LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman

There is much to report in Leg/Reg land this go around! Let's dive right in...

PENNSYLVANIA

Murrysville Watch Committee v. Municipality of Murrysville Zoning Hearing Board, 2022 WL 200112 (Comm. Ct. Pa. January 24, 2022). The Murrysville Watch Committee sued appealing a decision of the Zoning/Hearing Board on the validity of the municipality zoning ordinances relating to oil and gas development. Specifically, the MWC alleged that the use of property zoned as residential for oil and gas development was improper – oil and gas development should have been reserved for industrial zoned property, indicated that allowing oil and gas development in residential zones was unconstitutional "spot zoning" (the "unreasonable or arbitrary zoning classification of a small parcel of land, dissected or set apart from surrounding properties, with no reasonable basis for the differential zoning . . ."), and that the allowance of oil and gas development in residential districts violated the Environmental Rights Amendment to the Pennsylvania Constitution ("ERA"). The Commonwealth Court found that the MWC failed to introduce evidence to establish that the oil and gas drilling was incompatible with the "uses or overall character" of the residential zoning districts in question and failed to adduce competent evidence that the ordinances at issue were unreasonable. The court further found that the MWC failed to present any credible evidence that the zoning ordinance violated the rights established under the ERA. The Commonwealth Court accordingly affirmed the decision by the Zoning/Hearing Board and denied the MWC's legal challenges to the zoning districts.

OHIO

French v. Ascent Resources-Utica, L.L.C., 2022-Ohio-869 (March 24, 2022). In this case, the Ohio Supreme Court determined that a suit seeking the determination that an oil and gas lease expired by its own terms is a controversy "involving the title to or the possession of real estate" and therefore is exempt from arbitration clauses as a matter of Ohio law, overturning a decision of the 7th District Court of Appeals, and affirming a trial court case on the issue. The French family had executed a lease (as amended) containing an arbitration clause and sought to have the lease invalidated. Citing numerous cases, the Supreme Court determined that oil and gas leases clearly involve the use and title to real estate, and concluded that arbitration was not required, even if called for in the lease document.

Peppertree Farms, L.L.C. v. Thonen, 2022-Ohio-395 and 2022-Ohio-396 (February 15, 2022). It appears that the Ohio court system split the matter in controversy into two separate decisions. The first decision addresses the question of whether a reservation without language of inheritance creates merely a life estate benefiting the reserving party, or a "fee interest" in the real estate interests reserved. The second decision applies the Ohio Marketable Title Act ("MTA") to the land in question. Landowners conveyed the land in question in 1916, excepting and reserving a portion of the oil and gas rights without words of inheritance benefitting the Landowners.

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The Court in Peppertree I found that the interest retained by the Landowner in the 1916 deed was inheritable, because the interest she held prior to the deed reservation was already inheritable – the Landowner kept an interest in the same nature that she owned at the time of the conveyance. Nevertheless, in Peppertree II the court determined that the interest so reserved was not preserved in the Landowner's separate chain of title. The only document at issue was a will executed by the successor to the original Landowner/reserving party from 1961. The will did not expressly devise the reserved oil and gas interest and did not include a residuary clause. Consequently, while any residual interests (including the reserved oil and gas in question) did pass by intestacy due to the failure of the will, the intestate succession at issue was not recorded within the necessary 40-year period, which was also required by the statute. Therefore, the surface owner was able to prevail on its claim that the MTA operated to his benefit and effectively divested the reserved oil and gas interest.

Siltstone Resources, L.L.C. v. Ohio Public Works Commission, 2022-Ohio-483 (February 23, 2022). The Ohio Public Works Commission ("OPWC") oversees and administers a state environmental conservation program seeking to maintain green spaces within Ohio. As part of that program, the OPWC sometimes transfers land to county development corporations for the same purpose. In so doing, the OPWC places certain restrictions on the use and transfer of the properties to ensure that they are used in a manner consistent with the goals of the conservation program. In this case, OPWC conveyed land subject to various restrictions to a development corporation in Belmont County, OH ("CDC"). These restrictions included anti-transfer clauses and a restriction on the use and structures to be located on the land. The CDC subsequently leased the land for oil and gas production and conveyed out mineral interests from the land to other third party mineral purchasers. Upon realizing there were covenants on the land restricting its use, the oil and gas lessees and owners became concerned and sought a declaratory judgment as to their acquired oil and gas rights. The trial court found that the oil and gas rights so acquired did not violate the covenants and restrictions. On initial appeal, the 5th District overturned the trial court decision and found the covenants and restrictions did prevent oil and gas development. The Supreme Court analyzed the OPWC deed and determined that the 5th District was correct – the transfer of oil and gas rights by lease and by deed violated their restrictive covenants and were effectively nullified. The Court also found that the OPWC had statutory and contractual rights of damages from the parties that violated the restrictive covenants. The case was remanded for further consistent proceedings.

Fonzi v. Brown, 2022-Ohio-901 (March 24, 2022). Another Dormant Mineral Act (DMA) case. Here, surface owners argued that the 2006 amendments to the DMA actually created to separate ways to enforce the law. They could either go through the notice and administrative procedures or file a quiet title action. The administrative procedures give the severed mineral owners time to respond and preserve their severed minerals, while filing a quiet title action effectively would not. The Supreme Court rejected the argument of two parallel ways to utilize the DMA, finding that only the administrative procedural route is called for under the statute. Therefore, that method of enforcement is the only valid method under Ohio law. Applying this standard, the court concluded that the surface owners failed to meet the required notice requirements under the DMA and upheld the previous court's decision to find title to the oil and gas at issue remained vested in the severed oil and gas owners.

WEST VIRGINIA

Significant legislative changes have arisen in West Virginia. The state house and senate passed Senate Bill 694. While it contains several changes to the West Virginia Oil and Gas laws, the biggest change would be the addition of Section 22C-9-7a to the West Virginia Code, entitled "Unitization of interests in horizontal well drilling units." This new section establishes procedures and methodologies to created production units for all horizontal oil and gas wells, even in the face of opposition, recalcitrant, or unknown oil and gas owners. The law allows an operator to file for a unitization order with the West Virginia Oil and Gas Commission, after meeting various initial requirements.

First, the applicant must secure the consent or agreement to pool/unitize from at least 75% of the net acreage in the formation targeted for production. Second, the operator must control 55% of the operating interests in the proposed unit. Third, the operator must have made good faith offers and negotiated in good faith with all known and locatable royalty owners and operators to obtain the necessary consents to unitize and operate jointly. The application must include a significant amount of title information for all tracts in the proposed unit, whether controlled by the operator, controlled by other operators, or owned or controlled by unknown or unlocatable parties, including the names and last known addresses of all known or unknown royalty owners and operators. The application must include information relating to the proposed operator's attempts to identify and unknown or unlocatable owners and must include a list of proposed allocation between all relevant owners. The Commission is also empowered to select an "independent third party" to perform an evaluation of the economic factors included in the application for completeness and accuracy. The new statute establishes that unknown or unlocatable royalty owners are to be treated as being leased upon approval of the unit application, and unknown working interest owners will be treated as having elected to participate in the well or wells within the unit. The statute also provides an avenue for surface owners to acquire the interests of unknown or unlocatable oil and gas owners whose rights underlie their surface land. The bill was sent to Gov. Jim Justice of West Virginia on March 15th. At the time of writing, he has not signed the bill, but it is anticipated that he will do so.

Senate Bill 650 also passed both houses on March 5, 2022. This bill would amend the Co-Tenancy Modernization and Majority Protection Act that was enacted in 2019. For those unfamiliar, the prior act serves to provide a way to operate for oil and gas on lands with uncooperative, unknown, or unlocatable oil and gas owners without the fear of committing statutory waste under West Virginia law. West Virginia is unique in that it has traditionally provided no avenue toward production for oil and gas operators who are unable to obtain appropriate leases from 100% of the owners of the oil and gas under any given tract of land. This law was designed to provide the opportunity for such production without 100% lease right acquired under certain limited circumstances, including control of at least 75% of the "royalty owners", when there are 7 or more of such owners. The amendment under SB 650 eliminates the need for 7 royalty owners before the statute can be applied. In all other respects, the Co-Tenancy law would remain the same.

That sums it all up.

Regards,
Nik Tysiak – Legislative and Regulatory Committee Chair

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MLBC MEMBERSHIP REPORT
APRIL 2022

NEW MEMBERS:

First Name	Last Name	Employer	Member Type	Sponsoring Member
Anthony	Hoehler	Antero Resources Company	Active	Kuhn, Brian A.
Duane	Maust	Ridgeway Resources	Active	Garner, Jonny
Ryan	Stewart	Kiefaber & Oliva LLP	Associate	Abrams, Josh
Pat	Morrison	Blue Duck Resources	Active	Pierson, Kevin

MEMBERSHIP BY THE NUMBERS

Total Members: 606

Active: 390
Active PP: 30
Honorary: 10

Total Active: 420

% Active: 69.3%

Associate : 91
Student: 85

New members are approved on a monthly basis. If the need arises to move along membership approval (ex. Ohio Landman Registration), please email Abby Veigel - abbyveigel@mlbc-aapl.org

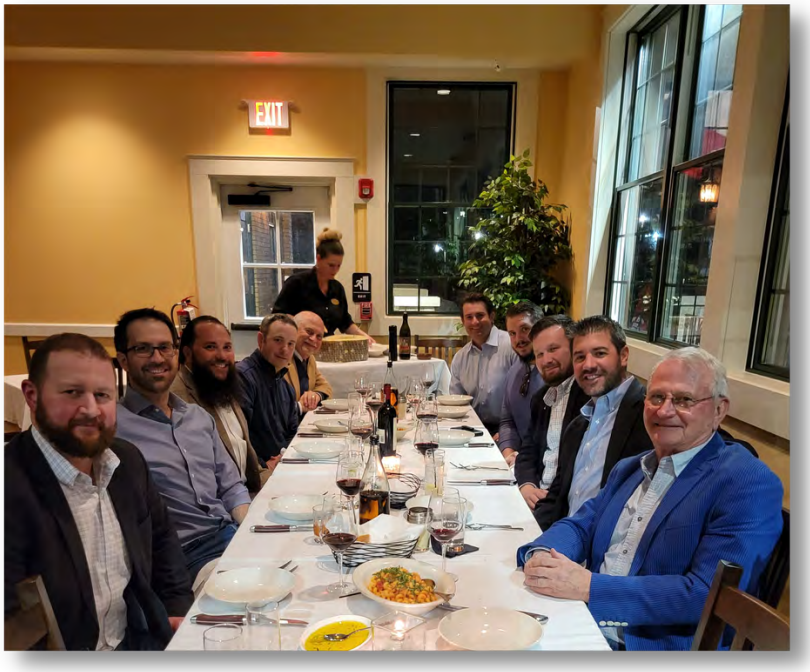
NOTICE OF DECISION

Pursuant to Article XIII, Section 10 of the MLBC By-laws, and after motion and unanimous vote during a meeting held March 24, 2022, the MLBC Executive Committee hereby notifies the membership of the committee's decision:

EXPULSION:

Anthony Dale Farr

MEMBERSHIP INFORMATION



Members of the MLBC and AAPL President Jim Devlin, far back left, met for dinner at Arlecchino's Ristorante in McMurray, PA

The MLBC membership application is located on the website at www.mlbc-aapl.org. Please check your information on the website prior to submitting your renewal. The MLBC website has an updated version of the membership listing. Please use this resource if you cannot find yours or others information in the directory. Please report any errors or omissions to Abby Veigel at abbyveigel@mlbc-aapl.org.

Application for membership in the Association shall be subject to the approval by a majority vote of the Executive Committee at a regularly scheduled meeting and shall require the signed approval by the acting President of the Executive Committee, as evidence of the Committee's approval.

Notice of the approved application(s) of all potential Association member(s) shall be printed in the next regularly scheduled publication of the Association. Members shall have the opportunity for a period of thirty (30) days following the publication to object to the potential member's application.