



## DRI Update

Jill Cranston Rice, *Dinsmore & Shohl LLP*, DRI State Representative

boasts more than 460 members. Many are missing out on all that DRI offers.

Membership in DRI has been incredibly valuable to many of us. Not only does it provide access to educational resources, DRI hosts twenty-nine substantive committees that host substantive seminars and develop ongoing dialogue about areas of practice.

DRI also provides access to resources and tools to grow our practices through a database of more than 65,000 experts; top-notch CLE seminars, conferences, and webcasts;

opportunities to network with DRI's 20,000+ defense practitioners; and more.

DRI recently launched LegalPoint (formerly DRI Online), a members-only service providing exclusive access to a vast online library of DRI articles, books, and materials. Members can search thousands of documents and filter them by practice area and resource. Content comes from DRI publications such as *For the Defense*, *In-House Defense Quarterly*, *Committee Newsletters*, Seminar materials, and the new *Defense Library Series (DLS)*.

I have made many friends and professional contacts through my DRI membership and received many business referrals. If you are a first-time, full-dues-paying member of DRI and a member of DTCWV, I will give you a certificate to attend a DRI seminar for free – an \$875 value! If you are interested in joining DRI, please contact Grace Hurney, our DRI State Membership Chair, at [grace.hurney@jacksonkelly.com](mailto:grace.hurney@jacksonkelly.com) or me at [jill.rice@dinsmore.com](mailto:jill.rice@dinsmore.com).



## Supreme Court of Appeals of West Virginia Scheduled to Decide Potential Landmark Oil and Gas Case

Jennifer Hicks, *Babst Calland*

The Supreme Court of Appeals of West Virginia will hear argument and issue a decision this year in *EQT Production Company v. Crowder, et al.*, Appeal No. 17-0968, a case that could

have far-reaching implications for oil and gas operators here.

In 2015, surface owners Beth Crowder and David Wentz filed suit alleging trespass and other claims arising when EQT Production entered the plaintiffs' surface tract and drilled nine horizontal gas wells that extended into neighboring tracts. The parties' predecessors had entered into an oil and gas lease in 1901 that was amended in 2011, after the surface and mineral estates were severed, to allow the pooling and unitization of the tract with the oil and gas from neighboring tracts. Plaintiffs argued that neither the lease nor the amendment gave EQT Production the right to use their surface to access and produce gas from neighboring tracts.

They claimed that despite having a valid oil and gas lease that allowed pooling, the producer did not have express permission to utilize the plaintiffs' surface property to produce natural gas from neighboring mineral tracts. While the plaintiffs acknowledged that the mineral lessee is entitled to "reasonable

use" of the surface to extract oil and gas, they argued that such "reasonable use" was limited to extraction from the subject tract only, not neighboring tracts.

Circuit Court Judge Timothy Sweeney agreed. In his summary judgment Order, Judge Sweeney found that because the mineral owners no longer owned the right to use the surface lands for exploration and production from neighboring tracts, they could not have given those rights to EQT Production in the lease amendment. Judge Sweeney found that only the surface owners or their predecessors could have expanded EQT Production's rights to use the surface. Judge Sweeney concluded that the "reasonable use" doctrine did not even come into play, and he granted summary judgment to the plaintiffs on their trespass and unjust enrichment claims. Following a jury trial on damages, EQT Production appealed.

The Supreme Court declined in 2016 to docket a similar certified question in this very case but now has a fully developed record. If the Court affirms Judge Sweeney's decision, this will no doubt be a landmark decision that will result in increased litigation over existing operations and create additional hurdles and costs for all future oil and gas operations in the state.