

0/a 2-5-88

SUPREME COURT OF FLORIDA

CASE NO. 70,845

**FILED**  
SID L. WHITE

JAN 20 1988

CLERK, SUPREME COURT

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pl

CONWAY LAND, INC., etc.,  
et al.,

Petitioners,

vs.

**PETITIONERS' REPLY BRIEF**

DAVID E. TERRY, et al.,

Respondents.

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Fletcher G. Rush  
RUSH, MARSHALL, BERGSTROM, REBER,  
GABRIELSON & JONES, P.A.  
Post Office Box 3146  
Orlando, FL 32802  
(305) 425-6624

John A. Reed, Jr.  
LOWNDES, DROSDICK, DOSTER, KANTOR  
& REED, PROFESSIONAL ASSOCIATION  
Post Office Box 2809  
Orlando, FL 32802  
(305) 843-4600

Attorneys for Defendants, Petitioners  
CONWAY LAND, INC., etc., et al.

TABLE OF CONTENTS

Table of Citations.....ii

Introduction.....1

Reply.....2

Conclusion.....7

TABLE OF CITATIONS

Amerada Hess Corp. v. Morgan, 426 So.2d 1122 (Fla. 1st DCA 1983).....2

Hanson v. Ware, 274 S.W. 2d 359 (Ark. 1955).....5,6

Miller v. Carr, 137 Fla. 114, 188 So. 103 (1939).....2,3,7

Welles v. Berry, 434 So.2d 983 (Fla. 2d DCA 1983).....4,5

## Introduction

Consistently throughout their brief, the Respondents advise the Court that the character of a royalty interest must be determined by reference to the instrument by which it is created. For example, at page 8, they cite authority for the proposition that "the term 'royalty' does not have a single fixed definition because it is interpreted by reference to the instrument in which it is used...." Again, at page 14 of the Respondents' brief, the comment is made: "As stated earlier, when defining the word 'royalty' in a given situation, the character of the instrument is an essential detail that must not be ignored...." The overriding irony in the Respondents' approach to the problem before this Court is that despite the acknowledged need for close scrutiny of the instruments in question, they urge a characterization of their interest in a 38-page brief citing abstract principles without giving full and fair consideration to the language of the instruments from which that interest arises. At page 33 of their brief, this forensic technique is brought to a question-begging conclusion in the following language:

"As has been demonstrated above, the strict legal precepts of the rule against perpetuities are not violated by the royalty interest reserved in this case because it is a presently vested interest in real property."

Obviously, the conclusion does nothing more than assume the very matter which is in dispute -- namely, the nature of the royalty interest as vested or not vested.













