



EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" SM
"The Family Business Law Firm" SM

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Oil & Gas, Solar, Pipeline, and Energy Newsletter February 1, 2018

Dear Clients, Friends, and Colleagues:

We're looking forward to meeting soon with our clients, friends, and others in Jefferson (2/26/18) and Belmont (3/22/18) Counties. Please see details on page 2 about these two meetings which are open to the public.

How to handle royalty checks, analyzing deductions from royalty payments, and dealing with the Lessee/Operator oil and gas companies will be the main focuses of these meetings. We will also be talking about saving taxes, family transfers, and estate planning for landowners, royalty, and mineral owners.

Sincerely,

Emens & Wolper Team

Dick, Bea, Sean, Kelly, Cody, Heidi, Chris, Gail, and Dawn

Landowner Royalty Owner Alert: Royalty owners receiving checks for royalty payments should be following procedures that document everything related to their royalty payments AND should be aware of the four-year statute of limitations in which to claim incorrect or unpaid royalties. (See page 3 Ohio Four Year Statute of Limitations Regarding Royalties).

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**EMENS & WOLPER
UPCOMING MEETINGS AND
PRESENTATIONS**

Monday, Feb. 26, 2018

Starting at 6:00 p.m.

Wintersville Fire Station

286 Luray Dr.

Wintersville, OH 43935

This meeting will focus primarily on how to handle royalty checks and especially deductions (valid or invalid) from royalty payments. We will also expand our earlier discussions regarding saving taxes, family transfers, and estate planning for royalty owners.

Thursday, March 22, 2018

Starting at 6:00 p.m.

Union Local Middle School

66859 Belmont Morristown Rd.

Belmont, OH 43718

This meeting will focus primarily on how to handle royalty checks and especially deductions (valid or invalid) from royalty payments. We will also expand our earlier discussions regarding saving taxes, family transfers, and estate planning for royalty owners.

EXPLORATION AND DEVELOPMENT UPDATE

Eclipse Resources Corporation ("Eclipse") Acquires Large Utica Acreage in Pennsylvania. In late January of 2018, Eclipse closed on a \$92.2 million acquisition of 44,500 acres in the Utica Shale play of Northcentral Pennsylvania. The acquisition, called the Flat Castle acquisition, was acquired by a subsidiary of Eclipse, Eclipse Resources-PA LP, through 37.8 million shares of Eclipse's common stock. A spokesman for Eclipse said it expects to have the first well of the Flat Castle acquisition spud in the first quarter of 2018. For more information see <https://www.kallanishenergy.com/2018/01/24/eclipse-resources-closes-on-92-2m-utica-purchase/>.

Rex Energy Corporation ("Rex") Plans to Continue Drilling Wells in Carroll County, Ohio. Pennsylvania-based Rex has stated it plans to drill 10 new Utica Shale wells in Carroll County, Ohio which are expected to begin production in 2018. Rex has already drilled three wells on its Jenkins Pad in Washington Township which are expected to begin producing in January of 2018. In addition, Rex is drilling the fifth of seven wells on its Goebeler Pad in Harrison Township which are expected to begin producing in the second quarter of 2018. In a press release, Rex stated that the new Carroll County wells are anticipated to increase its production of condensate, "a light liquid commonly used for making gasoline." For more information see <http://www.indeonline.com/news/20171115/rex-energy-keeps-drilling-carroll-county>.

Salt Fork Resources, LLC ("SFR") Appears to have Increased Equity Commitment for New Oil and Gas Leases. Based in Cannonsburg, Pennsylvania, SFR was formed in March 2017 with an equity commitment from Riverstone Holdings LLC ("Riverstone") to acquire leases and focus on the development of oil and gas interests in Ohio and West Virginia. On January 18, 2018 a joint press release was issued by SFR and Riverstone stating that SFR was "pleased to announce the successful closing of an upsized equity commitment" from Riverstone. To date, it is estimated that SFR has acquired oil and gas leases covering over 20,000 acres in the Utica Shale plays of Ohio and West Virginia. In Ohio, some of this acreage is in Jefferson, Harrison, and Belmont Counties. The press release did not mention how large of an "upsized equity commitment" was given from Riverstone to SFR. For more information see <https://www.prnewswire.com/news-releases/salt-fork-resources-announces-successful-upsize-equity-commitment-300584916.html>.

This news regarding SFR is intriguing since Emens & Wolper knows of several situations where SFR has acquired an oil and gas lease and recorded the memorandum of lease but still has not paid the landowners their lease bonus.

Chesapeake Energy Corporation ("Chesapeake") Proposes \$30 Million Settlement Offer in Pennsylvania Royalty Dispute. After four years of mediation, Chesapeake has offered to settle a long-standing lawsuit in Pennsylvania with over 14,000 lessor-landowners. These landowners filed a lawsuit against Chesapeake claiming that Chesapeake has and continues to take improper post-production deductions from the landowners' royalties, improperly decreasing their royalty payments. One claim of the lawsuit alleges that Chesapeake has been charging landowners high costs by overpaying affiliated companies for services, reducing some royalty payments below zero. To settle the suit, Chesapeake has offered to pay the landowners a total of \$30 million dollars in back-royalties (which amounts to an average of approximately \$2,140 per landowner to be adjusted based on the number of acres the landowner owns within the Chesapeake production units). Chesapeake also claims that as part of the settlement, it would allow each landowner to choose "how their royalties are paid going forward." Chesapeake has agreed to allow a landowner to choose either: (1) having gas produced from their property marketed outside the region for a potentially higher price, where Chesapeake would deduct post-production expenses from the landowner's royalty or (2) having gas produced from their property marketed within the region, where Chesapeake claims it would provide the landowner with a true-gross royalty.



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EMENS & WOLPER LAW FIRM LEGAL SERVICES

Our law firm provides numerous legal services related to natural resources including the following:

- We review, analyze and negotiate new and old oil and gas leases and mineral deeds;
- We review, analyze and negotiate solar options, letters of intent, and leases;
- We review royalty payments, deductions, and division orders;
- We represent landowners in ODNR mandatory unitization proceedings who are being forced unitized;
- We review, analyze and negotiate all wind farm documents;
- We review, analyze and negotiate pipeline easements;
- We analyze mineral abandonment claims and claims regarding expired leases;
- We review, analyze and negotiate water, sand, timber, gravel, and coal rights agreements;
- We review, prepare and negotiate real estate deeds, mortgages, notes and liens;
- We review, analyze, negotiate sale of minerals and royalties; and
- We assist with litigation on all of these matters.

Our law firm also provides services regarding estate planning, succession planning for family farms and other businesses and purchases and sales of farms and other businesses.

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Chesapeake Proposes \$30 Million Settlement Offer in Pennsylvania Royalty Dispute (Cont.). Chesapeake has added one large stipulation to its settlement offer – the Pennsylvania Attorney General must agree to settle its own separate lawsuit against Chesapeake before Chesapeake will commit to complete its settlement with the landowners. In 2015 former Pennsylvania Attorney General, Kathleen G. Kane, filed a lawsuit against Chesapeake also claiming that Chesapeake was cheating landowners through improper deductions on royalty payments. While the separate lawsuits cover the same conduct of Chesapeake, the Pennsylvania Attorney General's suit was filed as part of the Attorney General's role in policing the marketplace and punishing wrongdoing. For more information see <https://marcellusdrilling.com/2018/01/chesapeake-agrees-to-30m-royalty-settlement-for-pa-landowners/>.

Ohio Four-Year Statute of Limitations Regarding Royalties. In Ohio, the statute of limitation for claims to obtain incorrect or unpaid royalties is Ohio Revised Code § 2305.041 which states that any claim must be brought within four years of the alleged breach. We urge landowners to hire experienced legal counsel to review royalty statements to ensure royalty checks are in the correct amounts prior to cashing any royalty checks.

EQT Corporation ("EQT") Plans to Invest in More Ohio Utica Shale Wells. In November 2017, EQT completed its \$8.2 billion acquisition of Rice Energy. Since the acquisition, EQT officials have stated that the company hopes to drill an additional 38 new wells in Ohio during 2018 as part of EQT's plan to increase its production in both the Marcellus and Utica Shale plays. The planned wells in Ohio, which are expected to contain laterals of over two miles, are anticipated to be an investment of over \$2.2 billion this year. For more information see <http://www.theintelligencer.net/news/top-headlines/2017/12/eqt-to-spend-additional-2-2b-in-new-shale-wells/>.

Ohio Well Pads Could have Increased Wells per Pad. It appears Ohio shale development is trending toward increasing the number of wells drilled from a single well pad. According to MarcellusDrillingNews, well pads in the Marcellus and Utica Shale areas were averaging just three or four wells per well pad over the past few years with a dozen wells on a pad being "big." However, EQT Corporation ("EQT") now has a well pad in Allegheny County, Pennsylvania with 38 wells permitted (9 of which have already been drilled). EQT has now stated that it is averaging between 17 and 18 wells per pad. Antero Resources Corporation is also stating that it is averaging 10 wells per pad. More wells per pad is being made possible because well laterals are becoming much longer than in recent years. Some well laterals may extend up to nearly four miles underground. For more information see <https://marcellusdrilling.com/2018/01/supersize-me-marcellus-utica-well-pads-now-host-up-to-40-wells/>.



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Landowner Groups and Other Ohio Counties Where Emens & Wolper has Assisted Landowners

Black River Landowners
Association—Lorain County

Central Ohio Landowners
Association—Richland and
Ashland Counties

Coshocton County
Landowners Group—
Coshocton and Northeastern
Muskingum Counties

Jefferson County Landowners
Group—Jefferson County

Mohican Basin Landowners
Group—Ashland, Wayne, and
Holmes Counties

Muskingum Hills
Landowners—Southeastern
Muskingum County

Perry County Landowners—
Perry County

Resources Land Group—
Licking and Southeastern
Knox County

Smith Goshen Group—
Belmont County

Ashland, Ashtabula, Athens,
Brown, Carroll, Columbiana,
Crawford, Defiance,
Delaware, Erie, Fayette,
Franklin, Fulton, Geauga,
Guernsey, Hardin, Harrison,
Henry, Highland, Hocking,
Holmes, Huron, Mahoning,
Marion, Meigs, Monroe,
Montgomery, Noble, Preble,
Pickaway, Portage, Ross,
Sandusky, Seneca, Stark,
Summit, Trumbull,
Tuscarawas, Union,
Washington, Wayne, Wood,
and others.

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Ohio Orphan Well Program is Seeking Contractors to Plug Improperly Abandoned Wells. In Ohio, the Orphan Well Program exists to plug abandoned oil and gas wells which may be “a hazard to the environment and [landowner] health and safety.” Currently the Ohio Department of Natural Resources is seeking contractors to perform well plugging and site restoration services under this program. In the first two quarters of Fiscal Year 2018, the Orphan Well Program has established contracts in the amount of \$2.8 million to plug 40 abandoned wells. Under the current Ohio biennium budget for Fiscal Years 2018 and 2019, the Orphan Well Program has been allocated \$6 million.

Community Environmental Legal Defense Fund (“CELDF”) Seeking Ohio Constitutional Amendment to Prevent Oil and Gas Development; Attorney Receives Disciplinary Sanctions in Pennsylvania. A group from Pennsylvania, the CELDF, has launched a campaign to seek an amendment of the Ohio Constitution which would allow “local communities to usurp the state’s role in regulating oil and gas.” MarcellusDrillingNews has stated that “the net effect of passing [the constitutional amendment] would be to shut down Utica Shale drilling in many locations, and block pipelines in most locations” by allowing local governments to pass laws denying these operations which could trump state law.

Recently, CELDF founder and leader, Tom Linzey, was sanctioned by Pennsylvania Federal Judge Susan Paradise Baxter for pursuing “certain claims and defenses in bad faith” in his representation of Grant Township, Indiana County, Pennsylvania. Judge Baxter wrote a strong opinion stating that Linzey’s lawsuit was in bad faith and “seeking to overturn longstanding corporate rights and ignoring the established preemptive effect of valid federal and state permits and environmental regulation.” She stated that Linzey was providing legal assistance to Grant Township in order “to pursue a discredited and previously litigated ‘community rights’ approach to prevent oil and gas operations within the Township.” Thus, she imposed disciplinary sanctions against Linzey. For more information see <https://marcellusdrilling.com/2018/01/attorney-for-anti-group-celdf-fined-52k-for-bad-faith-lawsuits/> which includes a full copy of the Court’s Opinion and Order.

WIND AND SOLAR ENERGY UPDATE

Solar Projects Continue to be Proposed Across Ohio. While there is still a question of whether the Ohio Legislature will encourage or discourage renewable energy sources, we continue to receive calls from landowners asking us to review options and leases for solar projects. As we have previously stated, these agreements generally contain language that is landowner unfriendly.



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*Please visit our website
for Educational Articles
www.emenswolperlaw.com*

PIPELINE UPDATE

- Solar is Here in Ohio:
Landowners Beware
- Selling Your Mineral Rights –
Questions You Should Consider
First!
- Separating your Mineral Rights:
Remember Real Estate Taxes
- Post-Production Costs: Protecting
Landowner Rights
- Oil and Gas Leases and Pipeline
Easements - This Time It's
Different
- Oil and Gas Considerations
When Buying and Selling
Farmland
- "Force Pooling" in Ohio:
Requiring Non-Consenting
Landowner's to Develop Their
Oil and Gas Minerals
- "Mineral Rights ARE Different
Pipeline Easements and Right of
Ways: Protecting Your Rights
- Pipeline Easements: Steps to
Protecting Landowner Rights
- Unusual Ohio Oil and Gas Lease
Provisions
- Ohio Oil and Gas Conservation
Law – The First Ten Years
(1965-1975)

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Kinder Morgan Utopia Has Begun Transporting Ethane. In late January 2018, the Kinder Morgan Utopia Pipeline project began transporting ethane from Harrison County, Ohio to Windsor, Ontario, Canada. While in service, the 270-mile pipeline will provide takeaway capacity from the Utica shale region to petrochemical producers, including NOVA Chemicals Corporation in Canada. The pipeline initially has a takeaway capacity of 50,000 bbl/day with a possible expansion of up to more than 75,000 bbl/day. For more information see <https://www.icis.com/resources/news/2018/01/23/10186000/us-kinder-morgan-starts-up-utopia-ethane-pipeline-to-canada/>.

Leach XPress Pipeline Now in Service. In early December 2017, Columbia Pipeline Group ("Columbia") (which is now part of TransCanada) filed a request with the Federal Energy Regulatory Commission ("FERC") requesting the authority to begin service on the Leach XPress Pipeline. The request asked FERC to grant Columbia the authority to transport 1.5 Bcf/d of natural gas through the pipeline starting January 1, 2018. Originally, Columbia anticipated beginning service of the Leach XPress Pipeline as early as November 1, 2017, but claimed "slow permitting processes, weather setbacks and unforeseen construction hurdles were to blame for the delay." For more information see <https://marcellusdrilling.com/2017/12/leach-xpress-starting-up-jan-1-marc-utica-gas-heading-to-the-gulf/>.

The 160-mile, 36-inch Leach XPress Pipeline was granted approval from FERC and was placed in service on January 1, 2018. Now, the \$1.6 billion pipeline will transport Marcellus and Utica natural gas south to Leach, Kentucky before reaching an interconnection to existing Columbia pipelines. At Leach, Kentucky, the natural gas will continue south to the Southeast and the Gulf Coast. For more information see <https://www.transcanada.com/en/announcements/2018-01-02leach-xpress-project-placed-into-service-mountaineer-xpress-gulf-xpress-receive-ferc-certificates/>.

Rover Pipeline Phase 1B Now in Service. We're seeing apparently contradictory information about the Rover Pipeline:

On Friday, December 15, 2018, FERC approved Rover Pipeline LLC's ("Rover") request to place Phase 1B of the Rover Pipeline project into service. Rover has had FERC approval since August 31, 2017 to ship natural gas through Phase 1A of the pipeline. With the addition of Phase 1B, Rover transportation capacity will increase from 1 Bcf/d to 1.7 Bcf/d. Rover anticipates the final phase of the Rover Pipeline project will be placed in service by the end of the first quarter of 2018 but, if FERC stops all horizontal directional drilling ("HDD") under the project again, completion could be significantly delayed. For more information see <https://www.kallanishenergy.com/2017/12/18/ferc-approves-rovers-phase-1b-for-service/>.

In the August 2017 Edition of this Newsletter, we reported that FERC had stopped HDD for the entire project due to 2 million gallons of diesel-contaminated drilling mud being leaked into the Tuscarawas River and surrounding areas. In the November 2017 Edition of this Newsletter, we reported that FERC allowed Rover to continue to for construction of its project. Recently, Ohio Environmental Protection Agency ("OEPA") director, Craig Butler, filed a complaint with FERC alleging that 148,000 gallons of drilling mud was lost "down hole" in the Tuscarawas River in Stark County, Ohio. Butler, on behalf of the OEPA, is requesting FERC stop all HDD under the project once again because he claims that the drilling mud provides "significant concerns for the potential of similar releases" in the area. For more information, see <https://marcellusdrilling.com/2018/01/oepea-continues-to-hunt-rover-pipe-claims-2nd-spill-near-river/>.

FERC Denies Requests to Stay Construction of the Nexus Pipeline Project. As we mentioned in the November 1, 2017 Edition of this Newsletter, Nexus Gas Transmission ("Nexus") received its Certificate of Public Convenience and Necessity ("CPCN") from FERC on August 25, 2017 in order to begin construction on the Nexus Pipeline project. Since receiving its CPCN, Nexus has faced lawsuits and regulatory actions filed by the Coalition to Reroute Nexus ("CORN") and the Sierra Club seeking to hold off construction of the pipeline. FERC has recently denied such requests and the Nexus Pipeline is now under construction. Once completed, the 257-mile Nexus Pipeline is anticipated to transport 1.5 Bcf/d of natural gas from Ohio, through Michigan, to Ontario, Canada. For more information see <https://marcellusdrilling.com/2018/01/ferc-denies-cornball-sierra-club-request-to-stop-nexus-pipeline/>.

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LEGAL UPDATE

Ohio Appellate Court Holds Oil and Gas Producers do not Consider Indirect Costs in “Paying Quantities” Analysis. *Alford v. Collins-McGregor Operating Co.*, Slip Opinion No. 2018-Ohio-8, involved an appeal to the Supreme Court of Ohio by a group of landowners/successor lessors to an oil and gas lease (“Landowners”) seeking partial termination to geological formations below the Gordon Sand under the implied covenant to explore further. In 1980, Collins-McGregor leased property, as Lessee, in Washington County, Ohio for “the sole and only purpose” of “mining and operating for oil and gas and laying pipeline, and building tanks, powers, stations, and structures thereon, to produce, save and take care of said products.” In return for these rights, Collins-McGregor committed to make royalty payments based on the gas produced and to provide the landowners a portion of the oil. The primary term of the lease was “for a term of One (1) years from [the effective] date, and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee.” A well was drilled on the leasehold in 1981 and has continued producing from the Gordon Sand since being drilled.

In 2015 the Landowners filed an amended complaint against Collins-McGregor alleging that the company failed to explore the property covered by the lease in formations below the Gordon Sand, including the Utica and Marcellus Shales, because it lacked the equipment or financial strength to do so. Because the lease did not expressly disclaim any implied warranties, the Landowners sought partial horizontal termination of the lease for all depths below the Gordon Sand under the implied covenant to explore further.

Historically, the implied covenant to reasonably develop has been applied by the Ohio Supreme Court to require a lessee of an oil and gas lease to “work the land with ordinary diligence” to obtain production and to protect against drainage from neighboring landowners, the court said that covenant implies an obligation on the lessee only to the extent that a reasonably prudent operator would do so. The covenant to reasonable develop, therefore, could sufficiently be used on its own, according to the Court, to protect the Landowners’ rights to development of the property. Thus, the Court declined to adopt the covenant to explore further in Ohio because Landowners already have sufficient protections under another implied covenant.

Because the Landowners only alleged on appeal partial horizontal termination of the oil and gas lease under the implied covenant to explore further, and not under the implied covenant of reasonable development, the Supreme Court of Ohio, in a 6-1 decision, affirmed the lower courts’ decisions declining partial horizontal termination of the oil and gas lease as to all formations below the Gordon Sand. While *Alford* is a significant win for oil and gas producers, the decision leaves open the issue of whether a landowner may claim partial horizontal termination under the implied covenant of reasonable development as an appropriate remedy when a company fails to develop the deeper resources. As the Court stated, “the implied covenant of reasonable development is well suited to address [the Landowners’ concerns], namely, the emergence of new drilling technologies permitting production from deep strata that could not be obtained before.”

Supreme Court of Ohio Declines to Adopt the Implied Covenant to Explore Further in Ohio. As a case of first impression in Ohio, the Court of Appeals for the Seventh District of Ohio affirmed a decision from the Common Pleas Court of Monroe County, Ohio, in *Hogue v. Whitacre*, 2017-Ohio-9377, which held that indirect operating expenses should not be considered when determining whether an oil or gas well is producing in paying quantities under the habendum clause of an oil and gas lease. In 2006, the Hogues (“Hogues”), leased their land to Whitacre Enterprises, Inc. (“Whitacre”), Lessee, covering 78.5 acres which drilled an oil and gas well in 2006 – within the primary term.

In July 2015, the Hogues filed a complaint against Whitacre seeking a declaration that the lease had been terminated due to a lack of production in paying quantities and seeking quiet title as to the oil and gas rights. The trial court granted summary judgment in favor of Whitacre.



LEGAL UPDATE (CONT.)

Supreme Court of Ohio Declines to Adopt the Implied Covenant to Explore Further in Ohio (Cont.). The Hogues alleged that Whitacre misrepresented the amount of its profits by misrepresenting the amount of expenses it incurred in operating the well. The Supreme Court of Ohio has defined the term "paying quantities" as "the production of 'quantities of oil or gas sufficient to yield a profit, even small, to the lessee over operating expenses, even though the drilling costs, or equipping costs, are not recovered, and even though the undertaking as a whole may thus result in a loss.'"

For 2012, the Hogues argued that Whitacre paid a monthly expense of \$250 to its managing company, which should have added an additional \$3,000 per year expense to operation of the gas well. If included, this additional expense would have made the well unprofitable in 2012. These expenses included amounts for office payrolls, office leases, oil and gas software, office expenses, postage, professional expenses, utilities, furniture, vehicles, etc. The Court, relying on precedent of Louisiana and Oklahoma, stated that in Ohio courts must look to direct operating costs and exclude any indirect costs that do not contribute to the production of oil or gas. Thus, the Court said Whitacre and the trial court properly excluded these costs from its paying quantities analysis.

In a separate argument, the Hogues claimed no production terminated the Lease, but the Court, consistent with prior Ohio precedent, said that a temporary cessation of less than two years is not an unreasonable delay that causes the termination of an oil and gas lease.

Hogue is another significant win for oil and gas producers in Ohio. As the Court noted, prior to *Hogue* there was no Ohio precedent directly addressing whether a paying quantities analysis included indirect expenses such as business overhead costs.

Ohio Appellate Court Finds Pooling and Unitization Clause Ambiguous. In *Bond v. Halcon Energy Properties, Inc.*, 2017-Ohio-7754, the Court of Appeals for the Seventh District of Ohio reversed a decision from the Common Pleas Court of Mahoning County, Ohio, which had granted summary judgment to a producer by stating that a pooling and unitization clause in an oil and gas lease was not ambiguous, Anna J. Tims entered into an oil and gas lease with Murphy Oil Company (the "Lease"), which was partially assigned to Halcon Energy Properties, Inc. ("Halcon"). The Lease covered approximately 70 acres in Mahoning County, Ohio and allowed unitization to "pool or combine the land covered by [the] lease, or any portion thereof, into a well unit or units not exceeding approximately 40 acres for oil and not exceeding approximately 640 acres for gas." In 2000, the Bonds purchased 40.9 acres covered by the Lease from the Tims. In April 2013, Halcon drilled a horizontal well, known as the Davidson 1H, comprising 151.52 acres including some of the Bond's property. Ultimately the Davidson 1H well produced large quantities of both oil and gas. In May 2013, Halcon sought amendments from Lessors of all of Halcons leases, seeking unitization clauses with larger limits but the Bonds refused to sign claiming that the Davison 1H well was an oil well, producing in violation of the pooling and unitization clause of the Lease because the unit was larger than the allowed 40-acre limit. This caused the Bonds to file a lawsuit against Halcon claiming breach of contract and trespass.

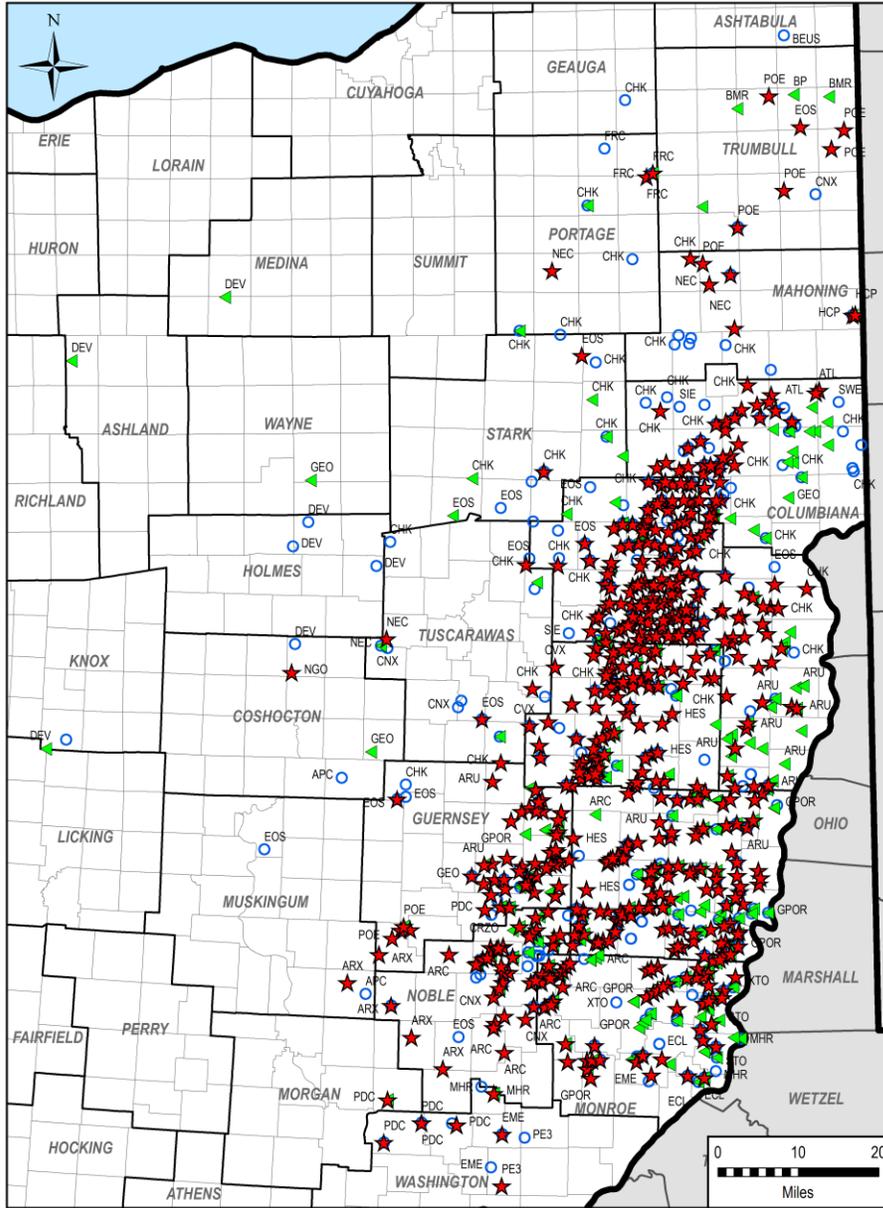
Before trial and upon Halcon's motion, the trial court granted summary judgment in favor of Halcon by stating that the Davidson 1H well was a "gas well" under the pooling and unitization clause because a "gas well" is any well "capable of producing gas." The trial court never explained its reasoning. The Appellate Court reversed the trial court by holding that the pooling and unitization clause was sufficiently ambiguous to create genuine issues of material fact. So, the case was remanded to the trial court for reconsideration.

This decision is important for Ohio practitioners because, as the Court notes, "Ohio does not have a statutory, administrative or common law definition to distinguish between oil and gas wells or well units." Many other states, including Kentucky, Montana, and Virginia contain such statutes.



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UTICA HORIZONTAL WELL STATUS THROUGH 12/30/2017

- ★ PRODUCING (1,787)
- ▲ DRILLING; DRILLED (497)
- PERMITTED OR NOT DRILLED (497)

OPERATOR	LBL	PROD	PMT	DRLG	DRLD	TOT
AMERICAN ENERGY UTICA LLC	AEU	0	1	0	3	4
ANADARKO E & P ONSHORE LLC	APC	0	4	0	0	4
AMERICAN PETROLEUM PRTR OH LLC	APP	0	2	0	0	2
ANTERO RESOURCES CORPORATION	ARC	179	30	11	38	258
ASCENT RESOURCES UTICA LLC	ARU	196	15	70	28	309
ARTEX OIL COMPANY	ARX	0	6	0	1	7
ATLAS NOBLE LLC	ATL	12	0	0	0	12
BEUSA ENERGY LLC	BEUS	0	1	0	0	1
BRAMMER ENGINEERING INC	BMR	0	0	0	2	2
BP AMERICA PRODUCTION COMPANY	BP	0	0	0	1	1
CHESAPEAKE EXPLORATION LLC	CHK	682	121	9	50	862
CNX GAS COMPANY LLC	CNX	59	6	4	11	80
CARRIZO (UTICA) LLC	CRZO	2	0	0	1	3
CHEVRON APPALACHIA LLC	CVX	0	10	0	0	10
DEVON ENERGY PRODUCTION CO	DEV	0	6	0	3	9
ECLIPSE RESOURCES I LP	ECL	96	52	9	14	171
EM ENERGY OHIO LLC	EME	6	8	6	1	21
ENERVEST OPERATING LLC	EOS	5	20	0	1	26
EQT PRODUCTION COMPANY	EQT	2	0	0	2	4
MOUNTAINEER KEYSTONE LLC	FRC	4	0	0	4	8
GEOPETRO LLC	GEO	2	2	1	0	5
GULFPORT ENERGY CORPORATION	GPOR	272	70	54	19	415
HILCORP ENERGY COMPANY	HCP	45	7	0	1	53
HESS OHIO DEVELOPMENTS LLC	HES	20	57	0	13	90
HG ENERGY LLC	HGE	5	1	1	0	7
HALCON OPERATING COMPANY INC	HK	2	1	0	1	4
TRIAD HUNTER LLC	MHR	22	0	0	1	23
NGO DEVELOPMENT CORP	NGO	1	0	0	0	1
NORTHWOOD ENERGY CORP	NEC	3	2	0	1	6
PDC ENERGY INC	PDC	29	7	6	0	42
PROTÉGÉ ENERGY III LLC	PE3	2	0	0	0	2
PIN OAK ENERGY PARTNERS LLC	POE	9	3	0	1	13
RICE DRILLING D LLC	RDD	78	12	8	28	126
R E GAS DEVELOPMENT LLC	REG	11	20	12	7	50
SIERRA RESOURCES LLC	SIE	0	0	0	3	3
STATOIL USA ONSHORE PROP INC	STO	1	15	12	7	35
SWEPI LP	SWE	0	0	0	1	1
XTO ENERGY INC.	XTO	42	18	1	2	63
TOTALS		1787	497	204	245	2733



KEY	DESCRIPTION
PROD	PRODUCING
PMT	PERMITTED
DRLG	DRILLING
DRLD	DRILLED

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Emens & Wolper would like to thank Marty Shumway of Shumway Resources, LLC for providing the Utica Status Map, above.