

05-1336-CD
In Re: Tax Sale #C02-000-00019MN

Tax Sale of 27.97% Interest in 990 Acres et al
2005-1336-CD

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97% :
INTEREST IN 990 ACRES OF OIL AND : NO 05 - 1336 - C.D.
GAS MAP NO. 128-C02-000-00019 MN : RULE AND PETITION TO
NOW MAPPED AS C02-000-00019 MN : SET ASIDE AND DISMISS
 : PROPOSED TAX SALE

Filed on Behalf of:
Petitioners

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972 (PHONE)
(814) 765-9893 (FAX)

FILED Aug pd.
01:37 PM 85.00
AUG 30 2005 (M)
CC Atty
Belin
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97% :
INTEREST IN 990 ACRES OF OIL AND :
GAS MAP NO. 128-C02-000-00019 MN :
NOW MAPPED AS C02-000-00019 MN :

NO 05 - 1336 - C.D.

FILED *cc*
Atty
AUG 30 2005 *Belin*

RULE

William A. Shaw
Prothonotary/Clerk of Courts

AND NOW, this 30th day of August, 2005, upon reading and considering the foregoing Petition, a Rule is hereby issued upon the Clearfield County Tax Claim Bureau to show cause why the Clearfield County Tax Claim Bureau should not be ordered as follows:

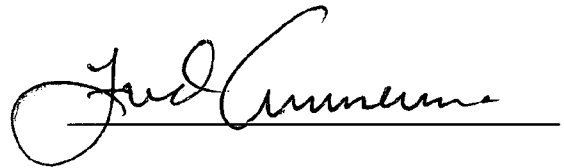
1. to strike all tax liens against the oil and gas interests of Petitioners in Warrant No. 4235;
2. to absolve the oil and gas assessments for any real estate taxes for all prior years, the current year and future years; and
3. to withdraw the proposed sale of said oil and gas interests of Petitioners scheduled for September 21, 2005, in Warrant 4235.

RULE returnable for written response September 21, 2005.

HEARING, if necessary, to be held on the 27th on the day of September, 2005, at 9:00 o'clock, A M., in Courtroom No. 1 of the Clearfield County

Courthouse, Clearfield, Pennsylvania 16830.

BY THE COURT,

A handwritten signature in cursive script, appearing to read "Fred C. Cunningham", is written over a horizontal line.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97% :
INTEREST IN 990 ACRES OF OIL AND : NO 05 - - C.D.
GAS MAP NO. 128-C02-000-00019 MN :
NOW MAPPED AS C02-000-00019 MN :

PETITION TO SET ASIDE AND
DISMISS PROPOSED TAX SALE

AND NOW comes Colleen Bailey, Mark S. Booth, John L. Harris, Katharine Harris, William D. Harris, II, Ronald A. and Wanda J. Guenot, H. Richard Hess, Virginia C. Peterson, Martha S. Schweinfurth, Diana B. Simms, and Virginia H. Wilson, by and through their attorneys, Belin & Kubista, and files the following Petition to set aside and dismiss proposed tax sale, and in support thereof avers as follows:

1. Petitioners are owners listed in a proposed tax sale of 27.97% interest by the Clearfield County Tax Claim Bureau in 990 Acres of coal and minerals (oil and gas) in Warrant No. 4235, in Sandy Township, Clearfield County, Pennsylvania. A copy of the Notice regarding the tax sale is hereto attached as Exhibit "1."

2. That the basis for the tax sale is that real estate taxes have been assessed against the coal and mineral (oil and gas) interests of Petitioners and have remained unpaid.

3. That Petitioners received title to the coal and minerals (oil and gas) by virtue of a deed of Alonzo S. Kline

et al. to Harry Boulton, dated October 2, 1922, and recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 259, page 131, in which the oil and gas were sold as separate items in, upon, and under Warrant No. 4235 in Sandy Township to Petitioners' predecessors in title. A copy of said deed is hereto attached as Exhibit "2."

4. That the oil and gas have been assessed as separate items along with coal and other minerals since the interests were transferred under the foregoing deed.

5. That the Supreme Court of Pennsylvania in *Independent Oil and Gas Association of Pennsylvania v. Board of Assessment Appeals of Fayette County*, 814 A.2d 180 (Pa. 2002), determined that no authority has existed for the Clearfield County Tax Claim Bureau to assess taxes against any interest in oil and gas interests, unlike coal and other minerals, under the applicable laws of the Commonwealth of Pennsylvania.

6. That by virtue of the authority of the said case, the assessed taxes against the oil and gas interests are void and that no basis existed for the Clearfield County Tax Claim Bureau to establish a tax lien against the oil and gas interests of Petitioners assessed in Warrant No. 4235.

7. That the Clearfield County Tax Claim Bureau has no authority in law to assess or collect taxes on the oil and gas interests of Petitioners, to establish a lien or a claim on

said interests, or to attempt to sell said oil and gas interests at a tax sale.

WHEREFORE, Petitioners request Your Honorable Court to order the Clearfield County Tax Claim Bureau:

1. to strike all tax liens against the oil and gas interests of Petitioners in Warrant No. 4235;

2. to absolve the oil and gas assessments for any real estate taxes for all prior years, the current year and future years; and

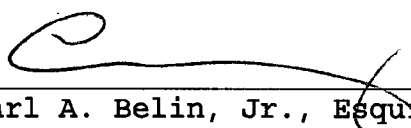
3. to withdraw the proposed sale of said oil and gas interests of Petitioners scheduled for September 21, 2005, in Warrant 4235.

AND they will ever pray.

RESPECTFULLY SUBMITTED,

BELIN & KUBISTA

By


Carl A. Belin, Jr., Esquire
Attorney for Petitioners

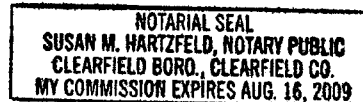
COMMONWEALTH OF PENNSYLVANIA :
 : SS.
COUNTY OF CLEARFIELD :

Before me the undersigned officer, personally appeared
DIANA B. SIMMS, one of the Petitioners herein, who being duly
sworn according to law, deposes and says that she was
authorized to execute the within Affidavit for the other
Petitioners herein, and that the facts set forth in the
foregoing Petition To Set Aside And Dismiss Proposed Tax Sale
are true and correct to the best of her knowledge, information
and belief.

Diana B. Simms
Diana B. Simms

Sworn and subscribed before me this 29th day of
August, 2005.

Susan M. Hartzfeld
Notary Public



Clearfield County Tax Claim Bureau



230 EAST MARKET STREET

SUITE 121

Clearfield, Pennsylvania 16830

TELEPHONE (814) 765-2641

FAX (814) 765-2640

Email - cctax@clearfieldco.org

July 22, 2005

Diana B Simms
345 South 5th Ave
Indiana PA 15701

RE: MAP # 128-C02-000-00019 MN - NOW MAPPED AS C02-000-00019 MN
DESC: INTEREST IN 990 A COAL & MIN (GAS & OIL) (842 A BARREN)
OWNERS:

COLLEEN BAILEY 2.63% INT
DAVID E BAILEY 5.26% INT
STEPHEN BAILEY 2.63% INT
JAMES C BOOTH .24% INT
MARJORIE BOOTH .24% INT
MARK S BOOTH .24% INT
GRACE C DANNER 3.94% INT
H. RICHARD HESS 15.78% INT

RONALD & WANDA GUENOT 7.01%
MARJORIE HIBBARD 1.31% INT
NANCY MCCLELLAND 1.31% INT
VIRGINIA PETERSON .98% INT
DIANA B SIMMS .24% INT
HELEN WILDERMUTH .98% INT
THORTON WILLIAMS 1.31% INT
JEAN VOSBURG ESTATE 3.94% INT

Dear Ms. Simms,

Please be advised that this office has received and accepted a bid of \$500.00 for the above referenced properties. Real estate taxes have been unpaid on these properties from 1993 to 2004 and, although offered at tax sale, no bid has been received until now.

The sale has been scheduled for September 21, 2005 at 9:00 AM in the Tax Claim Bureau 230 E Market Street Clearfield. Notice of this proposed sale will be published in The Courier Express and the Clearfield County Legal Journal on July 22, 2005 and August 5, 2005. Any party objecting to the sale price accepted for this property may, within forty-five days of this notice, petition the Court of Common Pleas to disapprove the sale.

Should you have further question, please contact me at 765-2641.

Sincerely,

Mary Anne Wesdock
Mary Anne Wesdock, Director
MAW/nac

Exhibit "1"

BK
259

DEED) THIS INDENTURE Made the Second day of October A.D. 1922, between
ALONZO S.KLINE ETAL) Alonzo S.Kline and Alice M.Kline, his wife, of the City of Pitts-
TO) burgh, Pennsylvania, William T.DeHaas and Virginia E.DeHaas, his
HARRY BOULTON) wife, and Walter Welch and Minnie B.Welch, his wife, of the Borough
of Clearfield, county of Clearfield and State of Pennsylvania, parties of the first part,
grantors, and Harry Boulton, Walter Welch, Wailliam T.DeHaas, Roll B.Thompson, Br. John W.
Gordon, of Clearfield, Pennsylvania, J.W.Bailey, A.Newton Cole, Fred M.Shaffer and Ida M.Hess,
of DuBois, Pennsylvania, Mary Gordon Schultz of Philadelphia, Pennsylvania, Leslie D.Gordon
of Detroit, Michigan, James T. Gordon of Orange, New Jersey, parties of the second part,
grantees.

WITNESSETH, that in consideration of the sum of Twenty Three Hundred Dollars (\$2300.00)
in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby quit-
claim, remise, release and convey unto the said parties of the second part, grantees, their
heirs and assigns, all their right, title and interest in and to all the coal, coal oil, gas,
fire clay and other minerals of every kind and aharacter in, under and upon the following
described five tracts or warrants of land:

The First Three Thereof, consisting of Warrants Nos. 4226, 4229 and 4235, situated
in the Township of Sandy, County of Clearfield and State of Pennsylvania, Beginning at an
original chestnut corner (now dead), being the southeast corner of Warrant No.4226; thence
north eighty nine and one-fourth degrees West, five hundred sixteen perches to a post; thence
north six hundred forty three perches, more or less, to an ironwood (now dead), being the
northwest corner of Warrant No.4225; thence east five hundred four perches, more or less,
to a post and stones, the northeast corner of Warrant no. 4235; thence south three hundred
twenty five perches to an original hemlock, the southeast corner of warrant no.4235; thence
East five hundred perches, more or less, to the southwest corner of Warrant no.4234; thence
South one hundred sixty six perches, more or less, to land now or formerly David Burkey;
thence West twenty one perches, more or less, to a post; thence South one hundred fifty four
perches, more or less, to post on line of Warrant no.3597; thence north eighty nine and one
fourth degrees west four hundred eighty three perches, more or less, to a chestnut corner and
place of beginning. Containing three thousand acres and allowance, more or less.

The Fourth & Fifth Thereof, consisting of the western half of Warrants Nos. 5676
and 5677, situate in Huston Township in said county of Clearfield, Beginning at a post, the
Southwest corner of Warrant no.566; thence North along tract line of Warrants nos.5672 and
5673 six hundred forty four perches, more or less, to a post, being the Northwest corner of
Warrant No.5676; thence east two hundred sixty one perches, more or less, to a post; thence
South six hundred forty four perches to a tract line of Warrant No.5676; thence West by same
two hundred sixty one perches, more or less, to a post and place of beginning, and being
the Western halves of Warrants nos. 5676 and 5677, and containing one thousand acres and
allowances, be the same, more or less.

Being the same premises which Annie T.Arnold, et al, by deed dated December 1, 1914,
and recorded in deed Book "207" page 312, conveyed to the said Alonzo S.Kline.

TO HAVE AND TO HOLD unto the said grantees, in the following proportions, that is to say: The title to Warrant No. 4229 to be held by the said grantees, their heirs and assigns, Walter Welch and William T. DeHaas the undivided 5/33 each; Harry Boulton the undivided 4/33; Mary Gordon Schultz, John W. Gordon, Leslie D. Gordon and James T. Gordon the undivided 4/33; J. W. Bailey, A. Newton Cole, Ida M. Hess, Fred M. Shaffer and Roll B. Thompson the undivided 3/33 each. The remaining part of said premises to be held by the said grantees, their heirs and assigns as follows: Harry Boulton the undivided 4/21; Mary Gordon Schultz, John W. Gordon, Leslie D. Gordon and James T. Gordon the undivided 4/21; J. W. Bailey, A. Newton Cole and Ida M. Hess the undivided 3/21 each; Walter Welch and William T. DeHaas the undivided 2/21 each; their heirs and assigns forever.

In Witness Whereof the said grantors have hereunto set their hands and seals the day and year aforesaid.

✓ Alonzo S. Kline (seal)
 ✓ Alice M. Kline (seal)
 ✓ William T. DeHaas (seal)
 ✓ Virginia E. DeHaas (seal)
 ✓ Walter Welch (seal)
 ✓ Minnie B. Welch (seal)

U.S. Rev. \$2.50

State of Pennsylvania)

County of Clearfield)SS

On this 7th day of October, A.D. 1922, before me a Notary Public in and for said county and state came the above named William T. DeHaas and Virginia E. DeHaas, Walter Welch and Minnie B. Welch, and acknowledged the foregoing deed to be their act and deed, and desired the same to be recorded as such.

Witness my hand and Notarial seal the day and year aforesaid.

Jennie E. Bailey (off. seal)

Notary Public

My commission expires at the end of the next session
 of the Senate.

State of Pennsylvania)

County of Allegheny)SS

On this 14th day of October A.D. 1922, before me, a Notary Public in and for said County and State, came the above named Alonzo S. Kline and Alice M. Kline, and acknowledged the foregoing Deed to be their act and deed, and desired the same to be recorded as such.

Witness my hand and Notarial seal the day and year aforesaid.

Robert S. Golden (off. seal)

Notary Public

My commission expires March 7, 1925.

Entered of Record Oct. 23, 1922. 2-30 P.M.

Recorded and Compared by

Recorder. *Chase*
mlo

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97% :
INTEREST IN 990 ACRES OF OIL AND : NO 05 - 1336 - C.D.
GAS MAP NO. 128-C02-000-00019 MN :
NOW MAPPED AS C02-000-00019 MN : CERTIFICATE OF SERVICE

Filed on Behalf of:
Petitioners

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
P.O. Box 1
Clearfield, PA 16830
(814) 765-8972 (PHONE)
(814) 765-9893 (FAX)

FILED *no cc*
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SEP 12 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97% :
INTEREST IN 990 ACRES OF OIL AND : NO 05 - 1336 - C.D.
GAS MAP NO. 128-C02-000-00019 MN :
NOW MAPPED AS C02-000-00019 MN :

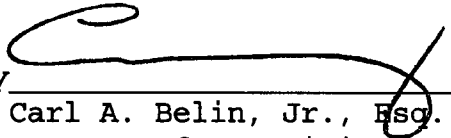
CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent certified copy of Rule and Petition to Set Aside and Dismiss Proposed Tax Sale in the above-captioned matter to the following parties by postage prepaid United States first class mail on the 30th day of August, 2005:

Mary Ann Wesdock
Clearfield County Tax Claim Bureau
230 East Market Street, Suite 121
Clearfield, PA 16830

Kim Kesner, Esquire
County Solicitor
23 North Second Street
Clearfield, PA 16830

BELIN & KUBISTA

By 
Carl A. Belin, Jr., Esq.
Attorney for Petitioners

IN RE: TAX SALE OF 27.97% INTEREST INTEREST IN 990 ACRES OF OIL AND GAS MAP NO. 128-C02-000-00019 MN NOW MAPPED AS C02-000-00019 MN	No. 05-1336-CD Type of Pleading: Written Response to Petition to Set Aside and Dismiss Proposed Tax Sale Filed on Behalf of: Clearfield County Tax Claim Bureau Counsel of Record for this Party: Kim C. Kesner, Esquire PA ID # 28307 23 North Second Street Clearfield, PA 16830 814-765-1706 Opposing Counsel of Record: Carl A. Belin, Jr., Esquire Belin & Kubista 15 North Front Street P.O. Box 1 Clearfield, PA 16830 814-765-8972
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William A. Shaw
Prothonotary/Clerk of Courts
3 cent to Amy

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: TAX SALE OF 27.97% INTEREST : No. 05-1336-CD
INTEREST IN 990 ACRES OF OIL AND :
GAS MAP NO. 128-C02-000-00019 MN :
NOW MAPPED AS C02-000-00019 MN :

**WRITTEN RESPONSE OF CLEARFIELD
COUNTY TAX CLAIM BUREAU**

TO: The Honorable Fredric J. Ammerman, President Judge

AND NOW COMES, the Clearfield County Tax Claim Bureau ("Bureau") by Kim C. Kesner, Esquire and files this Written Response to this Court's Rule issued on August 30, 2005.

1. Admitted.
2. It is admitted that the assessment of 27.97% interest in 990 acres of Oil and Gas identified by Map No. 128-D02-000-00090 MN ("Subject Assessment") was returned to the Bureau by the Sandy Township Tax Collector for unpaid real estate taxes for tax year 1993 and that a claim for taxes against the Subject Assessment was entered by the Bureau in accordance with the Pennsylvania Real Estate Tax Sale Law, 72 P.S. §5860.101 et seq. The tax claim became absolute in January of 1994 in accordance with 72 P.S. §5860.311.
3. The averments contained in Paragraph 3 constitute contentions or conclusions of law to which no response is required.
4. The averments contained in Paragraph 4 of the Petition constitute contentions or conclusions of law to which no response is required. To the extent that a response is required, it is specifically denied that the tax claim regarding the Subject Assessment is void. To the contrary, the Supreme Court of Pennsylvania's decision in Independent Oil & Gas Association of Pennsylvania vs. Board of Assessment Appeals of Fayette County, 814 A.2d 180 (Pa. 2002) has not and cannot be given

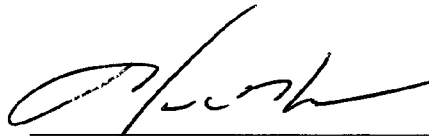
retroactive effect. Moreover, as a matter of law, a taxpayer may not collaterally attack the validity of an assessment once a tax claim has become absolute. The Petitioners here did not file a direct appeal to the assessment.

5. Admitted.

6. The averments contained in Paragraph 6 of the Petition constitute contentions or conclusions of law to which no response is required. To the extent that a response is required, it is admitted that the Clearfield County Tax Claim Bureau does not assess taxes. The Clearfield County Assessment Office assesses real property and local taxing districts levy taxes thereon. It is specifically denied that the Clearfield County Tax Claim Bureau lacks authority to collect the tax claim on the Subject Assessment which became absolute in December of 1994.

WHEREFORE, the Clearfield County Tax Claim Bureau respectfully requests your Honorable Court to dismiss the Motion to Set Aside Tax Sale.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kim C. Kesner', is written over a horizontal line.

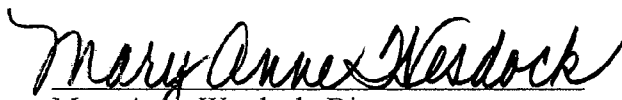
Kim C. Kesner, Esquire
Solicitor - Clearfield County
23 North Second Street
Clearfield, PA 16830

VERIFICATION

I, Mary Anne Wesdock, verify that I am the Director of the Clearfield County Tax Claim Bureau, and as such am authorized and empowered to make this Verification, and that the statements made in this Written Response are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 , relating to unsworn falsification to authorities.

Date:

9-20-2005


Mary Anne Wesdock, Director
Clearfield County Tax Claim Bureau

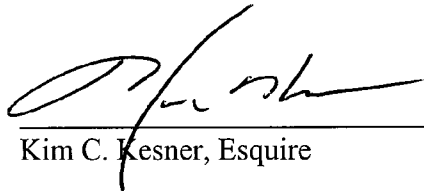
CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 21st day of September, 2005, I caused to be served a true and correct copy of the Written Response of the Clearfield County Tax Claim Bureau to the Petition to Set Aside and Dismiss Proposed Tax Sale on the following and in the manner indicated below:

By United States Mail, First Class,
Postage Prepaid, Addressed as Follows:

Carl A. Belin, Jr., Esquire
Belin & Kubista
15 North Front Street
P.O. Box 1
Clearfield, PA 16830

Date: 9-21-2005



Kim C. Kesner, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

IN RE: :
TAX SALE OF 27.97% :
INTEREST IN 990 ACRES OF : No. 05-1336-CD
OIL AND GAS MAP NO. :
128-C02-000-00019 MN :

O R D E R

NOW, this 27th day of September, 2005, this
being the date set for hearing relative the Petition to Set
Aside and Dismiss Tax Sale; upon agreement of counsel and
the parties, it is the ORDER of this Court as follows:

1. Petitioner and the solicitor for Clearfield
County shall provide the Court, within no more than ten
(10) days from this date, with a stipulation as to the
facts;

2. Counsel for the Petitioner shall have no
more than fifteen (15) days from this date in which to
supply appropriate brief to the Court;

3. The solicitor for Clearfield County shall
have no more than thirty (30) days from this date in which
to supply appropriate brief to the Court;

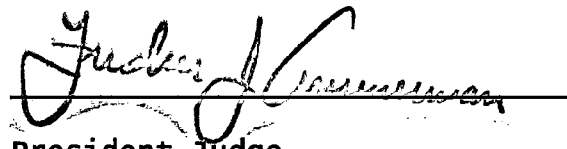
4. Counsel for the purchaser shall have no more
than thirty-five (35) days from this date in which to
supply appropriate brief to the Court should counsel wish
to do so. Counsel for the Petitioner shall have no more

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SEP 29 2005 Bell
William A. Shaw JCA Any
Prothonotary/Clerk of Courts
Kessner
GR

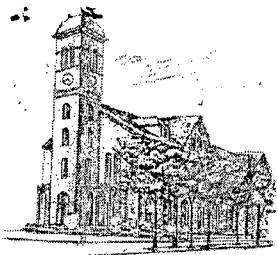
than five (5) days following receipt of the purchaser's
brief in which to respond in kind;

5. Pending disposition by the Court of the
issues raised within the Petition to Set Aside and Dismiss,
the proposed tax sale is hereby stayed.

BY THE COURT,

A handwritten signature in cursive script, appearing to read "Jackson L. Cunningham", is written over a horizontal line.

President Judge



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

_____ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

X Other *Copies have been provided to Attorneys Belin and Kesner*

_____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97% INTEREST :
INTEREST IN 990 ACRES OF OIL AND : No. 05-1336-CD
GAS MAP NO. 128-C02-000-00019 MN :
NOW MAPPED AS C02-000-00019 MN :

FILED

OCT 06 2005

06/13/05

William A. Shaw
Will Prothonotary
Prothonotary

STIPULATION OF FACTS

And now, comes the parties to this proceeding by their respective counsels and hereby stipulate to the following facts for the purposes of this court adjudication without formal proof:

1. The real estate tax assessment being the subject matter of this proceeding is a 27.97% interest in 990 acres of oil and gas in Warrant 4235 in Sandy Township, Clearfield County, Pennsylvania identified by Clearfield County Assessment Map No.128-C02-000-00019 MN, now mapped as C02-000-00019 MN ("Assessment").

2. Colleen Bailey, Mark S. Booth, John L. Harris, Katherine Harris, William D. Harris, Ronald A. & Wanda J. Guenot, H. Richard Hess, Virginia C. Peterson, Martha S. Schweinfurth, Diana B. Simms and Virginia H. Wilson ("Petitioners") are the record and assessed owners of the Assessment whose title derives through a deed from Alonzo Kline and others to Harry Boulton and others dated October 2, 1922, which was recorded in the Clearfield County Recorder of Deeds Office in Deed Book 259, Page 131. In that deed, Kline et al conveyed "all their right title and interest in and to the coal, coal oil, gas, fire clay and other minerals of every kind and character in, under, and upon ... Warrants 4226, 4229, and 4235...". By sundry deeds and inheritances, 27.97% of the gas and oil became vested in the present petitioners.

3. The Assessment has been assessed for real estate tax purposes since 1957.

4. Real estate taxes on the Assessment have been unpaid and delinquent since 1993.

5. The Sandy Township tax collector returned delinquent 1993 taxes to the Clearfield County Tax Claim Bureau in April of 1994 which were filed as a tax claim under 72 P.S. Section 5860.306.

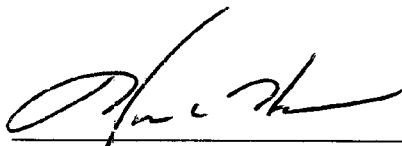
6. The tax claim for unpaid 1993 taxes became absolute on December 31, 1994 under 72 P.S. Section 5860.311.


7. Unpaid taxes have been returned every year by the Sandy Township tax collector to the Clearfield County Tax Claim Bureau since 1993.

8. The assessment was offered at upset tax sales in 2000 and 2002 but no bids were received.

9. In 2005, the Clearfield County Tax Claim Bureau received a bid to purchase the assessment at private tax sale.

10. The Clearfield County Tax Claim Bureau accepted the bid and scheduled the assessment for private tax sale on October 19, 2005.



Kim C. Kesner, Esquire
Solicitor, Clearfield County

Carl A. Belin, Jr., Esquire
Attorney for Petitioner

FILED

OCT 06 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

IN RE: TAX SALE OF 27.97% :
INTEREST IN 990 ACRES OF OIL AND : NO 05 - 1335 - C.D.
GAS MAP NO. 128-C02-000-00090 MN :
:

AND

IN RE: TAX SALE OF 27.97% :
INTEREST IN 990 ACRES OF OIL AND : NO 05 - 1336 - C.D.
GAS MAP NO. 128-C02-000-00019 MN :
NOW MAPPED AS C02-000-00019 MN :

REPLY BRIEF

Filed on Behalf of:
Petitioners

Counsel of Record for
This Party:

Carl A. Belin, Jr., Esquire
PA I.D. #06805

BELIN & KUBISTA
15 North Front Street
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COURT ADMINISTRATORS
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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The Tax Claim Bureau claims the *Fiore* rule as cited in Petitioners' brief should not be applied and cited cases in its brief at Pages 3 and 4 for this proposition.¹

A close reading of *Independent Oil* demonstrates that the Supreme Court indicated that its ruling was not overruling other precedent, which otherwise would have established a "new rule of law." It cited with approval the appellants' position that prior cases similar to those cited by the Tax Claim Bureau were not apposite to its holding in the *Independent Oil* case:

"Appellants acknowledge that certain cases such as *Rockwell v. Warren County*, 228 Pa. 430, 77 A. 665 (1910), cited by the trial court, establish, to some extent, oil and gas interests as interests in real estate.

¹ The Tax Claim Bureau's brief is unnumbered. Petitioners are referring to the third and fourth pages of the brief, excluding the cover page.

Appellants, however, point out that the treatment historically given these issues through our case law has evolved in situations concerning conflicting claims of ownership of such interests rather than in an assessment or tax context as is the case here. See *Funk v. Haldeman*, 53 Pa. 229 (1867); *Gill v. Weston*, 110 Pa. 305, 1 A. 917 (1885); *Westmoreland & Cambria Natural Gas Co. v. DeWitt*, 130 Pa. 235, 18 A. 724 (1889); *Blakley v. Marshall*, 174 Pa. 425, 34 A. 564 (1896); *Marshall v. Mellon*, 179 Pa. 371, 36 A. 201 (1897); *Hutchinson v. Kline*, 199 Pa. 564, 49 A. 312 (1901)."

Independent Oil, 814 A.2d at 182 (footnote 5). By taking this position, the Supreme Court cast its opinion so that it fell squarely within the *Fiore* rule that it's decision did not constitute a "new rule of law." Nowhere in the opinion did the court suggest it was overruling any cases previously decided by it. Obviously, lower court opinions, including those of the superior court, commonwealth court, and courts of common pleas, have no application in this determination regarding the rule unless the Supreme Court expressly adopted or overruled them.

A careful reading of the *Independent Oil* case makes clear that from the Supreme Court's perspective, they did not "affirm, alter, or overrule their previous decisions," that the statutes involved had never been amended, and that the decision clearly was the "initial interpretation" of the statute as to gas and oil. Thus, the determination set forth in the

Independent Oil case simply does not constitute a "new rule of law."

The Tax Claim Bureau's suggestion that the Supreme Court has "turned stare decisis on its head" in the *Independent Oil* case may be one of disappointment but is hardly relevant to the issue as to whether this is a new rule of law. What is relevant is whether the Supreme Court concluded it was establishing a new rule of law. If the Tax Claim Bureau's position were correct, that it was settled law as a result of prior decisions of the Supreme Court that gas had been assessed as real estate, then the Supreme Court in *Independent Oil* would have been faced with an additional hurdle to construe the GCAL.

Under the Statutory Construction Act of 1972, antecedent case law must be considered in construing a statute:

"1922. Presumptions in ascertaining legislative intent

In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

. . . .

(4) That when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language."

As stated by the Supreme Court in *Fonner v. Shandon, Inc.*,
724 A.2d 903, 906 (Pa. 1999):

"When confronted with questions of statutory construction, the words of a statute are to be interpreted in light of antecedent case law, and the legislative intent to effectuate a drastic change in the law is not to be inferred by mere omission and implication." (citation and footnote omitted)

If the status of the decisional law was settled as suggested by the Tax Claim Bureau, the Supreme Court would have had to deal with this issue. It did not - - thus it did not consider that any "antecedent decisional law" existed that inhibited its construction of the GCAL. Clearly then, there is no basis for concluding that the *Fiore* rule cited by Petitioners is inapplicable. As *Independent Oil* did not announce a new rule of law, it must be applied retroactively:

"Therefore, when we have not yet answered a specific question about the meaning of a statute, our initial interpretation does not announce a new rule of law. Our first pronouncement on the substance of a statutory provision is purely a clarification of an existing law."

Fiore v. White, supra at 757 A.2d 848.

Here the only parties affected are the Petitioners and the Tax Claim Bureau. Under such circumstances, it is even more compelling that the *Independent Oil* case should be applied

retroactively. As the municipal bodies had no power to tax the gas and oil, the subsequent actions of the Tax Claim Bureau were simply void. Under these circumstances Petitioners' prayer should be granted in its totality.

RESPECTFULLY SUBMITTED,

BELIN & KUBISTA

By 

Carl A. Belin, Jr. Esq.
Attorney for Petitioners

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has sent a true and correct copy of Reply Brief in the above-captioned matters to the following parties by postage prepaid United States first class mail on the 2nd day of November, 2005:

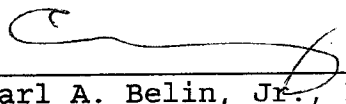
Mary Ann Wesdock
Clearfield County Tax Claim Bureau
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RESPECTFULLY SUBMITTED,

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By 

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Attorney for Petitioners

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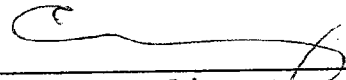
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FAX (814) 765-9893

November 2, 2005

HAND DELIVER

David S. Meholick
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

In re: Tax Sale of 27.97% Interest in 990 Acres of Oil and
Gas Map No. 128-C02-000-00090MN
No. 05-1335-CD

Tax Sale of 27.97% Interest in 990 Acres of Oil and
Gas Map No. 128-C02-000-00019MN Now Mapped as
C02-000-00019MN
No. 05-1336-CD

Dear Dave:

Enclosed find two (2) copies of Reply Brief with
Certificate of Service submitted by the Petitioners in the
above-captioned actions in accordance with Judge Ammerman's
Order of September 27th.

RECEIVED

NOV 02 2005

COURT ADMINISTRATOR'S
OFFICE

Very truly yours,

BELIN & KUBISTA

Carl A. Belin, Jr.

CABjr:smh

Enclosures

cc: Honorable Frederic Ammerman
w/enclosure
Mary Ann Wesdock
w/enclosure
Kim C. Kesner, Esquire
w/enclosure
Nicole Bancovich, Esquire
w/enclosure

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

In Re: Tax Sale of 27.97% Interest in 990 :
Acres of Oil and Gas, Map No. : No. 05-1335-CD
128-C02-000-00090-MN :
:
:
:
:
In Re: Tax Sale of 27.97% Interest in 990 :
Acres of Oil and Gas, Map No. : No. 05-1336-CD
128-C02-000-00019-MN :
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:
:

COPIES
FILED
01/12/35/201 to
JAN 12 2006 05-1335-CD
William A. Shaw
Prothonotary/Clerk of Courts
13 CC Atty Bel
1 CC Atty Resur

OPINION

At issue in this case is the proposed tax sale of the 27.97% interest in 990 acres of oil and gas, located in Sandy Township, Clearfield County. The consolidated Petitions¹ contest the Clearfield County Tax Bureau's right to sell the interest in a private tax sale based upon the disallowance of taxing oil and gas interests as a separate estate for real estate purposes.

Colleen Bailey, Mark S. Booth, John L. Harris, Katherine Harris, William D. Harris and Ronald A. and Wanda J. Guenot, H. Richard Harris, Virginia C. Peterson, Martha S. Schweifurth, Diana B. Simms and Virginia H. Wilson (hereinafter "Petitioners") are the record and assessed owners of the interest. Their title derives through a deed from Alonzo Kline, et al. to Harry Boulton and others dated October 2, 1922, recorded in Clearfield County Deed Book 259, page 131. The deed conveyed "all their right and interest in and to the coal, coal oil, gas, fire clay and other minerals of every kind and character in, under, and upon ... Warrants 4226, 4229, and 4235...." By sundry deeds and inheritances, 27.97% of the gas and oil became vested in the Petitioners. (Parties' Stipulation of Facts ¶ 2).

The interest has been assessed for real estate tax purposes since 1957. Real estate taxes have been unpaid and delinquent since 1993. The tax claim for unpaid taxes from 1993 became absolute on December 31, 1994, in accordance with 72 P.S. § 5860.311. The assessment was

¹ The cases, No. 05-1335-CD and No. 05-1336-CD, were combined for hearing purposes and will be referred to collectively as the "consolidated Petitions."

offered twice for upset tax sale in 2000 and 2002, but no bids were received. In 2005, the Clearfield County Tax Claim Bureau received a bid to purchase the assessment at a private tax sale. (Parties' Stipulation of Facts).

The principle issue presented is the application of Independent Oil and Gas Association of Pennsylvania v. Board of Assessment Appeals of Fayette County, 572 Pa. 240, 814 A.2d 180 (2002). The Petitioners urge that the Independent Oil decision be applied retroactively. Conversely, the Tax Claim Bureau maintains that the ruling should apply prospectively because the decision announces a new rule of law.

The right of a county tax claim bureau to sell a property for unpaid taxes requires a valid assessment. Humphrey v. Clark, 359 Pa. 250, 58 A.2d 836 (1948). Without a valid assessment, the sale for nonpayment of taxes is void. Nyphen Corporation v. Sechrist, et al., 10 A.2d 822 (Pa.Super. 1948). Accordingly, "the tax claim bureau must have the statutory authority to convey good title to the property in some manner." Commonwealth v. Sprock, 795 A.2d 1100 (Pa.Cmwlt. 2002). Independent Oil clearly holds that there is no statutory authority to tax oil and gas interests as real estate. 814 A.2d at 182. Therefore, the imposition of such a tax violates the owners' constitutional rights. Id.

It is clear to this Court that the Clearfield County Tax Claim Bureau's request to sell the affected oil and gas interests must be denied. Here, the Petitioners remain the record owners of the gas and oil interests. No prior tax sales have been successful. The interests of a third party who purchased at a tax sale are not implicated. The Court believes a private tax sale without the requisite statutory authority is inequitable.

Additionally, the Tax Claim Bureau alleges that the Petitioners' claim is barred because they failed to file an assessment appeal prior to the claims becoming absolute. The Bureau maintains the consolidated Petitions are a collateral attack and their challenge should not be

heard. However, this Court has subject matter jurisdiction to hear the Petitioners' claims. The Independent Oil Court clearly explains the distinction between the requirements of the administrative process and challenging the constitutionality of a taxing authority's power.

In *Borough of Green Tree v. Board of Property Assessments, Appeals and Review of Allegheny County* (internal citations omitted) we held that a substantial question of constitutionality concerning a taxing body's powers excuses resort to the administrative process and allows one challenging that authority to proceed directly in equity... their suit directly challenged the Board's authority to assess a tax in any case. Thus, as Appellants' challenge alleged a substantial constitutional question, i.e., the authority to impose the tax, the Commonwealth Court held that the trial court erred in dismissing the Appellants' action for lack of subject matter jurisdiction.

Independent Oil, 814 A.2d at 181. Accordingly, as the assessments and the proposed tax sales were made without the necessary authority, the Court believes the Petitioners' requested relief should be granted.

ORDER

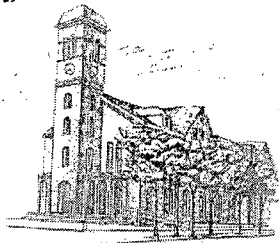
NOW, this 10th day of January 2006, after consideration of the consolidated Petitions to Disapprove Private Tax Sale, the Court HEREBY FINDS AS FOLLOWS:

1. All tax liens assessed against the interests of Petitioners in Warrants 4226 and 4235 are hereby STRICKEN.
2. Any claims for real estate taxes assessed against Warrants 4226 and 4235 are hereby RELEASED for all prior years, the current year and future years.
3. The proposed private tax sale for Warrants 4226 and 4235 are hereby CANCELLED.

BY THE COURT,

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 11/12/06

_____ You are responsible for serving all appropriate parties.

_____ The Prothonotary's office has provided service to the following parties:

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

X Special Instructions:

Copies given to Attorneys Belin & Kesner