

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Randall Mosser, Douglas Mosser,)	
Marilyn Koon, and Jayne Harkin,)	
)	ORDER DENYING DENBURY’S
Plaintiffs,)	MOTION FOR SUMMARY
)	JUDGMENT
vs.)	
)	
Denbury Resources, Inc. and)	
Denbury Onshore, LLC,)	Case No. 1:13-cv-148
)	
Defendants.)	

Defendants Denbury Resources, Inc. and Denbury Onshore, LLC (collectively “Denbury”) filed a motion for summary judgment on July 1, 2016. (Doc. No. 92). On October 6, 2016, the court ruled against Denbury with respect to several of the arguments made in support of its motion and reserved ruling on the remainder pending the possible certification of issues to the North Dakota Supreme Court. (Doc. No. 108).

On November 18, 2016, the court certified seven questions to the North Dakota Supreme Court of which that court answered six in a decision issued on July 12, 2017, and transmitted to and filed in this court on the same date.

After careful review of the North Dakota Supreme Court’s decision, the court now finally **DENIES** Denbury’s motion for summary judgment (Doc. No. 92) for the reasons articulated by the North Dakota Supreme Court as well as for the reasons expressed by this court in its October 6, 2016 partial ruling on the motion. In so ruling, the court concludes there are material disputed issues of fact with respect to damages that must be resolved by a jury. Without making any ruling with

respect to the entirety of plaintiffs' damages evidence, plaintiffs have proffered at least some evidence of damages that the North Dakota Supreme Court has concluded is relevant under North Dakota law with respect to the issue of "lost use of and access to" the pore space under N.D.C.C. § 38-11.1-04 and that otherwise appears at this point to facially be admissible.

IT IS SO ORDERED.

Dated this 18th day of July, 2017.

/s/ Charles S. Miller, Jr.

Charles S. Miller, Jr., Magistrate Judge
United States District Court