavit of Evelyn Frances Young	7-22-2019	168-13	5096-5136
Declaration of William G. Williams	7-22-2019	168-15	5161-5169
Base Contract for Sale and Purchase of Natural Gas	7-22-2019	168-16	5170-5183
Oil Purchase and Sale Contract	7-22-2019	168-17	5184-5208
Transaction Confirmation	7-31-2019	174-4	5450-5466
Total E&P's Cross- Motion for Summary Judgment	8-21-2019	177	5774-5776
Total E&P's Memo in Support of Cross-Motion for Summary Judgment and Response to Plaintiffs' Motion for Partial Summary Judgment	8-21-2019	178	5777-5802
Chesapeake's Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Partial Summary Judgment	8-21-2019	179	5803-5806
Brief in Support of MSJ	8-21-2019	179-1	5807-5835
Affidavit of J. Devon Bowles	8-21-2019	179-5	5881-5883
Joinder of Dfs Jamestown Resources and Pelican Energy to CHK's MSJ and Opposition to Pf's Mtn for Partial SJ	8-21-2019	180	5884-5887
Agency Agreement	9-20-2019	182-1	5892-5893
Pfs' Memorandum in Opposition to Total's Cross-Motion for SJ and Pfs' Reply Memo in Support of Pfs' Partial MSJ	9-20-2019	183	5894-5923

Pf's Opposition to Chesapeake's MSJ and Pfs' Reply Memo in Support of Pfs' Partial MSJ	9-20-2019	184	5924-5956
Total E&P USA's Reply to Pfs' Response to Cross Motion for SJ	10-4-2019	186	5977-5985
Chesapeake's Reply Brief in Support of MSJ	10-4-2019	187	5986-6002
Joinder of Dfs Jamestown Resources and Pelican Energy to Chesapeake's Reply in Support of MSJ	10-4-2019	188	6008-6010
Memorandum Opinion And Order	3-20-2020	202	6154-6191
Judgment Entry	3-30-2020	203	6192

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 20-3469 Case Name: Zehentbauer Family Land, LP v. Chesa

Name of counsel: Gregory W. Watts

Pursuant to 6th Cir. R. 26.1, Hanover Farms, LP
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on June 25, 2020 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Gregory W. Watts
Attorney for Plaintiffs-Appellants
Krugliak, Wilkins, Griffiths & Dougherty

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 20-3469 Case Name: Zehentbauer Family Land, LP v. Chesa

Name of counsel: Gregory W. Watts

Pursuant to 6th Cir. R. 26.1, Evelyn Young
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on June 25, 2020 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Gregory W. Watts
Attorney for Plaintiffs-Appellants
Krugliak, Wilkins, Griffiths & Dougherty

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 20-3469 Case Name: Zehentbauer Family Land, LP v. Chesa

Name of counsel: Gregory W. Watts

Pursuant to 6th Cir. R. 26.1, Zehentbauer Family Land, LP
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on June 25, 2020 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Gregory W. Watts
Attorney for Plaintiffs-Appellants
Krugliak, Wilkins, Griffiths & Dougherty

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.