

# LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman



A dose of new case law has arisen in Appalachia this winter. Enjoy!

## West Virginia

For those paying attention, there has been some litigation regarding the West Virginia statutory pooling laws passed in 2022. In *Sonda v. West Virginia Oil and Gas Conservation Commission*, two landowners sued the West Virginia Conservation Commission, challenging the new pooling laws (W. Va. Code §22C-9-1, et seq.) in federal court, alleging an unlawful taking without due process of law under the U. S. Constitution. Instead of proceeding on the merits, the U.S. district court for the Northern District of West Virginia unilaterally decided to abstain from hearing the case, stating that the parties needed to litigate in West Virginia state court first, without identifying the issues that needed to be resolved in state court. The U.S. Fourth Circuit Court of Appeals found that the U.S. District Court had “abused its discretion” in abstaining from the action, as there were clear questions of federal law presented for adjudication and no clear statement of state law issues to be decided. In order to abstain as attempted by the District Court, there must be an unclear issue of state law which may render the need to go to federal court moot. The Court of Appeals therefore reversed the District Court Order of Abstention and remanded to that court for further proceedings.

## Ohio

The U.S. District Court for the Southern District of Ohio, Eastern Division, confronted a question of whether the Point Pleasant formation constituted part of the Utica Shale, or a deeper formation. In *Honey Crest Acres LLC v. Rice Drilling D LLC* (2024 WL 1155970 (March 18, 2024 S. D. Ohio, ED)), the district court was asked to analyze the language of an oil and gas lease; while the language of the lease expressly limited the leasehold rights, retaining to the lessor “all formations below the base of the Utica Shale” it raised the question of whether development of the Point Pleasant formation violated the terms of the lease or not. Specifically, the question is whether the Utica Shale and Point Pleasant formations should be considered separate geological formations or not. However, the opinion is only addressing the parties’ motions for summary judgment. As such, the court is not necessarily deciding on the merits; instead, it is deciding if the pleadings support continuing. As to the issue of whether a trespass against the lands of Honey Crest Acres LLC and a conversion of its property occurred, the court found that there were sufficient pleadings to support a trial. This means that a trial can, and likely will, proceed on the merits of these claims, so it is a case to watch out for in the future.

In a case NOT dealing with the DMA or MTA coming out of Ohio (for once), the Seventh District Court of Appeals was tasked with adjudication a purportedly ambiguous “Term Royalty Assignment” in *Bounty Minerals LLC v. LL&B Headwater II, LP*, 2024-Ohio-944. In this case, landowners leased their oil and gas to Mason Dixon Energy Inc. in 2007, with a 5-year primary term, a 5-year extension term, and a standard secondary term. In 2011, the landowners executed a Term Royalty Conveyance to Principle Energy, LLC, granting all their 1/8 royalty interest for as long as the lease stayed in effect, but would also apply to new leases granted within three years if the existing lease were terminated, canceled, surrendered, etc. LL&B was one of several successors to Principle, and the lease became vested in Ascent Resources-Utica LLC. Through a series of conveyances, Bounty Minerals acquired a 35% interest in the oil and gas rights. The lease was never produced throughout the primary or extended terms, expiring on September 13, 2017. Instead, the landowners and the predecessors to Bounty signed a new lease about a week later. The Trial Court found that, despite claims by Principle, LL&B and others, the Term Royalty Conveyance expired following the expiration of the 2007 lease. On appeal, the Seventh District noted that the anti-washout term (that the Term Royalty Conveyance could apply to new leases) was only applicable if the termination, surrender, cancellation, etc. of the 2007 lease occurred *before* the expiration of the primary, extension, or secondary terms. In other words, the Conveyance only applied to new leases if the 2007 lease ended prematurely. The appellate court agreed with the trial court, finding that the Term Royalty Conveyance did, indeed, expire. The court further analyzed a series of related claims for appeal, but found them all to be without merit, finding in favor of Bounty and the landowners and affirmed the trial court’s final judgment.



Pennsylvania

In *Plum Borough v. Zoning Hearing Board of Plum*, ---A.3d---, 2024 WL 314667 (Pa. Comm. Ct., January 29, 2024), the Pennsylvania Commonwealth Court was tasked with determining whether the Plum Zoning Hearing Board had properly adhered to its own ordinances regarding the expansion of a UIC brine disposal well located in Plum Township. After lengthy discussion, the Commonwealth Court determined that the ZHB failed to properly apply its ordinances in dealing with the proposed expansion of the well operator, noting in several places that the ZHB expressed the sentiment that it was powerless to stop the actions of the operator, regardless of their determinations. The court emphasized that the ZHB was not powerless and had several tools at its disposal to prevent expansion of the well's operations. The court remanded to the ZHB, with instructions on how to conduct further hearings on the issue.

In the Pennsylvania Supreme Court, there was a decision involving a claim of accounting between two co-tenants to oil and gas rights in Wyoming County. In *KEM Resources, LP v. Deer Park Lumber, Inc.*, ---A.3d ---, 2024 WL 696763 (Pa. Supreme Court, February 21, 2024) the predecessor to Deer Park executed a lease covering its own interest and purporting to cover all the interest of its co-tenant, the predecessor to KEM. The factual background of the case is very convoluted, with quiet title actions, striking down the judgments in those actions, and a lot of procedural and technical arguments regarding the nature of accounting claims, but there appears to be only one issue that was up for appeal to the Supreme Court – did the accounting claim filed by KEM occur within the applicable statute of limitations time period? KEM claimed a six-year limitations period, while Deer Park claimed the applicable statute of limitations was only four years. After lengthy discussion of the background to the case, the arguments of the parties, and the law regarding accounting between co-tenants, the Supreme Court concluded that the appropriate claim in this instance was, indeed, one for accounting between co-tenants. The court went on to state that there was no specific statute of limitations for such an accounting claim, so the general statute of limitations for six years applied, thereby affirming the prior decisions of the trial court and the Superior Court on the issue.

Regards,

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