



2019 Legal Update

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Estoppel

- **Barclay Petro., Inc., v. Bailey, 2018-Ohio-5136**
 - Where a landowner accepts benefits under an oil-and-gas lease without reserving its rights to assert that the lease has terminated, is the landowner thereafter quasi-estopped from claiming that the lease terminated prior to the acceptance of benefits?
 - Case dismissed, sua sponte, as having been improvidently accepted.

Licensing for Independent Landmen

- Dundics v. Eric Petroleum, 2018-Ohio-3826
 - An oil-and-gas lease falls within definition of "real estate" in R.C. 4735.01(B).
 - Negotiation of oil-and-gas leases requires real-estate-broker's license pursuant to R.C. 4735.01(A) and 4735.02(A).
 - Because oil-and-gas land professionals seek compensation for conducting an activity described in R.C. 4735.01(A) without real-estate-broker's license, R.C. 4735.21 precludes their cause of action.

Constitutionality of the Unitization Statute

- Kerns v. Chesapeake Exploration, L.L.C., 2019 U.S. App. LEXIS 3450 (6th Cir.)
 - Mere use of the State's pooling order process without the assistance of state officials did not transform the company into a state actor under 42 U.S.C.S. § 1983.
 - The landowner's takings and due process claims against a state regulatory official failed because the complaint failed to adequately plead a property interest through physical damages or interference with use of the landowners' property.

Unitization

- Am. Energy-Utica, L.L.C. v. Fuller, 2018-Ohio-3250 (5th)
 - The use of the application procedure under R.C. 1509.28 by the assignees of the "deep rights" without the lessor's written agreement was a breach of the lease agreement because the assignees used the procedure to retroactively impair the obligation of the contract set forth in the lease.
 - Supreme Court declined to review the case.

Statute of Limitations

- Neuhart v. TransAtlantic Energy Corp., 2018-Ohio-4099 (7th)
 - The language in a letter amending the parties' contract was construed to be a Pugh clause, and undrilled acreage automatically reverted to appellants at the end of the primary term; no statute of limitations would apply.
 - Supreme Court declined to review the case.
- Browne v. Artex Oil Co., 2018-Ohio-3746 (5th)
 - 15 year statute of limitations applied to a landowner's claim to terminate an oil and gas lease.
 - Supreme Court review pending.

Landowner's Burden of Proof

- Pfalzgraf v. Miley, 2018-Ohio-2828 (7th)
 - Although the burden was on the property owner to prove that the well was not producing in paying quantities, the trial court's findings demonstrated that it placed the burden on the gas company to prove that the well was producing in paying quantities.
 - The trial court relied on multiple factors that have been found to be irrelevant to a paying quantities determination.

Paying Quantities

- Kraynak v. Whitacre, 2018-Ohio-2784 (7th)
 - Lessee's business records were ambiguous because they did not itemize operating expenses, so the \$300 per month payment between companies was treated as a direct operating expense.
 - Lessee argued that payment was made for accounting reasons and did not reflect actual operating costs of the well.
 - The well grossed approximately \$2000 per year.

Authority of the ODNR

- American Water Management Services, LLC v. Division of Oil & Gas Resources Management, 2018-Ohio-3028 (10th)
 - Trial court court reversed the Commission and allowed the resumption of wastewater injection.
 - Trial court's judgment was reversed because it was unreasonable and unlawful.
- State ex rel. AWMS Water Sols., LLC v. Zehringer, 2019-Ohio-923 (11th)
 - Respondents were not required to begin appropriation proceedings as operator had not been deprived of all economically beneficial use of the property.
 - Operator failed to show that they possessed reasonable investment-backed expectations that they would not be subject to regulations that could cause their operations to be suspended due to induced seismic activity in light of the disclosures in their offering documents.

Landowner Damages

- Victor v. Big Sky Energy, 2018-Ohio-4666 (11th)
 - The lessee's act of leaving a compressor on the property beyond the expiration of the lease constituted a trespass.
 - Damages were awarded for the cost of the space where the compressor was located and to complete remediation.
- Accettola v. Big Sky Energy, 2018-Ohio-5076 (11th)
 - Lessee had not taken action for almost three years after the lease was terminated in mid-2012, from 2013 through most of 2015, to remove its equipment from the owners' land.
 - The owners suffered intangible losses, including the ability to have property that was uncluttered by bulky, old, and damaged equipment, as well as the inconvenience and frustration resulting from spending years attempting to have equipment removed by contacting various entities.
- Woods v. Big Sky Energy, 2019-Ohio-554 (5th)

Calculation of Royalties (Ohio)

- Lutz v. Chesapeake Appalachia, LLC, 2018 U.S. Dist. LEXIS 172575
 - Class certification denied.
- Bond v. Antero Res. Corp., 328 F.R.D. 187
 - Class certification denied.
- Zehentbauer Family Land LP v. Chesapeake Exploration, L.L.C., 2018 U.S. Dist. LEXIS 121728
 - Class certification granted in part.
- Henceroth v. Chesapeake Exploration, L.L.C., 2018 U.S. Dist. LEXIS 48382
 - Class certification granted.

Calculation of Royalties (West Virginia)

- Richards v. EQT Prod. Co, 2018 U.S. Dist. LEXIS 111821
 - Denied the landowner's motion for summary judgment on whether EQT breached the contract by paying royalties on production from sales to an affiliate that deducted post-production costs.
- Corder v. Antero Res. Corp., 2018 U.S. LEXIS 97499
 - A market enhancement clause was insufficient to justify dismissal of a landowner's claim for improper royalty deductions.
- Fout v. EQT Prod. Co., 2018 U.S. Dist. LEXIS 125161
 - Trial court affirmed a verdict for EQT on whether deductions for post-productions costs were reasonable.



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