



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 - August 2019

Dear Clients, Friends, and Colleagues:

We continue to provide information for landowners related to oil and gas, solar, pipelines, probate, and estate planning on our website, www.EmensWolperLaw.com.

Recent articles on our website include:

- 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
- Protecting Landowners in Transactions with Oil and Gas Companies
- Ohio Supreme Court Interprets the Marketable Title Act

Sincerely,

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

Landowners Beware, Oil and Gas Companies Using Forced Unitization in Ohio:

Oil and gas companies operating today in Ohio appear to be more willing than previously to use the threat of forced unitization to coerce a landowner into signing an oil and gas lease on terms which are landowner-unfriendly. Oil and gas companies appear to be taking the position of “take our initial offer for an oil and gas lease or we will take your oil and gas on unfair terms by forced unitization.” We believe that this practice is an abuse of Ohio’s forced unitization statute – Ohio Revised Code Section 1509.28. During the early years of Ohio’s Utica Shale play, it appeared oil and gas companies were negotiating leases covering approximately 90% of the oil and gas minerals in a unit before attempting forced unitization. Today, at least one oil and gas company is using forced unitization after only obtaining negotiated leases covering approximately 72% of the oil and gas minerals in a unit.

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

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EXPLORATION AND DEVELOPMENT UPDATE

EQT Corp. ("EQT") Shareholders Elect Seven Rice-Nominated Directors to Board: In 2017 Rice Energy, Inc. ("Rice") shareholders, led by two of the Rice brothers, Toby Rice and Derek Rice, sold the company to EQT for \$6.7 Billion. Just months after the sale, EQT announced that it would need to spend more than \$300 Million more than planned in 2018 and it would produce approximately 3% less natural gas. Since the sale, the Rice brothers have criticized EQT and have sought to take control of EQT. On July 10, 2019, over 80% of EQT's shareholders elected seven Rice-nominated directors to EQT's board and elected Toby Rice as the new CEO of EQT. Toby Rice has stated that EQT's goals were too modest and he promised to deliver \$500 Million in free cash flow as CEO of EQT. For more information, *see* THE WALL STREET JOURNAL (July 11, 2019).

It appears that the Rice brothers are not planning to currently replace all of the upper-management of EQT. So far only two people have been replaced: CEO, Robert McNally, and General Counsel, Jonathan Lushko. Both Toby Rice and Derek Rice have been advocating a "100-day plan." The brothers announced that they plan to meet with all 800 EQT employees "in the near future." For more information, *see* <https://marcellusdrilling.com/2019/07/toby-rice-eqts-new-ceo-is-not-cleaning-house-re-top-management/>.

The management change occurred less than two months after McNally issued EQT's First Quarter 2019 update. On a conference call in April 2019, McNally stated that EQT spent \$476 million in the First Quarter of 2019, which was down 22% from the First Quarter of 2018 (\$610 Million). EQT also produced and sold 383 Bcfe in the First Quarter of 2019 (an average of 4.3 Bcfe per day), which was up 7% from the First Quarter of 2018. For more information, *see* <https://marcellusdrilling.com/2019/04/eqt-announces-good-1q19-drills-longest-marcellus-well-ever/>.

Oil and Gas Well Permitting on the Rise in Jefferson County, Ohio: According to the Ohio Department of Natural Resources, there are currently 216 Utica Shale wells that are drilling, drilled, or producing in Jefferson County, Ohio. Based on statements made by Mike Chadsey, representative of the Ohio Oil and Gas Association, this number appears to be increasing faster than other Ohio counties. Jefferson County has already surpassed Noble County, Ohio for the number of oil and gas well permits this year and is expected to surpass Guernsey County, Ohio by the end of the year. Chadsey stated that "Jefferson County continues to tick upward in terms of permits being issued. . . . I think particularly for the land owners, it probably means more drilling, more leasing, more royalty checks. And for the county and townships, it means more taxes and revenue – just general more activity in places like Steubenville." For more information, *see* <https://marcellusdrilling.com/2019/04/jefferson-county-oh-the-new-darling-for-utica-drillers/>.



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 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;
- 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.

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

2019 Exports of Liquefied Natural Gas ("LNG") Appear to be on Pace to Reach Record Levels: According to early indicators in 2019, LNG exports are up 50% over similar exports in 2018, which would put the exports on pace to reach record levels this year. Two-thirds of the LNG demand comes from Asia (a large portion in China), with fewer exports going to Europe and North America. However, the current Administration's trade war with China could limit future growth because China appears to already be seeking alternative sources of LNG, such as Russia. For more information, *see* THE KIPLINGER LETTER (July 12, 2019).

MPLX Official Tells Steubenville, Ohio Rotary Club That Natural Gas Production is Increasing in the Area: Sam Schupbach, Vice President of Operations and Processing of MPLX, recently told the Steubenville Rotary Club that dry gas production and fractionation of wet gas is steadily increasing in the Appalachian region. MPLX processes 70% of the gasses in the Marcellus Shale and Utica Shale in the area and then sends it to market through its 8,000 miles of pipelines across 17 states. Schupbach claims that the Shell cracker plant under construction in Monaca, Pennsylvania needs about 100,000 barrels of ethane a day to produce ethylene for plastics products but the Marcellus Shale and Utica Shale region is already producing enough ethane for five cracker plants. For more information, *see* <https://www.heraldstaronline.com/news/local-news/2019/04/regions-natural-gas-output-increasing-mplx-official-tells-steubenville-rotary-club/>.

Rick Simmers Claims Ohio Utica Shale Well Drilling to Remain Consistent Over Next Two Years: According to the Chief of Ohio's Division of Oil and Gas Resources Management, Rick Simmers, it is expected that there will be an additional approximately 350 Utica Shale wells drilled in Ohio in both 2019 and 2020. Drilling is expected to remain consistent with 2018, in which 358 Utica Shale wells were drilled. The number of wells being drilled has helped Ohio become a net-exporter of oil and gas. In 2011, Ohio produced less than 14% of its gas usage. Conversely, last year, Ohio produced more than twice what is consumed.

Over the past few years Ohio Utica Shale oil and gas wells have also consistently increased in lateral length. During 2011, an Ohio Utica Shale well was an average of 6,000 feet deep and 4,000 feet long. Today, the average Utica Shale well is 8,500 to 10,000 feet deep and 12,000 feet long. Some oil and gas companies, including Eclipse, are even drilling wells which approach 20,000 feet in lateral length. For more information, *see* <https://marcellusdrilling.com/2019/04/odnr-says-to-expect-350-new-utica-wells-per-year-next-few-years/>.

Oil and Gas Companies Claimed to Have Invested Over \$70 Billion in Ohio Since 2011: It has been reported that since 2011, the Ohio oil and gas industry has spent over \$70 billion in Ohio to construct the necessary infrastructure for the Utica Shale play. This investment includes dollars spent directly on jobs, materials, pipeline construction, processing plants, well pads, etc. In addition, the Ohio oil and gas industry has claimed to have paid \$132 million between 2010 and 2018 in ad valorem taxes in eight shale-producing counties. Ad valorem taxes are used in part by the schools located where the oil and gas are produced. Finally, the Ohio engineers in eight shale-producing counties have calculated an investment of \$302 million by oil and gas companies used to improve 639 miles of public roads. For more information, *see* THE TIMES LEADER, Martins Ferry (April 2, 2019).



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EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

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.

Ohio Department of Natural Resources Issues First Two Permits to Drill Horizontal Wells Which Will Produce Oil and Gas Minerals From Under Wayne National Forest: Wayne National Forest is scattered within privately owned land. It is estimated that approximately 60% of the oil and gas minerals under Wayne National Forest are privately owned. Previously, the landowners of the oil and gas mineral rights were denied the right to drill for the production of oil and gas due to the federal Bureau of Land Management ("BLM"). However, in 2016, the BLM auctioned the right to drill horizontal wells with laterals that extended under the park and on June 28, 2019, the Ohio Department of Natural Resources issued its first two permits to drill horizontal wells under Wayne National Forest in Monroe County, Ohio. For more information, see <https://marcellusdrilling.com/2019/07/ohio-issues-first-permits-to-drill-under-wayne-national-forest/>.

Top 25 Gas Producing Utica Shale Wells in Q1 of 2019: Natural gas production in the First Quarter of 2019 was approximately 54 Bcf lower than the Fourth Quarter of 2018. Natural gas production amounted to approximately 609.5 Bcf in the First Quarter of 2019 compared to 663.5 Bcf of natural gas production in the Fourth Quarter of 2018. Ascent Resources – Utica, LLC continues to own a majority of the top 25 gas-producing wells in the state. Currently Ascent owns 19 of the top 25 gas-producing wells. 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	GAS (MCF)
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	NOLAN NW CRC JF 1H	3,264,495
ASCENT RESOURCES UTICA LLC	BELMONT	COLERAIN	THEAKER E CLR BL 5H	2,976,146
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	MINGO S CRC JF 4H	2,932,086
ASCENT RESOURCES UTICA LLC	JEFFERSON	WAYNE	TANNER WYN JF 2H	2,782,068
ASCENT RESOURCES UTICA LLC	JEFFERSON	WAYNE	TANNER WYN JF 4H	2,764,083
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	GORDON N CRC JF 3H	2,725,229
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	MINGO SE CRC JF 6H	2,714,605
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	MINGO SW CRC JF 2H	2,652,915
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	MARQUARD W MTP JF 1H	2,579,913
ASCENT RESOURCES UTICA LLC	BELMONT	COLERAIN	THEAKER E CLR BL 3H	2,546,931
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	ELITE E MTP JF 5H	2,453,881
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	GORDON NW CRC JF 1H	2,264,450
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	ELITE W MTP JF 3H	2,252,133
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	BORUM E SMF JF 6H	2,247,488
ECLIPSE RESOURCES I LP	MONROE	ADAMS	WILEY D 8H	2,184,620
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	BORUM E SMF JF 4H	2,173,660
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	MARQUARD W MTP JF 3H	2,168,813
ECLIPSE RESOURCES I LP	MONROE	ADAMS	YELLOW ROSE A 2H	2,157,554
RICE DRILLING D LLC	BELMONT	MEAD	SMASHOSAURUS 3	2,135,188
RICE DRILLING D LLC	BELMONT	GOSHEN	BOUNTY HUNTER 3	2,129,518
RICE DRILLING D LLC	BELMONT	SMITH	DOMINATOR 9	2,122,660
ASCENT RESOURCES UTICA LLC	BELMONT	COLERAIN	THEAKER W CLR BL 1H	2,119,120
RICE DRILLING D LLC	BELMONT	GOSHEN	BOUNTY HUNTER 5	2,084,758
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	MINGO W CRC JF 8H	2,081,597
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	NOLAN NE CRC JF 3H	2,045,878



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EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Top 25 Oil Producing Utica Shale Wells in Q1 of 2019: Oil production in the First Quarter of 2019 was 736,948 bbl lower than the Fourth Quarter of 2018. Oil production amounted to 5,073,536 bbl in the First Quarter of 2019 compared to 5,810,484 bbl in the Fourth Quarter of 2018. Eclipse Resources I LP ("Eclipse") and Ascent Resources – Utica, LLC ("Ascent") continue to own all 25 of the top 25 oil-producing wells in the state which are all located in Guernsey County, Ohio. Currently Eclipse owns 11 and Ascent owns 14 of the top 25 oil-producing wells. More information on these top 25 oil-producing wells can be found at <http://oilandgas.ohiodnr.gov/production#QUART>.

PIPELINE UPDATE

Energy Transfer LP Considers Selling Interest in the Rover Pipelines Project: It is being reported that Energy Transfer LP (who owns a 33% interest in the Rover Pipelines Project), is weighing the sale of its share in the pipeline. Energy Transfer has hired an adviser to pursue the potential sale of its operating interest in the Rover Pipelines Project. It is estimated that operating interest could obtain as much as \$2.5 Billion. We will continue to monitor this potential sale. For more information, see <https://www.bloomberg.com/news/articles/2019-07-15/energy-transfer-is-said-to-weigh-sale-of-rover-pipeline-stake>.

Nexus Gas Transmission Claims to be Continuing to Restore Properties Affected by the Nexus Pipeline Project: According to Nexus spokesman, Adam Parker, Nexus has crews completing restoration work at various locations along the 255-mile Nexus Pipeline route. Parker stated that "We have developed plans to mitigate the unusual rain conditions and we remain on schedule to complete final restoration activities by the fourth quarter of 2019. Most restoration occurs within the first year following completion of construction. However, the process can take longer, depending on weather and other environmental impacts that may interrupt the restoration process." He also stated that if landowners have questions about restoration, they should call Nexus' landowner hotline at (844) 589-3655. There have been several lawsuits filed against Nexus for failing to restore the pipeline route, including at least five in Stark County, Ohio. For more information or to see some of the allegations made in the lawsuits, see <https://www.ohio.com/news/20190715/local-pipeline-court-fights-restoration-work-continue>.

Pipeline Subcontractors May be Permitted to File Mechanics Liens Against Properties without Narrowly Tailored Easement Language: We have seen reports of mechanics liens being filed against landowners' properties by subcontractors when general contractors are failing to pay subcontractors for work completed on pipeline projects. To avoid these types of mechanics liens being filed against properties, pipeline easements should be narrowly drafted to prohibit these types of situations. For one example, see <https://marcellusdrilling.com/2019/04/another-contractor-files-liens-against-lancaster-landowners-re-pipeline/>.

WIND AND SOLAR ENERGY UPDATE

Landowner Dangers with Solar Options, Solar Leases and Solar Easements: We are becoming more and more concerned for landowners because of the landowner-unfriendly language in Solar Options, Solar Leases and Solar Easements! We do believe that developing and generating solar energy on Ohio farmland can be beneficial to the landowners, to Ohio, and the USA, but it is vital that a landowner only enter into solar documents with a full understanding of the terms and language of the solar documents. We have written an article which is on our website that discusses some of our major concerns with Solar Options, Solar Leases and Solar Easements. To view the whole article, see <https://www.emenswolperlaw.com/landowner-dangers-with-solar-options-solar-leases-and-solar-easements/>.



LEGAL UPDATE

“Reasonable Diligence” Under 2006 Ohio Dormant Mineral Act May Not Require Internet Search: In *Gerrity v. Chervenak*, 2019-Ohio-2687 (5th Dist.), the Court of Appeals for the Fifth District of Ohio (the “Fifth District”) affirmed a decision by the Common Pleas Court of Guernsey County, Ohio, holding that a surface owner attempting to utilize the 2006 version of the Ohio Dormant Mineral Act (“2006 DMA”), Ohio Revised Code § 5301.56, to declare a severed oil and gas mineral interest abandoned, need only exercise “reasonable diligence,” exclusive of online subscription services, when attempting to locate potential holders of the mineral interest to serve notice by certified mail.

This case involves property in Guernsey County, Ohio which T.D. Farwell conveyed to Robert C. Shaefer in a 1961 Deed which contained a reservation of the oil and gas minerals to T.D. Farwell. In 1965, T.D. Farwell died, leaving the reserved oil and gas minerals to his daughter, Jane F. Richards, as evidenced by a recorded certificate of transfer. At the time the certificate of transfer was recorded, Richards was a resident of Cuyahoga County, Ohio; but, when she died in 1997, she was a resident of Florida.

After successive conveyances, the surface of the property was conveyed to the Chervenaks in 1999. In 2012, the Chervenaks attempted to serve Richards by certified mail at her last known address in Cuyahoga County (the address listed in the certificate of transfer). The service was returned undeliverable. After searching the real estate and probate records in both Guernsey County and Cuyahoga County, the Chervenaks failed to find any other address for Richards. So, they attempted notice by publication in Guernsey County and when no holder responded, claimed ownership of the oil and gas minerals.

Under the 2006 DMA, before a severed mineral interest is deemed abandoned and vested in the surface owner of the land, the surface owner must attempt notice by certified mail “to each holder or holder’s successors or assignees, at the last known address of each” of the surface owner’s intent to declare the mineral rights abandoned. If the certified mail fails, the surface owner “shall publish notice . . . in a newspaper of general circulation . . . [where the land] is located.” Timothy D. Gerrity, the sole heir of Richards, filed a lawsuit against the Chervenaks claiming that they failed to establish abandonment of the oil and gas minerals because the 2006 DMA requires surface owners to undertake “reasonable diligence” to locate the current addresses of holders of severed oil and gas minerals interests, *which includes utilizing online search services such as ancestry.com*. The Fifth District disagreed and held that “reasonable diligence” does not *necessarily require* online searches. Given the factual circumstances in this case wherein the surface owners had searched the probate and real estate records in both Guernsey County and Cuyahoga County, the Fifth District held that no internet search was necessary – the actions taken by the surface owners were reasonable. Thus, the Chervenaks were permitted to perfect their notice under the 2006 DMA by publication.

The *Gerrity* decision appears to be the third Ohio appellate decision to address the extent of the search a surface owner must conduct to locate holders of a severed mineral interest to meet the notice requirements in the 2006 DMA. However, *Gerrity* is the first decision from the Fifth District which adopts a “reasonable diligence” standard and it is the first in Ohio appellate decision which squarely addresses whether or not an internet search is required under the “reasonable diligence” standard.



LEGAL UPDATE (CONT.)

Statutory Unitization of Oil and Gas Lease Which is Silent on Unitization is Not a Breach of Lease: In *Paczewski v. Antero Resources Corp.*, 2019-Ohio-2641 (7th Dist.), the Court of Appeals for the Seventh District of Ohio (the "Seventh District") limited the interplay between an oil and gas lease and statutory unitization under Ohio Revised Code § 1509.28.

In 1975, a landowner in Monroe County, Ohio entered into an oil and gas lease which covered over 700 acres of land. The original parties to the lease struck a single clause from the lease which would have provided the lessee the right to voluntarily pool the acreage covered by the lease with other acreage to form drilling units for the production of oil and gas. After Antero Resources Corporation ("Antero") was assigned the deep rights under the lease, it attempted to obtain an amendment from one of the lessor's successors-in-interest, the Paczewskis, right to allow Antero to voluntarily pool the acreage covered by the lease. When negotiations failed, Antero applied to the Ohio Department of Natural Resources (the "Division") for a statutory unitization order under Ohio Revised Code § 1509.28. Antero's application set forth that the lease contained non-conforming provisions which limited the amount of acreage that it could consolidate and this would require it to reduce the lateral length of two of the three wells it was planning to drill on the unit. After an administrative hearing where the Paczewskis appeared and made objections, the Division issued the order authorizing unit operations on the unit (the "Order").

On appeal, the Paczewskis claimed that although the Order was proper under Ohio Revised Code § 1509.28, the Order constituted a breach of the lease because the lease did not allow for unitization. The Seventh District rejected this argument finding that the deletion of the unitization provision did not prohibit unitization, but merely made it silent on the issue. Based on the finding that the lease was silent as to the subject of unitization, the Seventh District held that the Order was not a breach of the terms of the lease.

The Seventh District distinguished the facts in *Paczewski* from those in *Am. Energy-Utica, LLC v. Fuller*, 2018-Ohio-3250 (5th Dist.) on the basis that the parties wrote the words "Unitization by written agreement only!" in the lease in *Fuller*. In *Fuller*, the parties to the lease struck the pooling provision in the lease and replaced it with the words "Unitization by written agreement only!" Based on this language the court in *Fuller* held that because the lease expressly prohibited unitization without a separate written agreement from the lessor, the use of the statutory unitization procedure without Fuller's written agreement constituted a breach of the written terms in the lease in that case.

The lessor in *Paczewski* also appealed the trial court's decision alleging that forced unitization is akin to eminent domain with their property being taken without just compensation. However, the Seventh District quoted the United States Supreme Court which has held "that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas" and such reasonable regulations "constitute a proper exercise of its police power." Therefore, the Seventh District found that because statutory unitization leaves each landowner's property interest in the minerals intact (where they receive royalties from the minerals after production) that the exercise of the state's power constitutes regulation of mineral interests, rather than a taking without just compensation.

Paczewski makes it clear (unless the Ohio Supreme Court decides otherwise) that landowners who want to prohibit or limit pooling/unitization of an oil and gas lease cannot merely rely on the absence or elimination of a pooling/unitization provision in the lease. Rather, the prohibition or limitation needs to be explicitly set forth in the lease. However, this clarification is unlikely to help landowners currently looking to lease acreage in eastern Ohio as oil and gas companies now typically require that leases allow for pooling/unitization. The greater impact of this decision will be on oil and gas leases which were signed prior to the Utica/Point Pleasant shale play when landowners could more easily strike pooling/unitization provisions or negotiate lease language prohibiting pooling/unitization. Based on this decision, oil and gas companies may not even need to attempt negotiations with landowners whose leases contain pooling/unitization provisions which were struck out. Rather it appears that companies can use the statutory unitization procedure without needing to obtain any agreement or consent from such landowners.