

**BEFORE THE VIRGINIA GAS AND OIL BOARD**

**PETITIONER:** CNX Gas Company LLC

**DIVISION OF GAS AND OIL**

**DOCKET NO:** VGOB 12-0515-3065-02

**RELIEF SOUGHT: (1) DISBURSEMENT FROM ESCROW REGARDING TRACT(S) 3, 5 (2) AND AUTHORIZATION FOR DIRECT PAYMENT OF ROYALTIES**

**HEARING DATE:** August 18, 2015

**DRILLING UNIT:** ZZZ32

**BUCHANAN COUNTY, VIRGINIA**

**PETITION FOR ORDER OF DISBURSEMENT OF ESCROW FUNDS**

**1. Petitioner and its counsel**

Petitioner is CNX Gas Company LLC, 627 Claypool Hill Mall Road, Cedar Bluff, VA 24609, (276) 596-5075. Petitioner's counsel is Mark A. Swartz, Hillard & Swartz, LLP, 122 Capital Street, Suite 201, Charleston, WV 25301.

**2. Relief Sought**

(1) the disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tracts 3 & 5 as depicted upon the annexed table; and (2) authorization to begin paying royalties directly to the parties to the prevailing plaintiffs; T.G. Rogers, III, Derek Browning Rogers, Kevin Rogers, Shaun Rogers, Gregory Poulos, Jason Poulos, and Pamela Poulos.

**3. Legal Authority**

Va. Code Ann. § 45.1-361.1 et seq., 4 VAC 25-160-140., and relevant Virginia Gas and Oil Board Orders ("Board") heretofore promulgated pursuant to law.

**4. Type of Well(s)**

Coalbed Methane

**5. Factual basis for relief requested**

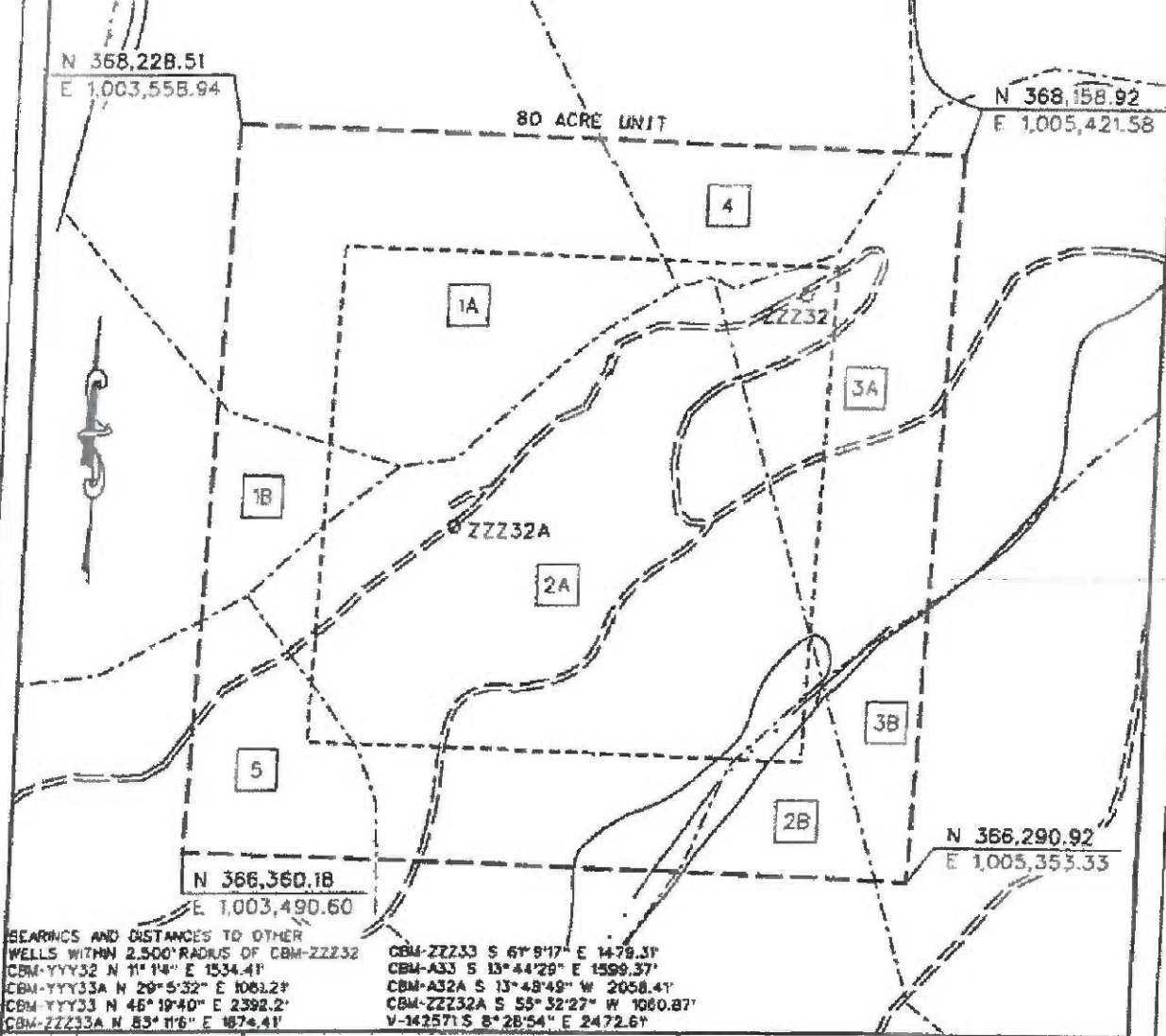
T.G. Rogers, III, Derek Browning Rogers, Kevin Rogers, Shaun Rogers, Gregory Poulos, Jason Poulos, and Pamela Poulos is entitled to 100% of the CBM royalties awarded under Case No. 550-13, Opinion dated July 10, 2014, Said decision allows the Applicant and Designated Operator to pay royalties directly to the person(s) identified in Exhibit EE annexed hereto and the annexed Table, further, specifies how said royalties are to be paid.

There are no remaining conflicts after the disbursement, escrow is no longer required and account is to be closed after disbursement.

**6. Attestation**

The foregoing Petition to the best of my knowledge, information, and belief is true and correct.

Property lines shown on this plat were provided by CNX Gas Company LLC and were taken from deed descriptions and chains of title of record. This does not represent a current boundary survey. This certification is as to the size, shape and location of the proposed unit.



○ CBM WELL  
● PROPOSED CBM WELL



Digitally signed by Stephen E Madfield  
DN: cn=US, o=Stephen E. Madfield, ou=IL PRICE ENGINEERING AND LAND SURVEYING INC PC, cn=Stephen E Madfield, o=Stephen E Madfield, ou=IL PRICE ENGINEERING AND LAND SURVEYING INC PC, email=stephen@ilprice.com, c=US, postalCode=26041, serialNumber=13842EE1A, version=1  
Date: 2014.03.13 14:40:26 -0400'

EXHIBIT A  
OAKWOOD FIELD  
UNIT ZZZ32  
FORCE POOLING  
VGOB-12-0515-3065-01

Company CNX Gas Company LLC Well Name and Number UNIT ZZZ32  
 Tract No. \_\_\_\_\_ Elevation \_\_\_\_\_ Quadrangle PATIERSON  
 County BUCHANAN District GARDEN/ NORTH GRUNDY Scale: 1" = 400' Date \_\_\_\_\_  
 This plat is a new plat X ; an updated plat \_\_\_\_\_ ; or a final plat \_\_\_\_\_

Form DGO-GO-7 \_\_\_\_\_ (Affix Seal)  
 Rev. 9/91 Licensed Professional Engineer or Licensed Land Surveyor \_\_\_\_\_

**CNX Gas Company LLC**  
**UNIT ZZZ32**  
**Tract Identifications**

1. Buchanan Realty Limited Partnership (100 Acre Tract) – All Minerals  
Island Creek Coal Company – Coal Below Tiller Seam Leased  
Jewell Smokeless Coal Corporation – Coal In Jawbone Seam and Above Leased  
Range Resources-Appalachia, LLC – Oil and Gas Leased  
CNX Gas Company LLC – CBM Leased  
20.85 acres                      26.0625%
  
- 1A. Curtis N. Stiltner, et al – Surface  
1B. Unknown Surface Owner
  
2. Clift Investment Group, LLC, et al (74.10 Acre Tract) – All Minerals  
Island Creek Coal Company – Coal Below Tiller Seam Leased (50%)  
Jewell Smokeless Coal Corporation – Tiller and Above Coal Leased  
CNX Gas Company LLC – Oil, Gas and CBM Leased  
34.90 acres                      43.6250%
  
- 2A. CNX Gas Company LLC - Surface  
2B. Unknown Surface Owner
  
3. LBR Holdings, LLC (85.50 Acre Tract) – All Coal  
Island Creek Coal Company – Coal Below Jawbone Seam Leased  
Reserve Coal Properties Company – P-3 Seam Subleased  
Jewell Smokeless Coal Corporation – Coal In Jawbone Seam and Above Leased  
LBR Holdings, LLC, et al – Oil and Gas  
EQT Production Company – Oil, Gas and CBM Leased (75%)  
14.33 acres                      17.9125%
  
- 3A. Walter Cooper, et ux – Surface  
3B. Unknown Surface Owner
  
4. Daryl Dennis, et al (35 Acre Tract) – All Minerals  
Jewell Smokeless Coal Corporation – Tiller and Above Coal Leased  
Appalachian Energy, Inc. – Oil and Gas Leased  
CNX Gas Company LLC – CBM Leased  
Burton Mullins, et ux - Surface  
4.47 acres                      5.5875%
  
5. LBR Holdings, LLC (211.80 Acre Tract) – All Coal  
Island Creek Coal Company – Coal Below Jawbone Seam Leased  
Reserve Coal Properties Company – P-3 Seam Subleased  
Jewell Smokeless Coal Corporation – Coal In Jawbone Seam and Above Leased  
LBR Holdings, LLC, et al – Oil and Gas  
EQT Production Company – Oil, Gas and CBM Leased (75%)  
Kim Smith, et al – Surface  
5.45 acres                      6.8125%

"This title block is for general informational purposes only and does not reflect an analysis of the severance deed and its effect upon coal bed methane ownership and should not be relied upon for such purpose."



Exhibit E  
Unit ZZZ-32  
Docket # VGOB 12-0515-3065-02  
List of Respondents that require escrow  
(80 Acre Unit)

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Acres in Unit

Percent  
of Unit

Escrowing not required

Exhibit EE  
Unit ZZZ-32  
Docket # VGOB 12-0515-3065-02  
List of Respondents with Royalty Split Agreements or Court Orders  
**(80 Acre Unit)**

	Acres in Unit	Percent of Unit	Percent of Escrow
<b><u>Tract #3, 14.33 Acres</u></b>			
<b><u>COAL OWNERSHIP</u></b>			
	14.33 acres	17.9125%	
(1) LBR Holdings, LLC P.O. Box 22427 Lexington, KY 40522-2427 <i>(85.50 Acre Tract)</i>	3.58 acres 1/4 of 14.33 acres	4.4781%	<i>n/a</i>
<b><u>OIL &amp; GAS OWNERSHIP</u></b>			
(1) LBR Holdings, LLC, et al. <i>(85.50 Acre Tract)</i>	14.33 acres	17.9125%	
(b) T.G. Rogers, III 3014 Shalford Lane Matthews, NC 28104	0.45 acres 1/32 of 14.33 acres	0.5598%	<b>9.0559%</b>
(c) Derek Browning Rogers 2300 Carmel Road Charlotte, NC 28226	0.45 acres 1/32 of 14.33 acres	0.5598%	<b>9.0559%</b>
(d) Kevin Rogers 139 Wickham Rd. Garden City, NY 11530	0.45 acres 1/32 of 14.33 acres	0.5598%	<b>9.0559%</b>
(e) Shaun Rogers 121 NE 100th St. Miami Shores, FL 33138	0.45 acres 1/32 of 14.33 acres	0.5598%	<b>9.0559%</b>
(f) Gregory Poulos 1894 Glenwood St., SE Palm Bay, FL 32907-2423	0.60 acres 1/24 of 14.33 acres	0.7464%	<b>12.0745%</b>
(g) Jason Poulos 10870 SW 95 St. Miami, FL 33176	0.60 acres 1/24 of 14.33 acres	0.7464%	<b>12.0745%</b>
(h) Pamela Poulos 5000 SW 83rd St. Miami, FL 33143-8510	0.60 acres 1/24 of 14.33 acres	0.7464%	<b>12.0745%</b>
<i>*Prevailing plaintiff under Case No. 550-13 Awarded 100% of the CBM royalty.</i>			
<b><u>Tract #5, 5.45 Acres</u></b>			
<b><u>COAL OWNERSHIP</u></b>			
	5.45 acres	6.8125%	
(1) LBR Holdings, LLC <i>Tr. 1 (211.80 acre tract)</i> P. O. Box 22427 Lexington, KY 40522-2427	1.36 acres 1/4 of 5.45 acres	1.7031%	<i>n/a</i>
<b><u>OIL &amp; GAS OWNERSHIP</u></b>			
(1) LBR Holdings, LLC, et al. <i>Tr. 1 (211.80 acre tract)</i>	5.45 acres	6.8125%	
(b) T.G. Rogers, III 3014 Shalford Lane Matthews, NC 28104	0.17 acres 1/32 of 5.45 acres	0.2129%	<b>3.4441%</b>

**Exhibit EE**  
**Unit ZZZ-32**  
**Docket # VGOB 12-0515-3065-02**  
**List of Respondents with Royalty Split Agreements or Court Orders**  
**(80 Acre Unit)**

	Acres in Unit	Percent of Unit	Percent of Escrow
(c) Derek Browning Rogers 2300 Carmel Road Charlotte, NC 28226	0.17 acres 1/32 of 5.45 acres	0.2129%	<b>3.4441%</b>
(d) Kevin Rogers 139 Wickham Road Garden City, NY 11530	0.17 acres 1/32 of 5.45 acres	0.2129%	<b>3.4441%</b>
(e) Shaun Rogers 121 NE 100th Street Miami Shores, FL 33138	0.17 acres 1/32 of 5.45 acres	0.2129%	<b>3.4441%</b>
(f) Gregory Poulos 1894 Glenwood Street, NE Palm Bay, FL 32907-2423	0.23 acres 1/24 of 5.45 acres	0.2839%	<b>4.5922%</b>
(g) Jason Poulos 10870 SW 95 <sup>th</sup> Street Miami, FL 33176	0.23 acres 1/24 of 5.45 acres	0.2839%	<b>4.5922%</b>
(h) Pamela Poulos 5000 SW 83 <sup>rd</sup> Street Miami, FL 33143-8510	0.23 acres 1/24 of 5.45 acres	0.2839%	<b>4.5922%</b>

***\*Prevailing plaintiff under Case No. 550-13  
Awarded 100% of the CBM royalty.***

**Exhibit J**  
**Unit ZZZ32 Escrow Account Reconciliation Summary**  
**VGOB 12-0515-3065**

CNX Deposit Information		
Check Date	Check Number	Total
4/30/2014	E000026059	\$0.61
5/19/2014	E000026574	\$18.59
6/20/2014	E000028199	\$24.39
7/18/2014	E000030214	\$18.79
8/21/2014	E000031996	\$14.59
9/18/2014	E000033873	\$12.97
10/20/2014	E000037690	\$10.10
11/19/2014	E000039246	\$10.16
12/22/2014	E000041031	\$23.11
1/20/2015	E000042858	\$18.07
2/19/2015	E000044889	\$17.16
3/19/2015	E000046694	\$12.25
4/21/2015	E000048603	\$10.40
5/20/2015	E000051415	\$9.52

Escrow Bank Data														
Date	Escrow Royalty Deposits	Income	\$ Mrkt Int	CDARS Int	Fees	Distributions	Audit Costs	Corrections	Gain/Loss	Royalty Bonus	Total Int. and Fees	Bank Balance	Running Balance	Difference
													\$0.61	\$0.61
5/31/2014	\$19.20		\$0.00	\$0.00	\$0.00						\$0.00	\$19.20	\$19.20	\$0.00
6/30/2014	\$24.39		\$0.00	\$0.00	\$0.00						\$0.00	\$43.59	\$43.59	\$0.00
7/31/2014	\$18.79		\$0.01	\$0.00	\$0.00						\$0.01	\$62.39	\$62.39	\$0.00
8/31/2014	\$14.59		\$0.01		(\$0.01)						\$0.00	\$76.98	\$76.98	\$0.00
9/30/2014	\$12.97		\$0.01		(\$0.01)						\$0.00	\$89.95	\$89.95	\$0.00
10/31/2014	\$10.10		\$0.02		(\$0.01)						\$0.01	\$100.06	\$100.06	\$0.00
11/30/2014	\$10.16		\$0.02		(\$0.01)						\$0.01	\$110.23	\$110.23	\$0.00
12/31/2014	\$23.11		\$0.04		(\$0.01)						\$0.03	\$133.37	\$133.37	\$0.00
1/31/2015	\$18.07		\$0.03		(\$0.01)						\$0.02	\$151.46	\$151.46	\$0.00
2/28/2015	\$17.16		\$0.02		(\$0.01)						\$0.01	\$168.63	\$168.63	\$0.00
3/31/2015	\$12.25		\$0.03		(\$0.01)						\$0.02	\$180.90	\$180.90	\$0.00
4/30/2015	\$10.40		\$0.03		(\$0.02)						\$0.01	\$191.31	\$191.31	\$0.00
5/31/2015	\$9.52		\$0.03		(\$0.02)						\$0.01	\$200.84	\$200.84	\$0.00
											<b>Total</b>	\$0.13		

<b>Total Deposited</b>	<b>\$200.71</b>
<b>Interest and Fees</b>	<b>\$0.13</b>
<b>Total</b>	<b>\$200.84</b>
<b>May 2015 First Bank and Trust balance</b>	<b>\$200.84</b>
<b>Difference</b>	<b>\$0.00</b>

**VIRGINIA: IN THE CIRCUIT COURT OF BUCHANAN COUNTY**

GREGORY G. POULOS, JASON G. POULOS,  
PAMELA F. POULOS, SHAUN D. ROGERS,  
KEVIN H. ROGERS, DEREK B. ROGERS and  
T.G. ROGERS, III,

Plaintiffs,

v.

LBR HOLDINGS, LLC,

Defendant.

Case No. 550-13

**ORDER**

This matter, having come before the Court for hearing on June 2, 2014, on the parties' respective motions for summary judgment, and the Court, having reviewed the written submissions of the parties and having heard oral argument of counsel, and for good cause shown, hereby ORDERS:

1. Plaintiffs' Complaint and Defendant's Counterclaim both request that this Court, pursuant to Virginia Code § 8.01-184, declare their respective rights under the May 27, 1938, deed ("Deed") attached to Plaintiffs' Complaint as Exhibit "A."

2. The Deed includes a conveyance by T. G. Rogers and Martha F. Rogers, his wife (the "Talmage Rogers Group"), and Lloyd Rogers and Anne F. Rogers, his wife (the "Lloyd Rogers Group"), of their interests in certain parcels of property in Buchanan County, Virginia, (the "Property") and McDowell County, West Virginia, to Lon B. Rogers. The Deed specifically recites: "But there is excepted from the above-described property an undivided one-half interest in the oil and gas under said property and the same is reserved to T. G. Rogers and Lloyd Rogers,

parties of the first part, their heirs and assigns, together with the usual and necessary rights of ingress and egress and drilling rights to explore, get and remove said oil and gas.”

3. It is undisputed that Plaintiffs are the successors to the interests of the Talmage Rogers Group under the Deed, and that Defendant, LBR Holdings, LLC (“LBR”), is the successor to the interests of Lon B. Rogers and the Lloyd Rogers Group under the Deed.

4. Plaintiffs seek a declaration that the Deed’s reservation of gas under the Property includes, *inter alia*, coalbed methane gas, and that they are, therefore, the owners of 25% of the coalbed methane gas under the Property and entitled to the associated royalties. LBR, on the other hand, seeks a declaration that the Deed’s reservation of gas under the Property does not include coalbed methane gas, that the Deed, therefore, conveyed coalbed methane gas to Lon B. Rogers, and that LBR, as Lon B. Rogers’ successor-in-interest, is the owner of all the coalbed methane gas under the Property and entitled to the associated royalties.

5. Having examined the reservation language and the “four corners” of the Deed, the Court finds that the Deed is unambiguous and that the Deed’s reservation of “the oil and gas under said property” includes a reservation of coalbed methane gas under the Property. Plaintiffs are, therefore, entitled to prevail as a matter of law.

6. Coalbed methane gas is obviously “gas,” *see Harrison-Wyatt, LLC v. Ratliff*, 593 S.E.2d at 234, 238 (Va. 2004) (coalbed methane “is a gas”); and there is nothing in the Deed that removes coalbed methane or any other type of gas from the scope of the reservation. The language at issue is unlimited, plain, and unambiguous.

7. LBR argues that “the oil and gas” does not mean “all” but only “some” gas. The Court agrees with Plaintiffs, however, that the reservation of “the” gas is not a limited reservation of only some types of gas, but an unambiguous and unlimited reservation of all gas. Such an

interpretation of “the” is in accordance with the ordinary, plain and common sense meaning of the word.

8. LBR also argues that the parties to the Deed would not have intended to include coalbed methane gas in the reservation because, according to LBR, the commercial value of coalbed methane was not known in 1938. LBR presented no evidence in support of this argument and Plaintiffs presented undisputed evidence to the contrary. Regardless, this Court is bound to uphold the unambiguous reservation language, which refers to gas without qualification or limitation, and which, as written, encompasses all types of gas, whether commercially exploitable at the time of the Deed’s execution or not.

9. The Court concludes that the arguments and authorities presented by Plaintiffs in their motion and reply brief are well-founded and correct. A ruling in LBR’s favor would require the Court to rewrite the Deed, which it will not do. Nor will the Court torture words and phrases or engage in speculation to create an ambiguity where the ordinary meaning of the words leaves no room for ambiguity.

10. There are no issues of material fact in dispute regarding Plaintiffs’ ownership of 25% of the coalbed methane gas under the Property. The Court grants Plaintiffs’ motion for summary judgment in full and denies LBR’s motion for summary judgment in full.

11. This Order constitutes a judicial determination of coalbed methane gas ownership as between Plaintiffs and LBR pursuant to Virginia Code § 45.1-361.22(5)(i) and resolves in Plaintiffs’ favor all conflicting claims of coalbed methane gas ownership between Plaintiffs and LBR relating to the Property.

12. Plaintiffs are entitled to receive all coalbed methane gas royalties attributable to their 25% gas estate interest in the Property that are being held in the Virginia Gas and Oil Board’s

escrow account or otherwise being withheld from Plaintiffs due to the conflicting claims of coalbed methane ownership between Plaintiffs and LBR. Plaintiffs are also entitled to receive all future coalbed methane gas royalties or other proceeds that are attributable to their 25% gas estate interest in the Property. All such royalties and proceeds shall be divided among the individual Plaintiffs in accordance with their respective percentages of ownership.

SO ORDERED, this the 10<sup>th</sup> day of July, 2014.

  
Circuit Court Judge

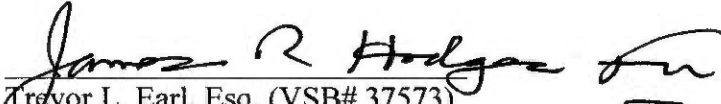

SEEN AND REQUESTED:

  
Jennifer L. Shaver, Esq. (VSB# 79047)  
Ellis Professional Building, Suite A  
211 West Main Street  
Abingdon, VA 24210  
Telephone: (276) 525-1103  
Facsimile: (276) 525-1112  
jen@jenshaver.com

*Counsel for Plaintiffs*

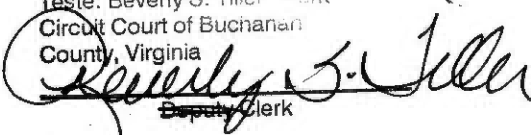
SEEN AND OBJECTED TO FOR ALL THE REASONS DETAILED IN LBR HOLDINGS, LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND AT THE HEARING; AND ON THE ADDITIONAL GROUNDS THAT TO THE EXTENT THE COURT MAY HAVE CONSIDERED SUBMISSIONS OF EXHIBITS OTHER THAN THE DEED AT

ISSUE, THE COURT SHOULD HAVE DENIED BOTH PARTIES' MOTIONS FOR SUMMARY JUDGMENT SO THAT BOTH PARTIES WOULD HAVE HAD AN OPPORTUNITY TO DEVELOP AND PROPERLY INTRODUCE SUCH EVIDENCE:

  
Trevor L. Earl, Esq. (VSB# 37573)  
REED WEITKAMP SCHELL & VICE PLLC   
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*Counsel for LBR Holdings, LLC*

A Copy  
Teste: Beverly S. Tiller, Clerk  
Circuit Court of Buchanan  
County, Virginia

  
Deputy Clerk