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***Oil & Gas, Solar, Pipeline, and Energy
Newsletter – January 2020***

Dear Clients, Friends, and Colleagues:

It is with great pleasure that we announce an exciting new chapter for our firm. Effective November 1, 2019, our firm’s name changed from “Emens & Wolper Law Firm” to “Emens Wolper Jacobs & Jasin Law Firm.” While our firm changed names, we continue to offer the same great services. We look forward to continuing to work with you in the New Year!

Two attorneys in our firm were recognized in the 2020 Edition of Super Lawyers. Beatrice E. Wolper was recognized as a Super Lawyer for the practice area of Business/Corporate and Sean E. Jacobs was recognized as a Rising Star in the practice area of Energy & Natural Resources. Super Lawyers describes itself as “a rating service of outstanding lawyers from more than 70 practice areas who have attained a high-degree of peer recognition and professional achievement.”

The National Association of Royalty Owners (“NARO”), with a mission “to encourage and promote exploration and production of minerals in the United States while preserving, protecting, advancing and representing the interests and rights of mineral and royalty owners” recently completed its endeavor to open an Ohio Chapter. The Ohio Chapter of NARO, which is an offshoot of the Appalachia Chapter of NARO, seeks to focus exclusively on issues affecting royalty owners in Ohio. Heidi Kemp, an attorney in our St. Clairsville office, was elected to the initial Board of Directors for the Ohio Chapter of NARO. If you are interested in becoming a member of NARO, there exist various levels of membership which can be found at naro-us.org.

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

Please note that our email addresses have changed. Our new email addresses can be found at the top of this Newsletter. Please update your records accordingly.

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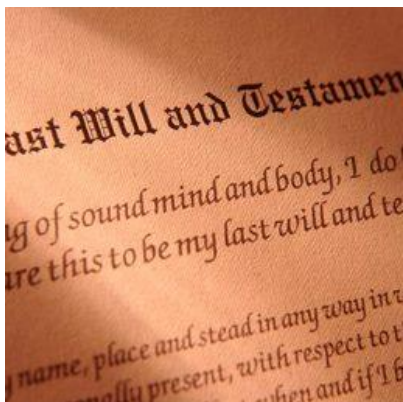
**UPCOMING MEETINGS AND
PRESENTATIONS**

**WHERE EMENS WOLPER
JACOBS JASIN LAW FIRM
IS SPEAKING**

Attorney Beatrice E. Wolper has been asked to teach “Wills, Trusts & Estates” as an Adjunct Professor at the Ohio State University, Moritz College of Law, for the Spring 2020 Semester.

Bea has been tailoring her lesson plan and will be teaching a 14-week class (135 total hours) to law students on various topics including:

- Intestate succession
- Will execution issues including capacity, fraud, duress, undue influence, etc.
- The Duty of Loyalty and Care for Executors and Administrators
- Protecting spouses and children
- And more.



EXPLORATION AND DEVELOPMENT UPDATE

Methane Leak in Belmont County, Ohio Appears to be Worse than Originally Expected: In February 2018, an oil and gas well in Belmont County, Ohio operated by Exxon Mobil (“Exxon”) subsidiary, XTO Energy, had begun to leak methane into the air. At the time the leak began, XTO Energy stated that it could not immediately determine the amount of methane leaked. Around the time of the leak, however, the European Space Agency had launched a satellite with a new monitoring instrument called Tropomi, designed to collect more accurate measurements of methane being released into the air. Tropomi was used through May 2019 to collect data related to the methane released from the oil and gas well. On December 16, 2019, an article was published in the Proceedings of the National Academy of Sciences which found that there was much more methane released from the oil and gas well than originally thought. In fact, the report estimated that the methane released from this one oil and gas well was more voluminous than the reported emissions of the oil and gas industries of countries like Norway and France. The satellite has shown that the methane leak has now been contained. An Exxon spokesman, Casey Norton, said that “This was an anomaly.” “This is not something that happens on any regular basis. And we do our very best to prevent this from ever happening.” We agree that this is not something that occurs on a regular basis. However, the methane leak in Belmont County, Ohio shows the dangers whenever oil and gas companies fail to take appropriate precautions when drilling an oil and gas well. One of the benefits of negotiating an oil and gas lease is that we are often able to negotiate more stringent requirements than those an oil and gas company initially offers to a landowner. For more information, see <https://www.nytimes.com/2019/12/16/climate/methane-leak-satellite.html> and <https://www.independent.co.uk/environment/methane-leak-space-greenhouse-gases-pollution-fracking-ohio-a9249631.html>.

Gulfport Energy Corporation (“Gulfport”) Lays Off Portion of Workforce and Ends Stock Buy-Back Program: In mid-November 2019, Gulfport Energy Corporation announced that it was laying off 13% of its workforce (estimated to be approximately 31 employees) and ending its stock buy-back program. It is speculated that the recent layoffs are in part due to one of Gulfport’s major shareholders, Shah Capital (which owns 1.9% of Gulfport’s stock), pressuring Gulfport to lower its budget by 29%. Gulfport stated that it believes that by initiating layoffs and cancelling its stock buy-back program, the company will be better able to “maintain a stronger balance sheet, leverage profile and ample liquidity.” It is also being reported that two of Gulfport’s board members will step down by 2020 and a third board member will not seek reelection in Gulfport’s next annual meeting. The company reported that it “has been working with a nationally recognized search firm to identify and evaluate new independent director candidates in an effort to ensure that shareholders are represented by fresh, diverse voices with strong expertise and qualifications.” For more information, see <https://marcellusdrilling.com/2019/11/gulfport-fires-13-of-workers-ends-stock-buy-back-board-changes/>.

Ohio General Assembly Amends Unitization Ambiguities in 2020-2021 Budget: In late 2019, the Ohio General Assembly passed Substitute House Bill 166 as part of its \$143 billion state budget bill for 2020-2021. As part of the budget, the General Assembly passed an amendment sought to clarify ambiguities surrounding forced unitization in Ohio for partial interests in tracts of oil and gas minerals. Under Ohio law, any applicant who seeks a unitization order must have 65% of the acreage within the unit leased by voluntary leasing. Recently, some unitization orders were denied because the Ohio Department of Natural Resources determined that individual tracts would only be counted for purposes of the 65% requirement if 100% of the oil and gas minerals for that tract were leased. The budget amendment now allows any leased acreage to count toward the 65% requirement, even if a tract of land has not been fully leased. It is now clear that oil and gas companies may use leases covering partial interests for purposes of unitization applications. For more information, see THE AMERICAN OIL & GAS REPORTER, September 2019.



EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

EMENS WOLPER JACOBS JASIN 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.

Shale Development in Ohio May Decline in 2020: We have seen reports that various commentators believe that shale growth in the United States will be declining in 2020. These reports appear to be affecting some of the oil and gas producers who have been operating in Ohio over the past decade including:

Antero Resources Corporation (“Antero”) – It is reported that Antero currently holds 612,000 net acres in the Marcellus Shale and Utica Shale which is believed to encompass 1,600 “premium undrilled core locations.” Antero had reported that it believes that its acreage accounts for 40% of the core undrilled liquids-rich locations in Appalachia. For 2020, Antero is planning to obtain 10%-14% lower well costs and 30% lower per unit lease operating expenses. It appears that Antero may be attempting to lower its costs and expenses by reducing the number of wells it drills in the Utica Shale.

Ascent Resources, LLC – Ascent Resources, LLC is a private E&P company focused on producing gas, oil, and NGLs in the Appalachian Basin. Ascent Resources, LLC utilizes a subsidiary, Ascent Resources – Utica, LLC, to develop its 348,000 acres in the Utica Shale. In 2019 Ascent Resources, LLC expected to produce an average of 2 to 2.2 Bcfe/d according to a report released in March 2019. However, it appears the company has failed to meet its goals for the first half of 2019 based on a recent report released by Ascent Resources, LLC. The report states that Ascent has averaged production of 1.8 Bcfe/d in the first half of 2019.

EQT Corporation – According to its website, EQT Corporation is the largest producer of natural gas in the United States. EQT Corporation stated that it expected to drill 96 oil and gas wells in the Marcellus Shale and 16 oil and gas wells in the Utica Shale in 2019. It appears that EQT Corporation may not meet this expectation because it had only drilled 22 oil and gas wells in the Marcellus Shale and 4 oil and gas wells in the Utica Shale through the Second Quarter of 2019.

For more information, see 2020 Unconventional Yearbook, Shale Growth Slows for Top US Operators, HartEnergy.com, December 2019.

Bureau of Land Management Continues to Lease Oil and Gas Minerals in the Wayne National Forest: The federal Bureau of Land Management recently announced that another 14 parcels of land (approximately 655 acres) located within the Wayne National Forest were leased to oil and gas companies for development of oil and gas minerals. Reports indicate that Eclipse Resources and BOP Acquisition were the two companies to obtain the leases. A news release by the Bureau of Land Management states that the leases contain 10-year primary terms and a 12.5% royalty provision. In addition, the Bureau of Land Management was paid nearly \$1.326 million for entering into the leases (approximately \$2,024.43 per acre). The news release also stated that the Ohio state government would receive 25% of any monies received by the Bureau of Land Management (both royalty and bonus). For more information, see https://www.thecentersquare.com/ohio/more-than-million-generated-in-ohio-oil-and-gas-lease/article_5406e83a-da58-11e9-83c1-0f7c36c17104.html.



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

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Top 25 Gas Producing Utica Shale Wells in Q3 of 2019: Natural gas production in the Third Quarter of 2019 was approximately 59.7 Bcf higher than the Second Quarter of 2019. Natural gas production amounted to approximately 673.962 Bcf in the Third Quarter of 2019 compared to 614.218 Bcf of natural gas production in the Second Quarter of 2019. Ascent Resources – Utica, LLC (“Ascent”) continues to own a majority of the top 25 gas-producing wells in the state. Currently Ascent owns 17 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>.

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.

OWNER NAME	COUNTY	TOWNSHIP	WELL NAME	GAS (MCF)
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	GENO E SMF JF 5H	3,243,594
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	GENO W SMF JF 1H	3,187,403
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	FALDOWSKI SE SMF JF 6H	3,155,802
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	RUTH W MTP JF 2H	3,135,321
ASCENT RESOURCES UTICA LLC	BELMONT	UNION	BANNOCK UNN BL 4H	3,010,784
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	COLAIANNI SE MTP JF 6H	2,833,992
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	GENO SMF JF 3H	2,798,276
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	RUTH W MTP JF 4H	2,714,112
GULFPORT APPALACHIA LLC	BELMONT	PEASE	LANCE 210967 7A	2,666,691
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	RUTH E MTP JF 6H	2,661,504
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	JADE N SMF JF 1H	2,659,243
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	JADE N SMF JF 3H	2,646,324
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	RUTH E MTP JF 8H	2,637,863
GULFPORT APPALACHIA LLC	BELMONT	PEASE	LANCE 210966 4B	2,623,141
GULFPORT APPALACHIA LLC	BELMONT	PEASE	LANCE 211400 2A	2,619,185
GULFPORT APPALACHIA LLC	BELMONT	PEASE	LANCE 210966 6A	2,572,553
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	LORI SE SMF JF 6H	2,547,534
ECLIPSE RESOURCES I LP	MONROE	GREEN	ROTH E 10H	2,512,079
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	FALDOWSKI SW SMF JF 2H	2,496,015
ASCENT RESOURCES UTICA LLC	BELMONT	UNION	BANNOCK UNN BL 2H	2,480,637
ECLIPSE RESOURCES I LP	MONROE	GREEN	ROTH D 8H	2,479,833
EAP OHIO LLC	HARRISON	GERMAN	MCBRIDE 20-11-4 205H	2,450,816
XTO ENERGY INC.	BELMONT	MEAD	KRNYAICH UNIT C 2H	2,426,829
ASCENT RESOURCES UTICA LLC	JEFFERSON	WAYNE	GRISWOLD SW WYN JF 2H	2,421,010
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	LORI SW SMF JF 2H	2,419,872

Top 25 Oil Producing Utica Shale Wells in Q3 of 2019: Oil production in the Third Quarter of 2019 was 1,386,549 bbl higher than the Second Quarter of 2019. Oil production amounted to 7,200,304 bbl in the Third Quarter of 2019 compared to 5,813,755 bbl in the Second Quarter of 2019. Eclipse Resources I LP (“Eclipse”), Ascent, and EAP Ohio, LLC (“EAP”) own all 25 of the top 25 oil-producing wells in the state. Currently Eclipse owns 6, Ascent owns 15, and EAP owns 2 of the top 25 oil-producing wells. 19 of the top 25 oil-producing wells are located within Guernsey County with the remaining 6 in Harrison and Belmont Counties. More information on these top 25 oil-producing wells can be found at <http://oilandgas.ohiodnr.gov/production#QUART>.



*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 (CONT.)

Oil and Gas Well Spacing Requirements are Amended: On September 30, 2019, the Ohio Department of Natural Resources, Division of Oil and Gas Resources Management, amended the rules related to the spacing requirements for oil and gas wells drilled in Ohio. The amended rules (1) changed the minimum acreage requirements for vertical (conventional) wells and (2) adopted new provisions related to the minimum distance requirement from which new horizontal shale (unconventional) wells may be drilled from boundaries of drilling units and other horizontal wells.

The amended minimum acreage requirements for conventional wells are now:

- Wells from zero to 1,000 feet: not less than one acre (no change);
- Wells greater than 1,000 feet to 2,000 feet: not less than five acres;
- Wells greater than 2,000 feet to 4,000 feet; not less than 10 acres; and
- Wells greater than 4,000 feet: not less than 20 acres.

Additionally, there is now no minimum distance required between horizontal wells within the subject tract. However, if adverse communication between one or more horizontal wells occurs in a subject tract, the Chief may require an alternative treatment plan or minimum distances between an existing horizontal well in that subject tract and a new horizontal well in that subject tract or between all new horizontal wells in that subject tract. If the owner of a horizontal well determines that adverse communication has occurred, the owner shall notify the Division.

These amended rules went into effect on October 10, 2019. For more information, see <http://oilandgas.ohiodnr.gov/division-updates/post/brine-disposal-fee-and-well-spacing-new-rules>.

PIPELINE UPDATE

Two Lawsuits Filed on Behalf of Shareholders of Pipeline Companies – Alleging Bribery:

Two class action lawsuits have recently been filed against ET Transfer regarding the Mariner East 2 pipeline project in Pennsylvania. The class action lawsuits have been brought on behalf of any shareholder of ET Transfer who invested in the company between February 25, 2017 and November 11, 2019. One of the Complaints filed in the suit alleges that Energy Transfer “misled its investors about its business, operational and compliant policies” by obtaining permits for the Mariner East 2 pipeline “via bribery and/or other improper conduct.” The two Complaints were filed after it was reported that Pennsylvania Governor Tom Wolf’s administration pressured the Department of Environmental Protection to approve permits for the pipeline in return for something of value. For more information, see <https://marcellusdrilling.com/2019/12/2nd-class-action-lawsuit-against-et-sunoco-re-mariner-east-pipe/>. A copy of one of the Complaints filed may be found at <https://www.bgandg.com/et>.



SOLAR AND WIND UPDATE

Solar Projects Continue to be Proposed Across Ohio: We continue to receive calls from landowners asking us to review options and leases for solar projects. While we believe that solar can be a benefit to Ohio, we urge landowners not to rush into signing solar documents when presented with the “apparently large rent” that comes with them. For more information regarding some of the key areas of concern with solar documents, please read our article at <https://ewjlaw.com/landowner-dangers-with-solar-options-solar-leases-and-solar-easement/>.

American Electric Power (“AEP”) Announces \$2 Billion Purchase of Oklahoma Wind Farms: Columbus-based AEP recently announced its plan to purchase three wind farms in Oklahoma, including a 999-MW project in central Oklahoma. The purchase is expected to cost AEP approximately \$2 billion and will service customers in Arkansas, Louisiana, Oklahoma and Texas. We continue to monitor AEP’s efforts to provide renewable energy in Ohio and hope that AEP invests significant resources in Ohio as well. According to the federal Energy Information Administration, just 3% of Ohio’s net energy generation comes from renewable sources. The vast majority of Ohio’s energy generation comes from coal, natural gas, and nuclear. For more information, see COLUMBUS BUSINESS FIRST, August 16, 2019.

LEGAL UPDATE

Northern District of Ohio Holds that Revenue May Be Realized at or Near the Wellhead for Leases with Net Royalty Provisions: In *Henceroth et al. v. Chesapeake Exploration, L.L.C.*, Case No. 4:15CV2591 (N.D. Ohio 2019), the federal District Court for the Northern District of Ohio (“Northern District”) granted summary judgement in favor Chesapeake Exploration, L.L.C. and Chesapeake Operating, L.L.C. (collectively, “CELLC”) against a class of landowners in Ohio by holding that CELLC was permitted to deduct costs from the landowners’ royalty payments incurred by CELLC’s marketing subsidiary, Chesapeake Energy Marketing, L.L.C. (“CMLLC”), prior to making such payments.

A group of landowners owning property from which CELLC was producing natural gas filed a class action lawsuit against CELLC claiming that CELLC was paying the landowners on the incorrect price when making royalty payments to such landowners. The landowner’s leases provide that “Lessee covenants to pay Lessor, proportionate to Lessor’s percentage of ownership, . . . equal to one-eighth of the net proceeds realized by Lessee from the sale of all gas and the constituents thereof produced and marketed from the Leasehold.” The parties to the suit stipulated that CELLC produces the gas from the wells and CMLLC transports the gas and enters into contracts with third-party purchasers for the sale of gas. The landowners alleged that CELLC was improperly paying the landowners royalties on a price that included costs which were incurred by CMLLC for transporting and marketing the gas produced (i.e. royalties were paid after “netting back” the price received by CELLC).

According to the landowners, CELLC must pay the landowners royalties on the downstream price received by CMLLC from third-party purchasers (which cannot be netted back to include the transportation and marketing costs incurred by CMLLC). “According to [the landowners], the royalties must be paid on revenue actually realized on a marketed product. It cannot be a debt. In other words, it cannot be money owed. And the only revenue realized is the real cash paid by the third-party buyers to [CMLLC].” The Northern District disagreed, however, finding that the landowners received royalties based on the language negotiated in their leases. The Northern District stated “CELLC sells the oil and gas at the wellhead to [CMLLC] . . . , receives a netback price from [CMLLC] for those sales, and paid [the landowners] 1/8th of those proceeds, without taking any deductions from the proceeds realized from [CMLLC].” Thus, the Northern District concluded that the prices on which the landowners were paid royalties were proper and granted summary judgement in favor of CELLC.

Henceroth is a significant win for oil and gas producers in the state of Ohio who are paying royalties to landowners who have a “net” royalty provision in their leases. The Northern District’s decision holds that an oil and gas company may “realize” the revenue from the sale of gas at or near the wellhead. This allows the oil and gas company to “net back” certain costs incurred by a marketing affiliate prior to paying royalties to the landowners, allowing the company to pay on a significantly lower price than if the revenue was realized at the point of sale to a third-party purchaser.



LEGAL UPDATE (CONT.)

Appellate Level Court Specifically Holds That Ohio Marketable Title Act and Ohio Dormant Mineral Act May Terminate Severed Oil and Gas Interests Concurrently: In *West v. Bode*, 2019-Ohio-4092 (7th Dist.), the Court of Appeals for the Seventh District of Ohio (“Seventh District”) held that the Ohio Marketable Title Act, Ohio Revised Code § 5301.47 *et seq.*, and the Ohio Dormant Mineral Act, Ohio Revised Code § 5301.56, are not irreconcilable and may both be applied to terminate historic severances of oil and gas.

In 1902, George L. Parks transferred “1/2 part of his royalty of all the oil and gas in and under” his land in Monroe County, Ohio (the “Severance”) to C.J. Bode and George T. Nalley. Through successive conveyances, the surface and one half of the oil and gas in and under land was transferred to Wayne West and Rusty West (the “Westes”). In 2017, the Westes filed a lawsuit for declaratory judgement alleging that the Severance was extinguished under the Marketable Title Act and remerged with the surface. Heirs to the holders of the Severance (the “Bodes”) filed a motion to intervene in the Westes’ suit by alleging, in part, that historic severances are not capable of termination by the Marketable Title Act because a more-specific statute, the Ohio Dormant Mineral Act, was subsequently enacted to apply with respect to oil and gas interests to the exclusion of the Marketable Title Act.

The Marketable Title Act was enacted in 1961 to provide any person who has an unbroken chain of title of record to any interest in land for 40 or more years from the person’s root of title with marketable record title to the interest in land claimed. The Marketable Title Act “operates to extinguish” all interests prior to the person’s root of title. *See* Ohio Revised Code § 5301.47(A) and Ohio Revised Code § 5301.50. Conversely, the Dormant Mineral Act, which was enacted in 1989 as part of the Marketable Title Act, was enacted to provide a surface owner with the means to have a severed interest in oil and gas “deemed abandoned” after 20 years in which the severed interest was not subject any of the six savings events enumerated in the act. *See also* Ohio Revised Code § 5301.56(B)(3)(a)-(f).

Under Ohio law, “If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.” *See* Ohio Revised Code § 1.51. Thus, one statute will apply to the exclusion of another *only if* the two statutes present an irreconcilable conflict with each other. Based upon the Supreme Court of Ohio’s interpretation of the Marketable Title Act in *Blackstone v. Moore*, 155 Ohio St.3d 448, 2018-Ohio-4959, and of the Dormant Mineral Act in *Corban v. Chesapeake Exploration, L.L.C.*, 149 Ohio St.3d 512, 2016-Ohio-5796, the Seventh District held that both statutes may be used to terminate severed oil and gas interests in Ohio. *See id.* at ¶ 47 (“They are co-extensive alternatives whose applicability in a particular case depends on the time passed and the nature of the items existing in the pertinent records.”). For example, the Marketable Title Act involves *extinguishment* of a severed oil and gas interest after 40 years resulting in a “null and void interest” which cannot be revived while the Dormant Mineral Act provides an *abandonment process* that may be used after a 20-year period with no savings event while allowing the severed oil and gas holder to file a post-notice claim to preserve. Thus, the Seventh District held that each statute may be applied independently and harmoniously with the other.

Bode appears to be the first appellate-level decision in Ohio to squarely address whether the Marketable Title Act can continue to be used to terminate severed oil and gas interests after the enactment of the Dormant Mineral Act, a more specific statute. The decision is a significant win for surface owners in Ohio who own property encumbered by a severed oil and gas interest. Because the Marketable Title Act may “operate[] to extinguish” a severed oil and gas interest even if the surface owner takes no action (i.e. is a “self-executing” statute), surface owners often prefer to attempt to use the Marketable Title Act (opposed to the Dormant Mineral Act) as it is often less difficult to successfully utilize to claim the oil and gas underlying their land.