



Dick Emens - demens@ewjlaw.com
 Bea Wolper - bwolper@ewjlaw.com
 Sean Jacobs - sjacobs@ewjlaw.com
 Kelly Jasin - kjasin@ewjlaw.com

Todd Kildow - tkildow@ewjlaw.com
 Cody Smith - csmith@ewjlaw.com
 Heidi Kemp - hkemp@ewjlaw.com
 David Welsh - dwelsh@ewjlaw.com

Chris Vallo - cvallo@ewjlaw.com
 Gail Tibbals - gtibbals@ewjlaw.com
 Dawn Homan - dhoman@ewjlaw.com
 Mandy Nagy - mnagy@ewjlaw.com

IN THIS ISSUE

EXPLORATION AND DEVELOPMENT UPDATE.....Page 2

Top 25 Gas Producing Utica Shale Wells in Q3 of 2021.....Page 2

Top 25 Oil Producing Utica Shale Wells in Q3 of 2021.....Page 2

Utica / Point Pleasant Shale Well Permitting in 2022 So FarPage 3

PIPELINE UPDATE.....Page 3

Union County Family Seeking to Enforce Terms of Agricultural Easement Against Columbia Gas of Ohio, Inc.Page 3

LEGISLATIVE UPDATE.....Page 4

LEGAL UPDATE.....Page 4

RENEWABLE ENERGY UPDATE.....Page 5

Oil & Gas, Real Estate, Solar, Easements/Rights of Way Newsletter – February 2022

Dear Clients and Other Friends,

Please start with the **Landowner Alerts** below as they provide information that is likely to directly affect you!

Sincerely,
 Emens Wolper Jacobs & Jasin Team
 Dick, Bea, Sean, Kelly,
 Todd, Cody, Heidi, David,
 Chris, Gail, Dawn, and Mandy

Landowner Alert to Owners of Land Leased for Solar or with Easements for Solar Projects AND Owners of Land Adjacent to Land that May Be Leased or with Easements for Solar Projects: Landowners considering leasing land / granting easements for a solar project AND landowners with land adjacent to a solar project should focus on drainage issues which may arise on their land. The solar project may change the drainage patterns. This is especially true if there are drain tiles, ditches, or waterways already existing on either the solar project land or land adjacent to the solar project.

Landowner Easement Alert: Easements are continuing to “bite” landowners who sign utility or pipeline easements without review by a knowledgeable attorney. By “bite” we mean that the unreviewed easements can end up costing the landowner \$\$\$ and/or reduce what activities a landowner can conduct on his/her land. In addition to being concerned about the wording of utility and pipeline easements, landowners should be watching to see if the utilities are exceeding their authority on older easements; we are seeing utilities claiming rights which go beyond their authority.

Landowner Royalty Alert: Natural gas prices have risen and we advise royalty owners to be extra careful in reviewing their royalty checks. In our review of clients’ royalty checks, we find unwarranted deductions being taken from royalty payments.

COLUMBUS
 1 Easton Oval • Suite 550
 Columbus, Ohio 43219
 Phone: 614-414-0888 • Fax: 614-414-0898

ST. CLAIRSVILLE
 250 West Main Street • Suite A
 St. Clairsville, Ohio 43950
 Phone: 740-238-5400 • Fax: 740-695-9551



EXPLORATION AND DEVELOPMENT UPDATE

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

- Do I Need to Avoid Probate?
- Landowner Dangers with Solar Options, Solar Leases and Solar Easements
- Easements and Rights of Way – Landowners Beware!
- Important Differences Between Sale of Oil and Gas Minerals and an Oil and Gas Lease
- 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)

***Emens Wolper Jacobs Jasin
 Law Firm***

One Easton Oval, Suite 550
 Columbus, Ohio 43219
 Phone: (614) 414-0888
 Fax: (614) 414-0898

and

250 West Main Street, Suite A
 St. Clairsville, Ohio 43950
 Phone: (740) 238-5400
 Fax: (740) 695-9551

Top 25 Gas Producing Utica Shale Wells in Q3 of 2021: Natural gas production in the Third Quarter of 2021 was approximately 9.37 Bcf higher than the Second Quarter of 2021. Natural gas production amounted to approximately 547.54 Bcf in the Third Quarter of 2021 compared to 538.170 Bcf natural gas production in the Second Quarter of 2021. Ascent Resources – Utica LLC (“Ascent”) owns 17 of the top 25 gas-producing wells in the state. More information on these top 25 gas-producing wells can be found below and at <http://oilandgas.ohiodnr.gov/production#QUART>.

| Owner Name | County | Township | Well Name and Number |
|----------------------------|-----------|--------------|--------------------------|
| ASCENT RESOURCES UTICA LLC | JEFFERSON | WELLS | DOYEN SW WEL JF 2H |
| ASCENT RESOURCES UTICA LLC | BELMONT | RICHLAND | COFFIELD W RCH BL 2H |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | WELLS | DOYEN SE WEL JF 4H |
| ASCENT RESOURCES UTICA LLC | HARRISON | SHORT CREEK | CRAVAT COAL NW SHC HR 5H |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | MT. PLEASANT | CESARIO NE MTP JF 5H |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | WELLS | ZIMNOX SE WEL JF 8H |
| ASCENT RESOURCES UTICA LLC | BELMONT | RICHLAND | COFFIELD S RCH BL 4H-A |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | WELLS | ZIMNOX SE WEL JF 6H |
| SWN Production (Ohio) LLC | MONROE | ADAMS | WILEY B 3H |
| SWN Production (Ohio) LLC | MONROE | ADAMS | WILEY A 1H |
| SWN Production (Ohio) LLC | MONROE | ADAMS | WILEY C 5H |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | WELLS | ZIMNOX SW WEL JF 4H |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | WELLS | DOYEN NW WEL JF 1H |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | SMITHFIELD | HOWELL 33 SE SMF JF 8H |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | SMITHFIELD | HOWELL 33 S SMF JF 6H |
| ASCENT RESOURCES UTICA LLC | HARRISON | SHORT CREEK | CRAVAT COAL N SHC HR 7H |
| RICE DRILLING D LLC | BELMONT | RICHLAND | BIG TEX SCL6H13 |
| ASCENT RESOURCES UTICA LLC | BELMONT | RICHLAND | COFFIELD E RCH BL 6H |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | WELLS | DOYEN NE WEL JF 3H |
| GULFPORT APPALACHIA LLC | MONROE | CENTER | MORRIS 211736 2A |
| GULFPORT APPALACHIA LLC | MONROE | CENTER | MORRIS 211160 1A |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | MT. PLEASANT | CESARIO NW MTP JF 1H |
| RICE DRILLING D LLC | BELMONT | RICHLAND | BIG TEX SCL6H9 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | SMITHFIELD | HOWELL 33 SW SMF JF 4H |
| EAP OHIO LLC | JEFFERSON | SALEM | NEWBURN 26-10-3 5H |

Top 25 Oil Producing Utica Shale Wells in Q3 of 2021: Oil production in the Third Quarter of 2021 was 340,694 bbl lower than the Second Quarter of 2021. Oil production amounted to 3,781,319 bbl in the Third Quarter of 2021 compared to 4,122,013 bbl in the Second Quarter of 2021. EAP Ohio, LLC (“EAP”), Ascent, Utica Resource Operating LLC (“Utica Resource”), and Gulfport Appalachia LLC (“Gulfport”) own all of the top 25 oil-producing wells in the State. EAP owns 17, Ascent owns 8, Utica Resource owns 2, and Gulfport owns 1. 18 of the top 25 oil-producing wells are located in Harrison County, with the remaining 7 in Guernsey County. More information on these top 25 oil-producing wells can be found at <http://oilandgas.ohiodnr.gov/production#QUART>.



**EMENS WOLPER JACOBS
 JASIN LAW FIRM
 LEGAL SERVICES**

EXPLORATION AND DEVELOPMENT UPDATE

Utica / Point Pleasant Shale Well Permitting in 2022 So Far: Ohio Department of Natural Resources' online records appear to indicate that a total of 15 Utica / Point Pleasant well permits were issued in 2022 as of January 22. Similar ODNR online records also indicate that there are a total of 12 rigs currently operating in Ohio.

| Permit Issued | County | Township | API # | Well Name & Number |
|---------------|------------|------------|----------------|-----------------------|
| 1/20/2022 | BELMONT | WHEELING | 34013215030000 | BLAYNEY S WHL BL 4H |
| 1/20/2022 | BELMONT | WHEELING | 34013215040000 | BLAYNEY SE WHL BL 6H |
| 1/19/2022 | BELMONT | WHEELING | 34013215100000 | BLAYNEY WHL BL 2H |
| 1/14/2022 | COLUMBIANA | FAIRFIELD | 34029219230000 | Fairfield Tarka 1H |
| 1/14/2022 | COLUMBIANA | FAIRFIELD | 34029219240000 | Fairfield Tarka 2H |
| 1/18/2022 | COLUMBIANA | FAIRFIELD | 34029219250000 | Fairfield Tarka 3H |
| 1/13/2022 | HARRISON | MOOREFIELD | 34067217070000 | ELLEN W MRF HR 4H |
| 1/13/2022 | HARRISON | MOOREFIELD | 34067217080000 | ELLEN W MRF HR 10H |
| 1/20/2022 | JEFFERSON | SMITHFIELD | 34081209400000 | Dawson N SMF JF 1H |
| 1/20/2022 | JEFFERSON | SMITHFIELD | 34081209410000 | Dawson N SMF JF 3H |
| 1/21/2022 | MONROE | LEE | 34111248900000 | HERRICK C WEST 6H |
| 1/21/2022 | MONROE | LEE | 34111248910000 | HERRICK B EAST MNR 7H |
| 1/4/2022 | MONROE | ADAMS | 34111249520000 | ROTHENBULER F MNR 3H |
| 1/4/2022 | MONROE | ADAMS | 34111249530000 | ROTHENBUHLER F MNR 5H |
| 1/21/2022 | MONROE | ADAMS | 34111249540000 | ROTHENBULER D MNR 1H |

For more information, see <https://ohiodnr.gov/wps/portal/gov/odnr/discover-and-learn/safety-conservation/about-ODNR/oil-gas/oil-gas-resources/horizontal-wells>.

PIPELINE UPDATE

Union County Family Seeking to Enforce Terms of Agricultural Easement Against Columbia Gas of Ohio, Inc. ("Columbia Gas"): A family who owns property in Union County, Ohio is currently defending a lawsuit against Columbia Gas. In 2021, Columbia Gas filed an eminent domain lawsuit against the family seeking to obtain a pipeline easement across their land. The family has stated that they are not interested in negotiating a pipeline easement across their land because it is already bound by an agricultural easement held by the Ohio Department of Agriculture which prevents the land from being used for any non-farm development. The Ohio Power Siting Board approved the Columbia Gas pipeline project in August of 2020, but construction cannot be completed until Columbia Gas secures easements for the entire route. The family has filed a mandamus action against the Ohio Department of Agriculture asking that it be required to enforce the terms of the agricultural easement. For more information, see <https://www.farmanddairy.com/news/hearings-begin-in-case-pitting-columbia-gas-pipeline-vs-preserved-farmland/694415.html>. ODNR

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 wind farm documents;
- We review, analyze and negotiate easements proposed by utilities and municipalities;
- 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;
- We assist with litigation on all of these matters;
- We work closely with geologists and engineers to obtain their evaluations of oil, gas, gravel, and sand reserves.

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.



***Landowner Groups and
Other Ohio Counties
Where Emens Wolper
Jacobs Jasin Law 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, Butler, Carroll,
Columbiana, Crawford,
Defiance, Delaware, Erie,
Fayette, Franklin, Fulton,
Geauga, Guernsey, Hardin,
Harrison, Henry, Highland,
Hocking, Holmes, Huron,
Mahoning, Marion, Meigs,
Miami, Monroe,
Montgomery, Noble, Preble,
Pickaway, Portage, Ross,
Sandusky, Seneca, Stark,
Summit, Trumbull,
Tuscarawas, Union, Warren,
Washington, Wayne, Wood,
and others.

LEGAL UPDATE

Seventh District Court of Appeals Further Clarifies Marketable Title Act Exception: In *Pernick v. Dallas*, 2021-Ohio-4635, the Seventh District Court of Appeals ("Seventh District") issued a decision clarifying certain fundamental concepts and principles related to ownership of oil and gas in Ohio. In doing so, the Seventh District further provided guidance related to the application of the Ohio Marketable Title Act ("MTA"), R.C. 5301.47, and the Ohio Dormant Mineral Act ("DMA"), R.C. 5301.56.

The MTA states that any person who has an unbroken chain of title of record to any interest in land for at least 40 years has a "marketable record title" to the interest. R.C. 5301.48. Unless an exception to the statute applies, "marketable record title" to the interest "operates to extinguish" "all interests and claims that existed prior to the effective date of the 'root of title,'" R.C. 5301.49, and those preexisting interests are "declared to be null and void." R.C. 5301.50. Similarly, the DMA states that if none of the savings events contained in R.C. 5301.56(B)(3) applies within the preceding 20-year period and the surface owner complies with the DMA's statutory requirements, a severed mineral interest may be deemed abandoned and vested with surface of the property. *See generally* R.C. 5301.56. Both of these statutes have been used in Ohio to reunite severed oil and gas interests with the surface of the property to which they were severed.

Application of the MTA and the DMA may be prevented when the severed oil and gas interest is the subject of a "title transaction" which affects the oil and gas interest. In *Pernick*, an alleged heir to a 1925 oil and gas interest claimed that an Oil and Gas Lease entered into by the surface owners was a "title transaction" preventing application of the MTA and DMA, thereby protecting the heirs' interest. The Seventh District rejected this claim holding that the surface owners' Oil and Gas Lease could not have protected the interest claimed by the heir because the surface owner did not own an interest in the oil and gas at the time they entered into an Oil and Gas Lease. Thus, *Pernick* suggests that a "title transaction" may prevent application of the MTA or DMA only when the "title transaction" was entered by someone who owns an interest in the oil and gas.

The MTA looks to the 40-year period after a "root of title." A root of title is "that conveyance or other title transaction in the chain of title of a person . . . which was the most recent to be recorded as of a date [40] years prior to the time when marketability is being determined." R.C. 5301.47(E). In *Pernick*, an alleged heir to the severed oil and gas interest also claimed that to be a "proper" "root of title," a deed cannot include a reference to prior instrument where the former grantor did not own all of the oil and gas. However, the Seventh District disagreed again and held that a "root of title" may still be "proper" if it does not contain any explicit reference to any prior oil, gas, or mineral reservation. The Seventh District based its holding on the longstanding Ohio law which provides that a deed will convey the largest estate possible unless it specifies otherwise.

In reaching its decision on the MTA, the Seventh District found the DMA claims to be rendered moot. Thus, it affirmed the trial court's decision. While *Pernick* does not appear to be a landmark decision for Ohio's oil and gas jurisprudence, it does reiterate some of the foundations of Ohio's law which are a bedrock for MTA and DMA interpretation.



RENEWABLE ENERGY UPDATE

In the May 2021 Edition of this Newsletter we provided a map showing the utility scale solar projects in Ohio which were pending, under construction, and operational. The Ohio Power Siting Board has updated this map as of January 21, 2022 which we include below:

