

## ALERT ENERGY & NATURAL RESOURCES



### Fourth Circuit Rules Oil and Gas Lease Allows for the Deduction of Post-Production Costs Pursuant to West Virginia Law

The United States Court of Appeals for the Fourth Circuit (Fourth Circuit) has vacated a judgment of the United States District Court for the Northern District of West Virginia that held an oil and gas lease failed to sufficiently indicate the method for calculating post-production costs to be deducted from royalty payments pursuant to West Virginia law. The lease provided that the lessor would bear some part of the post-production costs and contained a detailed list of post-production expenses that were deductible from royalties, but the District Court held the accounting methodology was not sufficiently disclosed. In *Young v. Equinor USA Onshore Properties, Inc.*, No. 19-1334 (4th Cir. Dec. 1, 2020), the Fourth Circuit held that West Virginia law does not require that an oil and gas lease set out an “Einsteinian proof” for calculating post-production costs and, in fact, could be satisfied by a simple formula. In holding that the lease sufficiently indicated the method for calculation in compliance with West Virginia law, the Fourth Circuit explained that the method was to add all the identified, reasonable, and actually incurred post-production costs, deduct them from the lessee’s gross proceeds, and then adjust for the lessor’s share of the total pooled acreage and royalty rate. This [opinion](#) also questions the continued viability of the West Virginia Supreme Court’s holding in the *Estate of Tawney v. Columbia Nat. Res., LLC*, 219 W. Va. 266, 633 S.E.2d 22 (2006) in light of critical comments in a subsequent royalty case decided by the West Virginia Supreme Court in 2017, *Leggett v. EQT Prod. Co.*, 238 W. Va. 264, 800 S.E.2d 850 (2017).

If you have any questions about the *Young* decision or its impact on the oil and gas industry, please contact Timothy Miller at (81) 265-1361 or [tmiller@babstcalland.com](mailto:tmiller@babstcalland.com), or Katrina Bowers at (81) 205-8955 or [kbowers@babstcalland.com](mailto:kbowers@babstcalland.com).

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#### CONTACT

**TIMOTHY M. MILLER**

[tmiller@babstcalland.com](mailto:tmiller@babstcalland.com)  
681.265.1361

**KATRINA N. BOWERS**

[kbowers@babstcalland.com](mailto:kbowers@babstcalland.com)  
681.205.8955

**Charleston, WV**

Suite 1000  
300 Summers Street  
Charleston, WV 25301  
681.205.8888

**BABSTCALLAND.COM**

PITTSBURGH, PA | CHARLESTON, WV | HOUSTON, TX | SEWELL, NJ | STATE COLLEGE, PA | WASHINGTON, DC

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