

ORIGINAL

Case No. 2013-1730

In The Supreme Court of Ohio

PHILLIP B. DODD, <i>et al.</i> ,	:	On Appeal from the Harrison County Court
	:	of Appeals, Seventh Appellate District
<i>Plaintiffs-Appellants,</i>	:	
	:	Court of Appeals Case No.: 12-HA-6
v.	:	
	:	
JOHN CROSKEY, <i>et al.</i> ,	:	
<i>Defendants-Appellees.</i>	:	

NOTICE OF CORRECTION TO RECORD

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 Hocker*

RECEIVED
 AUG 05 2014
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FILED
 AUG 05 2014
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RUPERT BEETHAM

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Cadiz, Ohio 43907

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n/k/a CONSOL ENERGY, INC.

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Canonsburg, Pennsylvania 15317

BRIAN CRIST

3384 N. River Road

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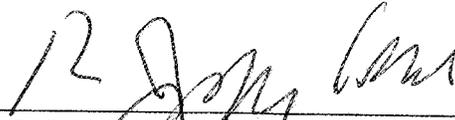
All Appellees seek to supplement and correct the record before the Court. It has come to Appellees' attention that an incomplete, and thus, incorrect, copy of the December 23, 2010 Affidavit Preserving Minerals (the "Affidavit") was included in the appellate record below, which was transmitted to this Court. The Affidavit is a significant document in this case.

The Affidavit was recorded at OR Book 186, pp. 1949-1956 of the Harrison County Recorder's Office. When the Harrison County Court of Common Pleas (the "Trial Court") issued its Judgment Entry (the "Entry"), it attached exhibits to the Entry, including the Affidavit as Exhibit C. However, Exhibit C to the Entry included Page 1953 of the Affidavit twice, but omitted Page 1954. Thus, an incomplete copy of the Affidavit was attached to the Entry. This is not to say that the Trial Court was without a true and accurate copy of the Affidavit. To the contrary, an accurate Affidavit *was* attached as Exhibit I to Appellants-Plaintiffs Motion for Summary Judgment. (Pl.'s Mot. Summ. J., Ex. I, 6/29/11).

Nevertheless, this incomplete Affidavit has since been used in the appellate proceedings. For example, when Appellants appealed to the Seventh District Court of Appeals, they attached a copy of the Entry with all exhibits, including Exhibit C: the incomplete Affidavit. Further, when Appellants filed their Appellants' Merit Brief with Appendix with this Court on May 12, 2014, the Appendix also included this same incomplete copy of the Affidavit. (Exhibit A3 to the Merit Brief).

For convenience of the Court, Appellees hereby attach a complete and accurate copy of the Affidavit to this Notice.

Respectfully submitted,



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Zitko, David B. Porter, Joann C. Wesley,
Cindy R. Weimer, Evert Dean Porter, Stuart
Barry Porter, Brian Porter, Mary Elaine
Porter, Kim Berry, Samuel G. Boak, Lorna
Bower, Sandra Dodson, Stewart Berry
Porter, Ian Resources, LLC*

/s/ Marquette D. Evans

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Attorney for Appellee, Harriet C. Evans

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Correction to Record was served via regular mail this 4th day of August 2014 upon the following:

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Hocker*

EXHIBIT 1

201000002693
Filed for Record in
HARRISON COUNTY, OHIO
TRACY L. BOYER, RECORDER
12-23-2010 At 11:34 am.
A MINERAL R 76.00
DR Book 186 Page 1949 - 1956

HARRISON COUNTY ENGINEER
TRANSFER NOT NECESSARY
DATE 12/23/10 INT JFL

201000002693
RUPERT BEETHAM

HARRISON COUNTY
AUDITORS OFFICE
TRANSFER NOT NECESSARY
DATE 12-13-10 BY D.G.
Patrick J. Moore, Auditor

AFFIDAVIT PRESERVING MINERALS

STATE OF OHIO

SS

COUNTY OF HARRISON

John William Croskey, being first duly sworn, deposes and says:

1. He resides at 150 Indian Trail in Cadiz, Ohio and is an heir of Samuel A. Porter and an heir of Emma A. Croskey.

2. That Samuel B. Porter and Josephine Porter conveyed the real property hereinafter described as Tract 3 and Tract 4 equally to Samuel A. Porter, Eliza Mae Corbley, Emma A. Croskey and Mary Belle Shepler of deed of record in Volume 100, Page 275, Deed Records of Harrison County, Ohio.

3. That by Certificate for Transfer of Real Estate Inherited of record in volume 114, Page 102, Deed Records of Harrison County, Ohio, the real property described as Tract 1 herein was conveyed to Samuel A. Porter.

4. That Samuel A. Porter, Executor of the Estate of Elizabeth Porter conveyed the real property herein described as Tract 2 to Samuel A. Porter by deed of record in Volume 114, Page 91, Deed Records of Harrison County, Ohio; and, the Society of Friends conveyed the same premises to Samuel A. Porter by quit-claim deed of record in Volume 121, Page 288, Deed Records of Harrison County, Ohio.

5. That Mary Belle Shepler, unmarried, conveyed her one-fourth interest in the real property described hereinafter, as Third Tract and Fourth Tract to Samuel A. Porter, Eliza Mae Corbley and Emma A. Croskey by deed of record in Volume 102, Page 93, Harrison County Deed Records.
6. That Samuel A. Porter and Blanche Long Porter, his wife, conveyed the real property described as Tract One herein to The Consolidated Fuel Company by deed of record in Volume 121, Page 3, Deed Records of Harrison County, Ohio reserving unto grantors, their heirs and assigns all the oil and gas within and underlying said lands together with all rights and privileges necessary to drill for, remove and market said oil and gas.
7. That Samuel A. Porter and Blanche Long Porter, his wife, conveyed the real property described as Tract Two herein to The Consolidated Fuel Company by deed of record in Volume 121, Page 381 Deed Records of Harrison County, Ohio reserving unto grantors, their heirs and assigns, all the oil and gas within and underlying said lands, together with all rights and privileges necessary to drill, for remove and market said oil and gas.
8. That Samuel A. Porter and Blanche Long Porter, his wife, conveyed the undivided one-third interest in the real property described herein as Tract Three and Tract Four to The Consolidated Fuel Company by deed of record in Volume 121 Page 383 Deed Records of Harrison County, Ohio, reserving unto grantors, their heirs and assigns all the oil and gas within and underlying said lands, together with all the rights and privileges necessary to drill for, remove and market said oil and gas.
9. That Emma A. Croskey, widow, conveyed to The Consolidated Fuel Company the undivided one-third interest in the real property described herein as Tract Three and Tract Four by deed of record in Volume 121, Page 384 Deed Records of Harrison County, Ohio, reserving unto grantor, her heirs and assigns, all the oil and gas within and underlying said lands, together with all the rights and privileges necessary to drill for, remove and market said oil and gas.
10. That Eliza Mae Corbley and William H. Corbley, her husband, conveyed the undivided one-third interest in the real property described herein as Tract Four to Hanna Coal Company by deed of record in Volume 109, Page 168 Harrison County Deed Records with no reservation of the oil and gas.
11. That Eliza Mae Corbly, widow, conveyed the undivided one-third interest in the real property described herein as Tract Three to Pittsburgh Consolidation Coal Company by deed of record in Volume 134, Page 627, Deed Records of Harrison County, Ohio, reserving unto grantor and her heirs and assigns the one-third interest in the oil and gas within and underlying said lands together with all rights and privileges necessary to drill, for remove and market said oil and gas.

12. That Samuel A. Porter was survived by a brother David D. Porter, a sister Emma A. Croskey, a sister Eliza Porter Corbley, and niece Alice M. Shepler, daughter of his deceased sister, Mary Bell Porter. That Samuel A. Porter died November 22, 1948. His estate was administered as Harrison County Probate Court Case No. 13675. The residue of his estate was left one-tenth to his nephew John Croskey, one-tenth to his niece Naomi Johnson, one-tenth to his niece Eliza Croskey, one-tenth to his niece Mary Croskey, one-tenth to his niece Myrtle Shepler, one-tenth to his niece Nina Corbley McGuire, two-tenths to his nephew Philip Porter and two-tenths to his niece Doris Chaney.
13. That Blanche Long Porter died August 13, 1950.
14. That John Croskey died December 30, 1959 survived by daughter Margaret Ann Turner, daughter Emma Jane Croskey, daughter Mary E. Surcy and son affiant.
15. That Naomi Johnson died January 20, 1996 survived by son Edwin Johnson, son Lee Johnson and daughter Martha A. Lovejoy.
16. That Martha A. Lovejoy died April 26, 2005 without issue, survived by her two siblings Edwin Johnson and Lee Johnson
17. That Eliza Windoft was survived by her brother John Croskey, her sister Naomi Johnson and her sister Mary Watson. That Eliza Croskey Windoft died August 18, 1983 without issue. Her will is of record in Volume 1191, Page 018 of the Will Records of Jefferson County, Ohio. The residue of her estate was left equally to the following nieces and nephews: Ann Turner, Jane Obradovich, William Croskey, Martha Cawley, Martha Lovejoy, Lee Johnson, Edwin Johnson, Mary Louise Morgan and Martha Beard.
18. That Ann Turner and Margaret Ann Turner are the same person.
19. That Jane Obradovich and Emma Jane Croskey are the same person.
20. That Emma A. Croskey died October 5, 1960. Her estate was administered as Case No. 15379 in the Harrison County Probate Court. She left her entire estate to her four children Naomi Johnson, Eliza Windoft, John Croskey and Mary Watson, who were her only children.
21. That Myrtle Shepler died in October of 1959 without issue, survived by her aunt Emma Croskey, cousins David Phillip Porter, Ewart Porter, Doris Chaney, children of her deceased uncle David Porter, and her cousins Nina Corbley, Corrine Haverfield, Martha Estelle, and Emma Louise Kalbaugh, children of her deceased aunt Eliza Corbley.
22. That Eliza Corbley died August 13, 1956 survived by her daughter Nina Corbley, her daughter Corrine Haverfield, her daughter Martha Estelle and her daughter Emma Louise Kalbaugh.

23. That Nina Corbley died May 28, 1983 survived by sister Corrine Haverfield, sister Martha Estelle and nephew William Kalbaugh, nephew Harry R. Kalbaugh and niece Joann Davis, children of her deceased sister Emma Louise Kalbaugh.
24. That Corrine Haverfield died in January of 1996 survived by grandsons Samuel G. Boak and William H. Boak, sons of her daughter Phyllis Boak who predeceased her.
25. That Martha Estelle died July 26, 1988 survived by her daughter Charel Bishop.
26. That Joann Davis died June 30, 1995 survived by son Harry Roy Davis, son Thomas Davis and son Richard Davis.
27. That Harry R. Kalbaugh died December 25, 1974 survived by son Harry K. Kalbaugh, son Michael Kalbaugh and daughter Jennifer K. Bernay.
28. That Phillip Porter died April 26, 1980 survived by daughter Joann Zitko and granddaughter Joann Wesley, grandson David E. Porter and granddaughter Cindy R. Weimer, issue of his deceased son David R. Porter.
29. That Doris Porter Chaney died August 21, 1992 survived by son Sam Chaney, daughter Jill Dodson Chaney, daughter Harriet J. Evans and daughter Lorna Bower.
30. That Sam Chaney died August 27, 2007 survived by daughter Karen A. Chaney, daughter Linda C. Boyd, daughter Terri Hocker and daughter Patty Hansman.
31. That Evert Porter, brother of Phillip Porter and Doris Porter Chaney died October 2, 1995 survived by Evert Dean Porter and Stuart B. Porter.
32. That the real property under which the oil and gas and rights and privileges necessary to drill for, remove and market said oil and gas is as follows:
- Situated in the County of Harrison, State of Ohio, and Township of Green and bounded and described as follows: *SE & SW Qtrs*
- FIRST TRACT:** Beginning at the Southeast corner of Section 22, Township 9, Range 4;
 Thence North 85 deg. 04' 30" West 2680.50 feet to a stone;
 Thence North 84 deg. 51' 15" West 1074.17 feet to a stone;
 Thence North 5 deg. 14' East along land now owned by S.E. and H.C. Reed 2679.10 feet to land now owned (Sept. 1923) by J.T. Sparrow;
 Thence South 85 deg. 05' East along the southerly boundary of land belonging to said J.T. Sparrow 1071.97 feet to a post;
 Thence South 4 deg. 57' 30" West 1351.53 feet;
 Thence South 85 deg. 07' East along the South boundary of land now owned by S.B. Porter 2672.37 feet;

Thence South 5 deg. 04' West along the Western boundary of land owned by S.B. Porter 1333.78 feet to the place of beginning, containing by actual survey, One Hundred Forty-Eight and 105/1000 (148.105) acres, more or less.

EXCEPTING AND RESERVING therefrom all the coal, except the No. 8 vein, together with mining rights and privileges, in and underlying the same as set forth in the deed of Barclary W. Moore, Executor of the Estate of J.B. Lyons, deceased, to The Ohio and Pennsylvania Coal Company, dated September 22, 1923, and recorded in Deed Record 86, Page 488.

Shortcreek Township SE QTR
SECOND TRACT: Being a part of Section 14 Township 9 Range 4, beginning at a stone on the Western boundary line of said Section and being corner of lands of Wm. C. Johnston and Bro. Wm. S. Fox and Sarah G. Hall, running thence 2 1/2 deg. East 22 chains to a stone;

Thence South 81 deg. East 17.80 chains to a stone in the road; where a black walnut 20 inches diameter bears S. 30 deg. West 25 links;

Thence South 77 1/2 deg. East 22.03 chains to a stone where a White oak 36 inches diameter bears N. 61 deg. East 90 links;

Thence S. 52 1/2 deg. West 8.95 chains to a stone;

Thence S. 10 1/4 deg. East 14.35 chains to a stone where black walnut 24 inches diameter bears N. 6 deg. West 31 links;

Thence N. 86 1/2 deg. West 13.83 chains to a stone where a black walnut 20 inches diameter bears N. 36 deg. West 6 1/2 links;

Thence N. 3 deg. East 2.00 chains;

Thence N. 84 deg. West 21.88 chains to the place of beginning, containing seventy-four (74) acres, more or less.

THIRD TRACT: Situated in the County of Harrison, in the State of Ohio, and in the Township of Green

Situated in the County of Harrison, in the State of Ohio, and in the Steubenville Land District and bounded and described as follows: Being the Southwest Quarter of Section No. 16 in Township No. 9 of Range No. 4 containing One Hundred and Sixty (160) acres, more or less. Being the premises conveyed by J.D. Wortman to Samuel B. Porter by deed recorded in Harrison County Ohio, Deed Book 32, Page 198.

FOURTH TRACT: Being the North one-half of the Southeast Quarter of Section 22, Township 9 and Range 4 beginning at a stone at the quarter post between sections Nos. 16 and 22;

Thence North 88 1/4 deg. West 162.16 perches to a limestone at the center of said Section;

Thence South 1 1/4 deg. West 80.96 perches to the center of the West line of said quarter;

Thence South 88 1/4 deg. East 162.32 perches to the center of the East line of said quarter section;

Thence North 1 deg. 40' East 81.24 perches to the beginning, containing 82 acres, 1 rod and 4 perches, more or less.

Being the same premises conveyed to Samuel B. Porter by John Croskey, Admr. Of the Estate of Henry Shepler, by deed recorded in Harrison County, Ohio, Deed Book 37, page 523.

The First Tract being the minerals and appurtenant rights reserved by Samuel A. Porter and Blanche Long Porter, husband and wife in a deed to The Consolidated Fuel Company of record in Deed Volume 121 Page 381; and, the Second Tract being the minerals and appurtenant rights reserved by Samuel A. Porter and Blanche Long Porter, husband and wife in a deed to The Consolidated Fuel Company of record in Deed Volume 121, Page 382; and the Third Tract being the minerals and appurtenant rights reserved by Samuel A. Porter and Blanche Long Porter, husband and wife, in a deed to The Consolidated Fuel Company of record in Deed Volume 121, Page 383 by Emma H. Croskey, widow in deed to The Consolidated Fuel Company of record in Deed Volume 121, Page 384 and by Eliza Mae Corbley to Pittsburgh Consolidation Coal Company of record in Deed Volume 134, Page 627.

33. That the current owners of the surface of the above described premises are as follows:

A. Phillip P. Dodd and Julie R. Bologna, husband and wife, by virtue of a deed from R. James Coffelt and Shelley M. Coffelt, husband and wife of record in Book 156, Page 2343, Official Records of Harrison County, Ohio.

B. George Monzula and M. Marilyn Monzula, husband and wife, being part of the premises conveyed by a deed from James N. Richmond and Donna J. Richmond, husband and wife, and Jason D. Richmond, unmarried of record in Book 163, Page 1481, Official Records of Harrison County, Ohio.

C. Kevin S. Labuhn and Lori A. Labuhn, husband and wife, being part of the premises conveyed by a deed from James N. Richmond and Donna J. Richmond, husband and wife, and Jason D. Richmond, unmarried of record in Book 163, Page 1584, Official Record of Harrison County, Ohio.

D. Dominic Armeni and Catherine Armeni husband and wife, being part of the premises conveyed by a deed from James N. Richmond and Donna J. Richmond, husband and wife and Jason D. Richmond, unmarried of record in Book 163, Page 1252, Official Records of Harrison County, Ohio.

E. John A. Rocchi, unmarried being conveyed by the premises of a deed from John A. Rocchi, divorced and Dayna M. Rocchi, divorced of record in Book 181, Page 1139 Official Records of Harrison County, Ohio.

F. James Rocchi, being the premises conveyed by a deed from James N. Richmond and Donna J. Richmond, husband and wife, of record in Book 22, Page 638, Official Records of

Harrison County, Ohio and deed from Angela Shay Allen unmarried of record in Book 27, Page 281, Official Records of Harrison County, Ohio, and the premises conveyed by James N. Richmond, Jr., unmarried and Jason Richmond, unmarried of record in Book 147, Page 164 Official Records of Harrison County, Ohio.

G. Capstone Holding Company, being part of the premises conveyed by Shell Company to R&F Coal Company by deed of record in Volume 241, Page 462, Deed Records of Harrison County, Ohio; and by Certificate of Merger of R&R Coal LLC into Capstone Holding Company of record in Book 79, Page 351, Official Records of Harrison County, Ohio.

H. David Schlabach, being part of the premises conveyed by R. James Coffelt of record in Book 180, Page 2856, Official Records of Harrison County, Ohio.

I. John A. Seleski and Judith E. Seleski, being part of the premises conveyed from James N. Richmond, Jr.; with release of dower by his wife Deanne L. Richmond and Jason D. Richmond unmarried; of record in Book 163 Page 1523, Official Records of Harrison County, Ohio; and by deed from John J. Seleski and Judith E. Seleski, husband and wife of record in Book 51, Page 889, Official Records of Harrison County, Ohio.

J. Edward R. Seleski and Marsha L. Seleski by deed from Edward L. Seleski, a single man, of record in Volume 228, page 414 Deed Records of Harrison County, Ohio

That the current owners of the minerals and oil and gas reserved by the deeds set forth in Paragraphs 6,7,8,9 and 10 herein are:

- | | |
|-------------------------------|---|
| Mary E. Surrey and Roy Surrey | 8718 Smith Lane, James Store, VA 23080 |
| Erma Jane Croskey | 2381 Hillwood Street SE, Magnolia, OH 44643 |
| Margaret Ann Turner | 606 E. Market Street, Cadiz, OH 43907 |
| John W. Croskey | 150 Indian Trail, Cadiz, OH 43907 |
| Mary Louise Morgan | 4403 Fairway Drive, Steubenville, OH 43952 |
| Martha Beard | 310 Oxbridge Court, Pittsburgh, PA 15238 |
| Eee Johnson | 16005 Spohn Road, Fredrickstown, OH 13019 |
| Edwin Johnson | 151 Oak Hill Lane, Clyde, NC 28721 |
| Joann Zitko | 103 Jones Ave., Cadiz, Ohio 43907 |
| David B. Porter | 1617 Hickory Ave., Punto Gorda, FL 33950 |
| Joann C. Wesley | 1617 Hickory Ave., Punto Gorda, FL 33950 |
| Cindy R. Weimer | 2672 Gramham Rd., Stow, OH 44224 |
| Lorna Bower | 116 S. Main St., P.O. Box 216, New Athens, OH 43981 |
| Jill Dodson Chaney | 3294 Devin, Grove City, OH 43123 |
| Harriet J. Evans | 5635 Outville Rd., SW, Pataskala, OH 43062 |
| Karen A. Chaney | 794 Breeze, Craig, CO 81625 |
| Linda C. Boyd | 72 Dawn Heath Cir., Littleton, CO 80127 |
| Terry Hocker | 204 S. Buckhorn Dr., Bastrop, TX 78602 |
| Patty Hausman | 1130 Beta Loop, Colorado Springs, CO 80906 |

Charlotte S. Bishop	20000 32 nd S. SE, Rm 437 Maple Creek, Grand Rapids, MI 49508
Samuel G. Boak	167 Colonial Dr., Canfield, OH 44406
William H. Boak	4049 Watercourse Dr., Medina, OH 44256
William Kalbaugh	28 Orriawn Dr., Talmadge, OH 44278
Harry Roy Davis	217 St. David Dr., Mount Laurel, NJ
Thomas David	25015 Stillman Vly., Florence, TX 76527
Richard Davis	22834 Fairfax Village W. Dr., Spring, TX 77373
Harry Kenneth Kalbaugh	534 Willis Lane, Delaware, OH 43015
Michael Kalbaugh	10 Archer Court, Greensboro, NC 27407
Jennifer Kalbaugh Beman	8113 Priestley Dr., Reynoldsburgh, OH 43068
Evert Dean Porter	2131 SE Stonecrop St., Port Saint Lucie, FL 34984
Stuart Barry Porter	3980 Jaclyns Jetty, winter Have, FL 33884
Brian Crist	3385 N. River Rd., Zanesville, OH 43701
Brian Porter	2500 E. 22 nd St., Apt. 101, Austin, TX 78722
Elaine Porter	25509 6 th St., Apt E., San Bernardino, CA 92410
Kim R. Berry	1900 Seofield Ridge Pkway At. 2202, Austin, TX 78727
Consolidation Coal Company (Tract 4 only)	1800 Washington Rd., Pittsburg, PA 15291

That the claimants herein do not intend to abandon their rights to the mineral interest, but intend to preserve their rights.

John William Croskey
John William Croskey

JURAT

Sworn to and subscribed in my presence by John William Croskey this 23 day of December 2010 at CADIZ Ohio.

Rupert N. Beetham
Notary Public

This instrument prepared by:
RUPERT N. BEETHAM
ATTORNEY AT LAW
110 South Main Street
P.O. Box 262
Cadiz, Ohio 43907
(740) 942-8282

RUPERT N. BEETHAM, Attorney at Law
Notary Public - State of Ohio
My commission has no expiration
date. Sec. 14708 BC

