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***Oil & Gas, Real Estate, Solar,
Easements/Rights of Way Newsletter –
September 2020***

Dear Clients and other Friends,

This Newsletter Highlights:

- Gas and Oil Pricing/Shut-In Wells - - Natural gas prices have recently bounced back to \$2.57/MMBtu (NYMEX 9/1/2020) but will they stay there? Will Shut-In Wells be reopened?
- Easements and Rights of Way - - We include some specific information for landowners who are approached for Electric, Solar, Pipeline or other Easements and Rights of Way
- Chesapeake Bankruptcy - - Ohio’s largest Ohio Shale operator (former) has filed for bankruptcy. What are the chances of collecting on a claim? When must claims be filed?
- More and More Solar Deals - - We continue to see more Solar Options, Leases and Easements/Rights of Way. Landowners should not be “blinded” by the apparent high acreage \$\$\$ for a lease of their property.
- Important Ohio DMA Case - - What is the “reasonable search” that must be made in order to satisfy Ohio’s Dormant Mineral Act?

Sincerely,
Emens Wolper Jacobs & Jasin Team
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Todd, Cody, Heidi, David,
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EXPLORATION AND DEVELOPMENT UPDATE

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

- Easements and Rights of Way – Landowners Beware!
- Do I Need to Avoid Probate?
- Landowner Dangers with Solar Options, Solar Leases and Solar Easements
- 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)

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Natural Gas Prices Continue to be an Important Topic of Discussion: There was much writing about the decline of natural gas prices over the last several months, including a lengthy article in the WALL STREET JOURNAL which said “[n]atural-gas prices have bounced back from the 25-year low . . . but analysts and traders don’t expect them to go much higher—at least until it is time to turn on the heat.” For more information, see <https://www.wsj.com/articles/the-world-cant-take-much-more-shale-gas-11594114202>.

However, NYMEX natural gas prices reached \$2.57/MMBtu on 9/1/2020 so maybe the experts were wrong. We hope so!

We noticed that EQT sent out letters to a number of landowners notifying them that their leases were affected by gas wells being shut-in temporarily. It will be interesting to see if the notice was sent to avoid a lot of telephone calls about lower royalty payments—and if the shut-in is really temporary.

Chesapeake Energy Corporation (“Chesapeake”) Filed for Chapter 11 Bankruptcy: On June 28, 2020 Chesapeake and more than three dozen affiliate companies filed for chapter 11 bankruptcy making it the largest oil and gas company to ever file for bankruptcy. The bankruptcy comes after Chesapeake’s share prices have dropped precipitously (from \$172.00 per share) in part because of falling oil and gas prices due to Covid-19. Chapter 11 bankruptcy is the “reorganization” bankruptcy which allows the debtor to keep its business alive and pay creditors over time. In a statement, Chesapeake stated that the bankruptcy is expected to “strengthen [Chesapeake’s] balance sheet and restructure its legacy contractual obligations to achieve a more sustainable capital structure.” As part of its restructuring, Chesapeake is seeking to eliminate around \$7 billion in debt. It is anticipated that more than 200 oil and gas companies could file for bankruptcy over the next two years if oil and gas prices continue to be low. For more information, see https://lite.cnn.com/en/article/h_7c789743bd4bd38ed3f09cc59b254100, <https://www.wsj.com/articles/fracking-trailblazer-chesapeake-energy-files-for-bankruptcy-11593374287>, and <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics>.

The “Claims Bar Date,” the date before which any claim must be made in Chesapeake’s bankruptcy, is October 30, 2020 according to the 8/31/2020 Court docket. As of August 28, 2020 there were at least 667 claims filed—ranging in size from \$6.64 to more than \$7,000,000.00. For more information, see <https://dm.epiq11.com/case/chy/dockets/787>.

Landowner Group Leasing for Oil and Gas: We are happy that we are again helping landowners get together on a group leasing project. We have not seen this happen for several years, but as drilling units in the Utica Shale include more acreage and the lateral well drilling continues to extend to 12,000 –15,000 feet there will likely be more leasing of town lots which is appropriate for group leasing.



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

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

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.

Top 25 Gas Producing Utica Shale Wells in Q2 of 2020: Natural gas production in the Second Quarter of 2020 was approximately 12.238 Bcf lower than the First Quarter of 2020. Natural gas production amounted to approximately 569.396 Bcf in the Second Quarter of 2020 compared to 581.634 Bcf of natural gas production in the First Quarter of 2020. Ascent Resources – Utica, LLC (“Ascent”) owns 20 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
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	HENDERSON E RCH BL 6H
GULFPORT APPALACHIA LLC	BELMONT	PEASE	STARVAGGI 210725 1A
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	HENDERSON W RCH BL 4H
GULFPORT APPALACHIA LLC	BELMONT	PEASE	STARVAGGI 210727 4A
ASCENT RESOURCES UTICA LLC	BELMONT	COLERAIN ISLAND	SMITH NW CLR BL 1H
EAP OHIO LLC	JEFFERSON	CREEK	BOZICH 28-7-2 206H
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	BLESSED E RCH BL 7H
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	HENDERSON W RCH BL 2H
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	BLESSED E RCH BL 9H
GULFPORT APPALACHIA LLC	BELMONT	PEASE	STARVAGGI 210727 3B
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	BLESSED N RCH BL 5H
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	THOMPSON W SMF JF 1H
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	THOMPSON W SMF JF 3H
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	THOMPSON E SMF JF 5H
ASCENT RESOURCES UTICA LLC	BELMONT	COLERAIN	SMITH NE CLR BL 7H
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	BLESSED W RCH BL 3H
ASCENT RESOURCES UTICA LLC	BELMONT	COLERAIN	SMITH NE CLR BL 3H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WELLS	CECELIA SE WEL JF 6H
ASCENT RESOURCES UTICA LLC	BELMONT	COLERAIN	SMITH NE CLR BL 5H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WELLS	CECELIA SW WEL JF 2H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WELLS	CECELIA SE WEL JF 8H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WELLS	CECELIA SW WEL JF 4H
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	HAMMACK CRC JF 4H
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	HAMMACK E CRC JF 2H
RICE DRILLING D LLC	BELMONT	GOSHEN	DEL SCORCHO 12

Top 25 Oil Producing Utica Shale Wells in Q2 of 2020: Oil production in the Second of 2020 was 704,551 bbl lower than the First Quarter of 2020. Oil production amounted to 5,182,481 bbl in the Second Quarter of 2020 compared to 5,887,032 bbl in the First Quarter of 2020. EAP Ohio, LLC (“EAP”), Ascent, and Eclipse Resources I LP (“Eclipse”) own all 25 of the top 25 oil-producing wells in the state. EAP owns 12, Ascent owns 10, and Eclipse owns 3 of the top 25 oil-producing wells. 13 of the top 25 oil-producing wells are located within Guernsey County with the remaining 12 in Harrison County. More information on these top 25 oil-producing wells can be found at <http://oilandgas.ohiodnr.gov/production#QUART>.



***Landowner Groups and
Other Ohio Counties
Where Emens Wolper
Jacobs Jasin Law Has
Assisted Landowners***

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

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.

Drilling Rigs and Ohio Oil and Gas Activity: The number of oil and gas rotary drilling rigs active in the United States declined to an all-time low of 176 active rigs during the summer of 2020. This compares with slightly more than 2,000 active rigs in 2012 according to U.S. Energy Information Administration, based on data from Baker Hughes Company.

Also, the number oil and gas operators in Ohio declined from 182 in 2008 to 41 in 2019, with the top 12 operators filing 85% of last year's ODNR completion reports with most of those wells being in the Utica shale, according to Marty Shumway, technical director at Locus Bio-Energy Solutions.

“Nevertheless, that small number of operators are producing more oil and gas, Shumway pointed out. Although the Utica is known as a gas play, oil production statewide, driven largely by the shale, increased 23% in 2019, to slightly less than 28 million barrels, with unconventional production accounting for 24.9 million barrels of the total, he indicated. Natural gas production rose 22%, with unconventional production approaching 3 trillion cubic feet in 2019 and conventional wells producing 50 billion cubic feet for the year”, Shumway said.

For more information, see *Ohio Oil and Gas Association*, THE AMERICAN OIL & GAS REPORTER, p. 88, April 2020.

Sales of Oil and Gas Assets: Since our last Newsletter there have been two large Asset/Acreage transactions announced:

First, in June, “EnerVest Auctioning 58K Utica Leased Acres in Ohio & Pennsylvania” in which EnerVest, “a private equity firm that owns a lot of acreage and wells (most of them conventional) in the Marcellus/Utica region,” offered:

“Highlights:

- Leasehold Acreage:
 - 175.09 Net Marcellus Acres
 - 2,060.00 Net Shallow Acres
 - 4,071.27 Net Knox Acres
 - 57,892.99 Net Utica Acres
- Mineral Acreage:
 - 0.02 Net Shallow Acres
 - 34,974.16 Net Utica Acres
- Non-Operated Working Interest in Three Wells:
 - 3.1446% to 0.130689% Working Interest / 2.75195% to 0.114353% Net Revenue Interest
 - An Additional ORRI in All Three Wells
 - One Producing Well | Two Non-Producing Wells
 - Operators: EAP Ohio LLC and Geopetro LLC
- ORRI in 15 Producing Wells:
 - 0.566407% to 0.002898% ORRI
 - Operators: Equinor USA Onshore Properties and SWEPI LP
- Six-Month Average Net Income: \$6,374 per Month
- Six-Month Average 8/8ths Production: 92.389 MMcf/d of Gas and 3 bbl/d of Oil
- Further Subject to Documentary Stamp Fees”



EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Sales of Oil and Gas Assets (Cont.): Then, in July, “Former EV Energy Partners Sells Appalachian Assets for \$20.5M,” Harvest Oil and Gas, the company that emerged from bankruptcy with a new name and \$355 million of debt erased after EV Energy Partners, the drilling subsidiary of EnerVest entered bankruptcy, made the following announcement:

“Harvest Oil & Gas Corp. (OTCQX: HRST) (“Harvest” or the “Company”) announces today that a wholly-owned subsidiary has entered into a definitive agreement to sell its Appalachian Basin assets, which will represent substantially all of the assets of the Company, to an unaffiliated third party (“Buyer”) for consideration of \$20.5 million, subject to customary purchase price adjustments. The consideration consists of \$14.5 million of cash and a \$6 million note. The transaction is expected to close in August 2020 and has an effective date of July 1, 2020. The holders of a majority of the common stock of the Company have approved the transaction. The definitive agreement contains various representations, warranties, covenants and indemnification obligations of the Company and the Buyer that are customary in transaction of this type. There can be no assurance that these closing conditions will be satisfied.”

SOLAR UPDATE

The Number of Solar Projects in Ohio Continues to be Increasing: We are continuing to receive more and more calls regarding Leasing, Options to Lease, and Rights of Way for Solar projects in Ohio. As we have stated earlier, we encourage landowners not to be “blinded” by what might appear to large acreage payments, but to focus more on the many, many years that solar projects tie up the land and the obligations of the landowners to the entities that provide the financing to the solar project, including mortgages. Our article in the OHIOFARMER magazine pointed out many of the potential landowner pitfalls in solar projects. That article is reprinted below.

Landowner Dangers with Solar Options, Solar Leases and Solar Easements
By: Dick Emens and Cody Smith

We are becoming more and more concerned for landowners because of the landowner unfriendly language in Solar Options, Solar Leases and Solar Easements! While we believe that developing and generating Solar energy on Ohio farmland can be beneficial to the landowners, to Ohio, and the USA, it is vital that a Landowner only enter into Solar documents with a full understanding of the terms and language of the Solar documents.

Many landowners appear to become so dazzled by the “apparently large rent” payments proposed in the Solar Lease, that the landowners do not focus on the problems of having the land tied up for 25-40 years or longer. This article will list some of our major concerns with Solar Options, Solar Leases and Solar Easements. As background it is important to understand there are three key players in the Solar documents—the Landowner, the Developer, and the Lender.

We start with key areas of concern in the Solar Options:

Since the first document the Landowner is asked to sign is labeled “Solar Option”, often we have seen landowners believe they are not signing a “binding” document. But the “Solar Option” is a one-way document giving...

If you want to read the remainder of this article, please go to our website ewjjlaw.com or call Chris Vallo at 614-414-0888.

OHIOFARMER can be accessed at <https://www.farmprogress.com/ohio-farmer>.



SOLAR UPDATE (CONT.)

Amazon is Planning to Invest in Two Ohio Solar Generation Facilities: Amazon has now announced that it expects to invest in five solar electric generation facilities as part of its goal to rely entirely on renewable energy by 2030. Two of the announced projects are expected to be located in Ohio. The first Ohio project is expected to be an 80 MW project, called the Nestlewood Solar Farm, and will be located in Brown and Clermont Counties. The second Ohio project is expected to be a 200 MW project, called the Hillcrest Solar Farm, and will be located in Brown Counties. The two projects, along with another in West Virginia, are expected to provide electricity to Amazon's distribution and fulfillment centers as well as over 69,000 homes in the United States. For more information, see <https://www.dispatch.com/business/20200527/amazon-to-invest-in-2-ohio-solar-farms> and THE COLUMBUS DISPATCH.

UTILITIES/EASEMENTS/RIGHTS OF WAY UPDATE

For-Profit Companies, and Governmental Agencies are Seeking Easements from Landowners for Development of Projects: We continue to see for-profit companies and governmental agencies wanting to acquire easements and rights of way for electricity transmission, solar facilities, sewage, other pipelines, etc. Many landowners do not understand their rights when the landman knocks on the door and acts as if the landowner should just accept the terms and compensation being offered - - some entities trying to acquire Easement/Rights of Way do NOT have the right of eminent domain.

We recently put some additional information regarding this subject on our website. To access the additional information please go to our website at www.ewjlaw.com. Then click on the link toward the top of the page which states "Landowners." Then click on the link toward the top of the page which states "News & Publications." Then click on the link which states "Easements, Rights of Way for Landowners: Eminent Domain?" There are also other articles prepared by our firm in the "News & Publications" link.

LEGAL UPDATE

Ohio Appellate Court Holds that "Reasonable Diligence" Under the Ohio Dormant Mineral Act May Require Searching Out of State: In *Fonzi v. Brown*, 2020-Ohio-3631 (7th Dist.), the Court of Appeals for the Seventh District of Ohio ("Seventh District") held that a surface owner may be required to search for heirs to a severed oil and gas interest out of the state in which the property is located prior to availing themselves to the publication procedure of the Ohio Dormant Mineral Act (the "DMA"), R.C. 5301.56.

On October 4, 1952, Harry A Fonzi, II, and Elizabeth Henthorn Fonzi (the "Fonzis") conveyed a property in Monroe County, Ohio (the "Property") by deed to Donald and Eva Jean Brown. The conveyance deed reserved one-half of the oil and gas underlying the Property (the "Reservation"). The conveyance deed specifically stated that the Fonzis resided in Finleyville, Washington County, Pennsylvania. On January 13, 2006, Donald and Eva Jean Brown conveyed the surface rights of the Property to Gary D. Brown ("Brown").



LEGAL UPDATE (CONT.)

Ohio Appellate Court Holds that “Reasonable Diligence” Under the Ohio Dormant Mineral Act May Require Searching Out of State (Cont.): Brown attempted to utilize the DMA to declare that the Reservation underlying the Property was abandoned and deemed vested with the surface of the Property. Brown, through his attorney, searched title in the public records of Monroe County, Ohio for the Reservation but was unable to locate any potential heir to the Reservation who was identifiable in those records. On March 21, 2013, Brown provided the unknown heirs of the Fonzi (the “Fonzi Heirs”) notice of his intent to declare the Reservation abandoned by publishing in the Monroe County Beacon. Thereafter, Brown completed the remaining DMA procedure.

The DMA provides in R.C. 5301.56(E)(1) that notice by publication can only be used if “service of notice *cannot* be completed to any holder” by certified mail. (Emphasis added.) The Seventh District has previously held that service by certified mail cannot be completed on a holder when the holder is not identifiable or locatable after a “reasonable search” is completed. In this case, the Fonzi Heirs argued that Brown did not complete a reasonable search because he failed to search for the Fonzi Heirs in the public records of Washington County, Pennsylvania. In response, Brown argued that the DMA does not require a search beyond the public records in the county in which the property is located.

Whether a search for heirs to an oil and gas severance is “reasonable” depends on the facts and circumstances of each case. Here, the Seventh District found that the next “logical step” to locate the Fonzi Heirs after searching the public records in Monroe County, Ohio would have been to search the public records of Washington County, Pennsylvania due to it being recited in the deed where the Reservation occurred. *Id.* at ¶ 33. However, because Brown failed to do so, his search was “*per se* unreasonable” and the notice by publication was invalid. *Id.* Thus, the Reservation was not deemed abandoned and vested with the surface of the Property.

Fonzi is the latest decision interpreting the provisions of the DMA. The decision is important because it provided additional guidance as to what constitutes “reasonable diligence” for purposes of the notice provisions of the DMA. Specifically, *Fonzi* makes it clear that a search of the public records in the county in which the property is located, alone, even if thorough, will not always rise to the level of “reasonable.” Instead, surface owners may be tasked with searching the public records in other counties, or other states, if something in the chain of title to the oil and gas references such out-of-county location.