



EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" SM
"The Family Business Law Firm" SM

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

Todd Kildow - tkildow@emenswolperlaw.com
Cody Smith - csmith@emenswolperlaw.com
Heidi Kemp - hkemp@emenswolperlaw.com
Chris Vallo - cvallo@emenswolperlaw.com
Gail Tibbals - gtibbals@emenswolperlaw.com
Dawn Homan - dhoman@emenswolperlaw.com

IN THIS ISSUE

Oil & Gas, Solar, Pipeline, and Energy Newsletter June 2018

TODD KILDOW JOINS EMENS & WOLPER.....Page 2

EXPLORATION AND DEVELOPMENT UPDATE..... Page 2

Ohio Natural Gas Production Hits Record Levels in 2017.....Page 2

XTO Energy Inc. Plans to Sell Acreage in Monroe and Washington Counties in OhioPage 2

EQT Corporation's ("EQT") President Resigns Shortly After EQT Announces Company Split.Page 2

Ohio Department of Natural Resources ("ODNR") Issues Permits for Three Injection Wells.Page 3

Monroe County, Ohio Natural Gas Liquids Storage Facility Announced to be Delayed Until at Least 2019.....Page 3

Rex Energy Corporation ("Rex") Files for Chapter 11 Bankruptcy.....Page 3

Oklahoma is Continuing to Study whether or not Hydraulic Fracturing may Cause EarthquakesPage 3

Pennsylvania Decision on "Rule of Capture" May Curtail Marcellus Production.....Page 3

PIPELINE UPDATE..... Page 4

Nexus Pipeline Project Claimed to be in Service in 2018.....Page 4

Trade Associations Ask President Trump to Expedite Pipeline Approvals... Page 4

Ohio Environmental Protection Agency ("OEPA") Renews Request with FERC Regarding Wetland Contamination Claimed to be Caused by RoverPage 4

WIND AND SOLAR ENERGY UPDATE..... Page 4

Solar Projects Continue to be Proposed Across Ohio..... Page 4

PROBATE AVOIDANCE..... Page 5

Do I need to Avoid Probate..... Page 5

LEGAL UPDATE..... Page 5

Horizontal Utica Status.....Page 7

Dear Clients, Friends, and Colleagues:

Many landowners have been telling us that oil and gas companies ("OGC") are delaying in making full payment for royalties that are due from producing wells. Landowners are being told that new title issues, for both surface owners and mineral owners, have suddenly appeared so the OGC is "holding" the money until the title issues are resolved. Because of this problem, we are representing numerous landowners in litigation against the OGCs. We are very happy to let you know we can now do first-chair litigation now that **Todd Kildow** has joined us in our St. Clairsville, office. See page 2 in this Newsletter.

Landowners who hold ownership of their land in their individual names, such as John Jones, an unmarried man, or Mary Jones, an unmarried woman, or John and Mary Jones, husband and wife, need to know that this type of ownership in the property will result, upon death, in the property passing through probate which can cost extra dollars and take extra time. To avoid probate, please see our article on this subject on page 6 in this Newsletter and a longer version on the Emens & Wolper Law Firm website.

Because so many of our landowner clients and other landowners have been receiving lower prices than the TCO-Appalachian Index and have been having unwarranted deductions taken by OGCs from royalty checks, we repeat below our Landowner Royalty Alert.

Sincerely,

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

REPEAT:

Landowner Royalty Owner Alert: Royalty owners receiving checks for royalty payments should be following procedures that document everything related to their royalty payments AND should be aware of the four-year statute of limitations in which to claim incorrect or unpaid royalties.

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

The materials contained in this Newsletter have been prepared by Emens & Wolper Law Firm (except where indicated otherwise)

© 2018 Emens & Wolper Law

Horizontal Utica Status.....Page 7 for educational and informational purpose only and not for legal advice.



EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" SM
"The Family Business Law Firm" SM

EXPLORATION AND DEVELOPMENT UPDATE

Emens & Wolper Law Firm Adds Attorney to the St. Clairsville Office



Todd Kildow joined the Emens & Wolper St. Clairsville office in April 2018 which now allows us to be able to provide first-chair litigation services. Todd focuses his practice on real estate law, estate planning/elder law, probate law/estate administration, oil and gas issues, commercial law, small business and limited liability companies, creditor collections and foreclosures, and general civil litigation. Todd currently serves as general counsel to Belmont Savings Bank.

Todd received his Bachelor of Arts Degree from Mount Union College in 1987 where he was a member of the Mount Union Varsity Baseball Team and Phi Kappa Tau Fraternity. He earned his law degree from Ohio Northern University in 1993. Todd previously served on the Union Local School Board, Community Mental Health Board and volunteered as counsel to the Union Local Alumni Association, Union Local Education Foundation and the Union Local Touchdown Club. Todd has served as faculty for the National Business Institute's Continuing Education Seminar on Elder Care in West Virginia and as an adjunct professor of Sports Law at Wheeling Jesuit University.

Todd is admitted to practice in the States of Ohio and West Virginia as well as the Commonwealth of Pennsylvania. He is also admitted before the United States District Court for the Southern District of Ohio and the Northern District of West Virginia, and the United States Court of Appeals for the Sixth Circuit. He is a member of the Ohio State Bar, the West Virginia State Bar, the Belmont County Bar Association and the American Bar Association.

Ohio Natural Gas Production Hits Record Levels in 2017. Since early 2015, Ohio has produced more natural gas than it uses, becoming a net exporter. Last year, Ohio produced a record 1.7 trillion cubic feet of natural gas. Most of this natural gas production came from wells drilled into the Utica Shale. So far in 2018 (through June 2, 2018), Ohio has permitted a cumulative total of 2,835 horizontal wells for development of the Utica Shale – 2,358 of which have been drilled. For more information, see <http://www.indeonline.com/news/20180404/utica-report-card-ohios-natural-gas-production-at-record-levels> and <http://oilandgas.ohiodnr.gov/shale>.

XTO Energy Inc. Plans to Sell Acreage in Monroe and Washington Counties in Ohio. In April 2018, XTO announced its intention to sell certain leasehold assets in Monroe and Washington Counties in Ohio. XTO claims it intends to sell approximately 9,400 net mineral acres (70% of which appear to be held by production). According to Oil & Gas Asset Clearinghouse, LLC, who is marketing the sale, there exists potentially 40-plus net drilling locations within the 9,400 net mineral acres. XTO currently claims to hold approximately 82,000 acres of Utica Shale leases in Belmont and Monroe Counties in Ohio (in addition to the Washington County, Ohio leaseholds). The approximately 9,400 acres being sold appear to be acreage that does not currently fit within XTO's future drilling plans. For more information, see <https://www.oilandgasinvestor.com/marketed-xto-energy-leasehold-assets-utica-shale-1697886> and <https://marcellusdrilling.com/2018/04/xto-selling-9400-oh-utica-acres-in-monroe-washington-counties/>.

EQT Corporation's ("EQT") President Resigns Shortly After EQT Announces Company Split. On March 16, 2018, EQT, which is claimed to currently be the nation's largest natural gas producer, announced that its President and Chief Executive Office, Steven Schlotterbeck, resigned from EQT effective immediately. Schlotterbeck was employed by EQT for 18 years and helped guide EQT through its \$8.2 billion acquisition of Rice Energy last year. Schlotterbeck's departure from EQT came only one month after EQT announced its intention to split EQT into two separate companies: a drilling company and a midstream pipeline company. As part of the company split, Rice Midstream Partners will be merged into EQT Midstream Partners which is planned to transport natural gas produced by the remaining EQT Corporation. For more information, see <https://marcellusdrilling.com/2018/03/eqt-ceo-steve-schlotterbeck-suddenly-quits-leaves-company/> and <https://www.cnn.com/2018/02/21/eqt-corporation-is-spinning-off-its-midstream-pipeline-business.html>.

Ohio Department of Natural Resources ("ODNR") Issues Permits for Three Injection Wells. On March 16, 2018, the ODNR issued three well permits for Class II Injection Wells in Brookfield Township, Trumbull County, Ohio over the objection of the Brookfield Township Trustees. Class II Injection Wells are generally used to store contaminated wastewater from oil and gas drilling operations. The three new well permits were issued in addition to two others that were issued in late 2017. The Brookfield Township Trustees, who strongly opposed the wells – citing their potential for triggering earthquakes and the risks of environmental contamination – recently filed a letter with Governor John Kasich claiming that because Kasich and the ODNR have the authority to take action with respect to the wells, the trustees "would hold them responsible for any hazardous or catastrophic incident that may occur as a result of those injection wells." For more information, see <https://marcellusdrilling.com/2018/03/odnr-grants-permits-for-3-new-injection-wells-in-trumbull-county/>.

Monroe County, Ohio Natural Gas Liquids Storage Facility Announced to be Delayed Until at Least 2019. Energy Storage Ventures, LLC ("ESV") announced its intention in 2016 to develop, construct, and operate a natural gas liquids (NGL) storage facility on 200 acres in Monroe County, Ohio. Currently, the planned NGL facility is on hold, waiting on regulatory approval from the ODNR, the Ohio Environmental Protection Agency, and the Ohio Department of Transportation.



EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" SM
"The Family Business Law Firm" SM

EMENS & WOLPER 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 all 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; and
- We assist with litigation on all of these matters.

Our law firm also provides services regarding estate planning, succession planning for family farms and other businesses and purchases and

The proposed NGL facility is expected by ESV to hold ethane in the Salina Salt formation which is 6,700 feet underground between the Marcellus and Utica Shales. ESV originally wanted the NGL storage facility to be in service by the end of 2018. However, because regulatory approval has taken too long, David Hooker, president of ESV, has announced that the NGL storage facility has been pushed back to 2019. Hooker claims to believe that the delay in approval is due in part to environmental issues caused by the Rover pipelines project as well as a hard-rock storage facility being closed in 2012 when it was discovered to have been leaking propane. For more information, see <https://extension.psu.edu/ohio-ngl-storage-project-pushed-back-to-2019>.

Rex Energy Corporation ("Rex") Files for Chapter 11 Bankruptcy. In early April 2018, Rex announced in a Form 8-K that it could not make an interest payment it owed on senior notes held by Angelo, Gordon & Co. Angelo, Gordon & Co. agreed to give Rex two additional weeks to make the required payments. Rex, again, missed this deadline. Recently, Rex has filed for Chapter 11 bankruptcy and has announced that it plans to market and sell all of its Marcellus and Utica assets, including wells, leases, etc. to repay its lenders rather than be forced to auction the assets through the Bankruptcy Court. Rex has stated it intends to have the sale of assets completed within the next four to five months. For more information see, <https://marcellusdrilling.com/2018/04/rex-energy-defaults-on-ious-cant-file-annual-report-on-time/> and <https://www.prnewswire.com/news-releases/rex-energy-initiates-sale-process-for-all-remaining-assets-filing-voluntary-petitions-under-chapter-11-of-the-us-bankruptcy-code-300650990.html>.

Oklahoma is Continuing to Study whether or not Hydraulic Fracturing may Cause Earthquakes. Oil and gas regulators in Oklahoma ordered oil and gas producers to limit the wastewater the oil and gas companies were pumping into the ground in an effort to reduce the frequency of tremors (i.e. small earthquakes) in the area. The reduction in wastewater appeared to be a success because the number of tremors in Oklahoma reduced from five per day to less than two per day. Recently, however, Oklahoma has been experiencing a number of new tremors in an area where shale formations are being developed even though almost no wastewater is being pumped back into the ground. This is causing Oklahoma legislators and regulators to revisit the use of hydraulic fracturing. It appears unlikely that Oklahoma will prohibit the use of hydraulic fracturing, as it has allowed production of over 497,000 barrels of oil a day in the state, but Austin Holland, a supervisory geophysicist with the United States Geological Survey in New Mexico has stated "[y]ou can't rule out the possibility that you could have a significant earthquake triggered by hydraulic fracturing." For more information, see THE COLUMBUS DISPATCH, February 12, 2018.

Pennsylvania Decision on "Rule of Capture" May Curtail Marcellus Production. A Pennsylvania Superior Court has recently held that the "Rule of Capture" does not apply to horizontal wells which have been hydraulically fractured. The "Rule of Capture," which is also applicable in Ohio, states that if a landowner drills an oil and gas well near the edge of a property line on their own land, that landowner may lawfully take the oil and gas if the well draws the oil and gas from the neighboring properties. The "Rule of Capture" was designed to recognize that oil and gas is migratory and free to move below the surface from one property to another. However, a Pennsylvania Superior Court has recently stated that in shale areas, the oil and gas is trapped within the shale structure. Thus, it is not free to move without hydraulic fracturing. Therefore, if an oil and gas company fracs a horizontal well bore, and the fractures extend onto a neighboring property which is unleased or not within the drilling unit, the oil and gas company may be liable for trespass under Pennsylvania law. Former secretary of the Pennsylvania Department of Environmental Protection, David E. Hess, has stated that he believes the decision "could open the door to hundreds of potential similar trespass lawsuits filed across Pennsylvania" and believes Pennsylvania will "soon see legislative attempts to redefine the rule of capture." For more information, see <https://marcellusdrilling.com/2018/04/pa-rule-of-capture-case-has-power-to-limit-marcellus-drilling/>.



EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" SM
"The Family Business Law Firm" SM

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.

PIPELINE UPDATE

Nexus Pipeline Project Claimed to be in Service in 2018. As we mentioned in the November 1, 2017 Edition of this Newsletter, Nexus Gas Transmission ("Nexus") received its Certificate of Public Convenience and Necessity ("CPCN") from the Federal Energy Regulatory Commission ("FERC") on August 25, 2017 in order to begin construction of the approximately 255-mile Nexus natural gas pipeline project across parts of Ohio and Michigan. Construction of the Nexus natural gas pipeline project appears to have begun shortly thereafter, in mid-October 2017, and is still underway as of the date of this Newsletter. Recently, Adam Parker, a spokesman for Nexus stated that Nexus believes the pipeline will be in service by the end of the third quarter of 2018. For more information, see <https://marcellusdrilling.com/2018/04/despite-opposition-nexus-pipe-will-be-done-running-this-year/>.

Trade Associations Ask President Trump to Expedite Pipeline Approvals. Five trade associations, including the Natural Gas Supply Association, the American Petroleum Institute, the American Gas Association, the Independent Petroleum Association of America, and the Interstate Natural Gas Association of America, drafted a joint letter in April of 2018 urging President Trump and his administration to call on federal agencies to expedite the permitting process of pipelines in the United States. The trade associations claim in the letter that as currently enacted, Section 401 of the Clean Water Act (which allows states oversight on pipelines' effects on wetlands and other aquatic resources) has been used by states "to hijack the permitting process for pipelines that transport natural gas in interstate commerce." These trade associations asked President Trump to better define and implement the Section 401 process to ensure that states are not "manipulating the process" of pipeline review by withholding their Section 401 approvals. For more information see, <http://www.naturalgasintel.com/articles/114000-natural-gas-council-urges-trump-include-section-401-in-quest-for-faster-permitting> and <https://marcellusdrilling.com/2018/04/natgas-groups-urge-trump-to-act-against-states-blocking-pipelines/>.

Ohio Environmental Protection Agency ("OEPA") Renews Request with FERC Regarding Wetland Contamination Claimed to be Caused by Rover. As we mentioned in the August 2017 of this Newsletter, the OEPA filed a lawsuit against Rover claiming that Rover spilled over 2 million gallons of drilling mud used to lubricate its drilling equipment on 6.5 acres of wetlands adjacent to the Tuscarawas River south of Navarre in Stark County, Ohio. In February 2018, the OEPA continued its claims against Rover by filing a letter with FERC claiming that testing done by OEPA found the presence of tetrachloroethene (PCE) at Rover's underground drilling site at the Tuscarawas River. Energy Transfer Partners, the company behind the Rover pipelines project, responded by arguing the PCE came from sediment at the bottom of the long-polluted Tuscarawas River. On May 8, 2018, the OEPA sent FERC another letter claiming that the data it provided to FERC previously "does not agree with [Rover's claims of] the source of the PCE found" and asking FERC to require Rover to "pin point where PCE is entering into the drilling fluids and take measures to correct those conditions." For more information, see <https://marcellusdrilling.com/2018/05/ohio-epa-continues-to-hound-99-done-rover-pipe-re-river-drilling/>.

WIND AND SOLAR ENERGY UPDATE

Solar Projects Continue to be Proposed Across Ohio. We continue to assist landowners asking us to review options and leases for solar projects. As we have previously stated, these agreements from various companies generally contain language that is very landowner-unfriendly.



EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" SM
"The Family Business Law Firm" SM

PROBATE AVOIDANCE

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

- Do I Need to Avoid Probate?
- Solar is Here in Ohio:
Landowners Beware
- 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 Law Firm

One Easton Oval, Suite 550
Columbus, Ohio 43219
Phone: (614) 414.0888
Fax: (614) 414.0898

Chris Vallo, Assistant to Dick Emens
cvallo@emenswolperlaw.com

and

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

Do I Need to Avoid Probate? Often, there is a lot of talk about "avoiding probate." What is probate? And is it something you need to avoid? And if so, how is that done?

Probate is the legal process that occurs when a person passes away with assets titled in his or her individual name. Some people believe that if they have a will, distributions will avoid probate. Sadly, this is not true.

So, why do people talk about avoiding probate? The probate process involves certain court costs and most likely legal fees. Often, Executors require the legal assistance to prepare the necessary probate forms and other paperwork. The probate process can tie-up probate assets during the administration of the estate. Estate administration may last a few months or even a few years. During the administration of the estate, the beneficiaries may have little to no access to the assets. Another characteristic of the probate process is that all the probate documents, including the Will and subsequent paperwork filed with the probate court, become public record. Do you want your snoopy neighbor being able to see how much you were worth and to whom you left your assets? Maybe not.

If any of the above issues concern you, how do you avoid probate? There are lots of ways and some of them are very simple.

For Ohio real estate, you may execute a transfer on death designation affidavit ("TOD"). The TOD is a document in which the owners of the property can designate who they want to leave the property to upon their deaths. This is significant for **the ownership of Minerals, Oil, and Gas**. Valuing those assets can be very difficult and the court may require an appraisal which could cost thousands of dollars. The TOD gets recorded with the County Recorder but be changed at any time prior to the owners' deaths.

For cash accounts and investment accounts, financial institutions usually have payable on death ("POD") or transfer on death ("TOD") forms which allows an individual to name one or more beneficiaries to receive the balance of those accounts at his death.

For business interests, like LLC interests or corporation stock, a transfer on death designation may be used. This is extremely important. We recommend family farms and business interests not go through probate. If they do, the interests must be valued, which will likely mean a costly appraisal. The value of the company becomes public record. And the probate process may impede the normal running of the business during the estate administration. You may also fund a revocable trust during your lifetime (or the trust may be named as the beneficiary on the forms discussed). A trust passes outside of probate and therefore remains private. A revocable trust may be amended or revoked at any time during the individual's lifetime. This is an effective way to avoid probate and to also provide for the distribution of assets over time to the beneficiary(ies) for the purposes stated in the trust.

It is never easy to prepare for "what happens when . . . ," but lack of planning may result in additional frustrations, delay and costs for your loved ones.

LEGAL UPDATE

Ohio Appellate Court Applies the Duhig Rule to Reservation of Fractional Mineral Interests. In *Talbot v. Ward*, the Court of Appeals for the Seventh District of Ohio indirectly applied the well-known *Duhig* rule out of Texas, to estop a grantor and his successors "from claiming title in a reserved fractional mineral interest when to do so would, in effect, breach the grantor's warrant as to the title and interest purportedly conveyed to the grantee." *Talbot v. Ward*, 2017-Ohio-9213, ¶ 69 (7th Dist.). This is the first time the *Duhig* rule has been applied or discussed by any Ohio Appellate court or the Ohio Supreme Court as noted by the Seventh District Court of Appeals in its decision.

The materials contained in this Newsletter have been prepared
by Emens & Wolper Law Firm (except where indicated otherwise)
for educational and informational purpose only and not for legal advice.

© 2018 Emens & Wolper Law



LEGAL UPDATE (CONT.)

Ohio Appellate Court Applies the *Duhig* Rule to Reservation of Fractional Mineral Interests (cont.) In *Talbot* the Court reviewed the ownership of oil and gas royalties, rentals, and bonuses (the "O&G") underlying 117.33 acres in Monroe County, Ohio (the "Property"). In 1936, E.M. Ward conveyed the Property to Dow Mellott, by General Warranty Deed which contained the following language: "Excepting and reserving the coal known as the Pittsburgh or No. 8 vein, the same having been sold to Samuel W. Harper of Wheeling, W.Va. Also excepting 1/2 of the oil and gas royalty and 1/2 of all rentals and bonuses from the above grant" (the "1936 Ward-Mellott Deed"). *Id.* at ¶¶ 46-47. In 1943, Mellott conveyed the Property to Minnie Tomolonis, by General Warranty Deed, which contained similar exception and reservation language (the "1943 Mellott-Tomolonis Deed"). The main issue on appeal was whether or not the 1943 Mellott-Tomolonis Deed reserved a one-half interest in the O&G or whether the language was a reference to the one-half reservation of O&G contained in the 1936 Ward-Mellott Deed.

The Court noted that even if it could be argued that the 1943 Mellott-Tomolonis Deed intended to reserve the remaining one-half of the O&G underlying the Property, the 1943 Mellott-Tomolonis Deed only accounted for one-half of the O&G and appeared to convey the remaining interest to the grantee. Thus, any reservation by Mellott would become void because it would violate the warranty provisions of the 1943 Mellott-Tomolonis Deed. This conclusion is based on the "ideology of the *Duhig* rule" which may be summarized as "[i]f both the grant and reservation cannot thereby be given effect, the reservation must fail and the risk of title loss is on the grantor." *Id.* at ¶ 68.

Talbot is an important decision for Ohio practitioners and title examiners because, as the Court notes, the decision marks the first time an appellate-level Ohio court has discussed the *Duhig* rule. This decision also provides clarity regarding the manner in which Seventh District Court of Appeals will determine issues of over-conveyance and deed interpretation. As in many other states, this Court appears to favor the grant over the reservation in general warranty deeds if effect cannot be given to both.

Ohio Appellate Court Holds that the Ohio Dormant Mineral Act Requires Only "Reasonable Diligence" to Locate Holders of Severed Mineral Interests. In *Shilts v. Beardmore*, 2018-Ohio-863 (7th Dist.), the Court of Appeals for the Seventh District of Ohio affirmed a decision from the Common Pleas Court of Monroe County, Ohio, holding that a surface owner attempting to utilize the 2006 version of the Ohio Dormant Mineral Act ("2006 DMA"), O.R.C. Ann. § 5301.56, to reclaim abandoned oil and gas minerals, need only exercise "reasonable diligence" when attempting to locate potential holders of the mineral interests to serve notice by certified mail.

Under the 2006 DMA, before a severed mineral interest is deemed abandoned and vested in the surface owner of the land, "the owner of the surface of the lands subject to the interest shall . . . serve notice by certified mail . . . to each holder" of the surface owner's intent to declare the severed mineral interest abandoned. O.R.C. Ann. § 5301.56(E)(1) (emphasis added). "If [certified mail] cannot be completed to any holder, the [surface] owner shall publish notice . . . in a newspaper of general circulation . . . [where the land] is located." *Id.* Christman argued that because the 2006 DMA states that a surface owner "shall serve" notice by certified mail prior to publishing notice, the statute *requires* certified mail be sent. She urged that the statute requires a "whatever it takes" standard where, in all cases, certified mail *must be* sent. Conversely, Shilts argued that Ohio law permits notice by publication once the addresses of potential holders of the severed mineral interest cannot be located through reasonable diligence.

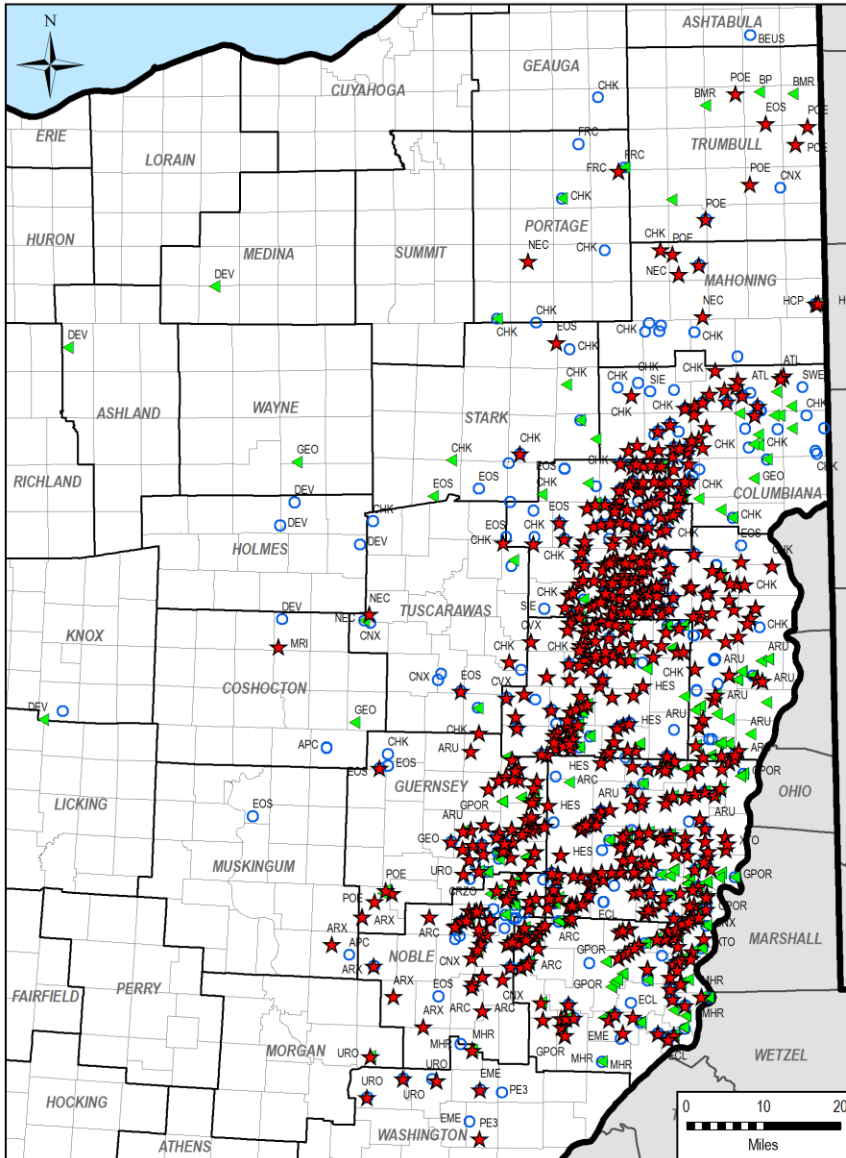
Ultimately, the Court of Appeals for the Seventh District of Ohio concluded that because certified mail could not be completed to all potential holders after reasonable diligence, notice by publication satisfied the statutory language. In a strongly worded opinion, the appellate court stated "[i]t would be absurd to absolutely require an attempt at notice by certified mail when a reasonable search fails to reveal addresses or even the names of potential heirs who must be served." *Id.* at ¶ 15.

Shilts is a significant win for surface owners and for oil and gas companies who hope to avoid having to track down large numbers of heirs of oil and gas reservations when the surface owner(s) attempted to use the 2006 DMA. The scope of this decision is much more limited than the *Corban* decision by the Ohio Supreme Court in 2016 involving the 1989 DMA, and it could still be appealed. If the Seventh District Court of Appeals held surface owners to the "whatever it takes" standard of diligence, it would significantly impair their ability to utilize the 2006 DMA and would cause a greater number of prior attempts to use the 2006 DMA to come under attack. This decision at least provides an example of what the Seventh District Court of Appeals considers reasonable diligence.



EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" SM
 "The Family Business Law Firm" SM



UTICA HORIZONTAL WELL STATUS THROUGH 5/5/2018

- ★ PRODUCING (1,890)
- ▲ DRILLING, DRILLED (448)
- PERMITTED OR NOT DRILLED (482)

OPERATOR	LBL	PROD	PMT	DRLG	DRLD	TOT
AMERICAN ENERGY UTICA LLC	AEU	0	2	0	3	5
ANADARKO E & P ONSHORE LLC	APC	0	4	0	0	4
AMERICAN PETROLEUM PRTR OH LLC	APP	0	2	0	0	2
ANTERO RESOURCES CORPORATION	ARC	194	24	14	29	261
ASCENT RESOURCES UTICA LLC	ARU	205	33	60	49	347
ARTEX OIL COMPANY	ARX	7	0	0	0	7
ATLAS NOBLE LLC	ATL	12	0	0	0	12
BEUSA ENERGY LLC	BEUS	0	1	0	0	1
BRAMMER ENGINEERING INC	BMR	0	0	0	2	2
BP AMERICA PRODUCTION COMPANY	BP	0	0	0	1	1
CHESAPEAKE EXPLORATION LLC	CHK	702	117	10	43	872
CNX GAS COMPANY LLC	CNX	61	14	6	3	84
CARRIZO (UTICA) LLC	CRZO	0	3	0	0	3
CHEVRON APPALACHIA LLC	CVX	8	2	0	0	10
DEVON ENERGY PRODUCTION CO	DEV	0	6	0	3	9
ECLIPSE RESOURCES I LP	ECL	102	50	10	18	180
EM ENERGY OHIO LLC	EME	6	7	3	5	21
ENERVEST OPERATING LLC	EOS	5	20	0	1	26
EQT PRODUCTION COMPANY	EQT	0	0	0	4	4
MOUNTAINEER KEYSTONE LLC	FRC	2	2	1	3	8
GEOPETRO LLC	GEO	1	0	0	4	5
GULFPORT ENERGY CORPORATION	GPOR	288	48	25	60	421
HILCORP ENERGY COMPANY	HCP	15	39	0	1	55
HESS OHIO DEVELOPMENTS LLC	HES	59	25	0	6	90
HG ENERGY LLC	HGE	0	2	0	5	7
HALCON OPERATING COMPANY INC	HK	0	4	0	0	4
TRIAD HUNTER LLC	MHR	5	11	8	2	26
M & R INVESTMENTS OHIO LLC	MRI	1	0	0	0	1
NORTHWOOD ENERGY CORP	NEC	5	0	0	1	6
PDC ENERGY INC	PDC	0	8	0	1	9
PROTÉGÉ ENERGY III LLC	PE3	1	1	0	0	2
PIN OAK ENERGY PARTNERS LLC	POE	12	0	1	0	13
RICE DRILLING D LLC	RDD	79	13	11	26	129
R E GAS DEVELOPMENT LLC	REG	33	9	0	8	50
SIERRA RESOURCES LLC	SIE	0	3	0	0	3
STATOIL USA ONSHORE PROP INC	STO	17	10	4	8	39
SWEPI LP	SWE	0	1	0	0	1
UTICA RESOURCE OPERATING LLC	URO	28	0	5	0	33
XTO ENERGY INC.	XTO	42	21	2	2	67
TOTALS		1890	482	160	288	2820



KEY	DESCRIPTION
PROD	PRODUCING
PMT	PERMITTED
DRLG	DRILLING
DRLD	DRILLED

SHUMWAY RESOURCES, LLC
 137 E Dublin Granville Rd, Ste E
 Worthington, Ohio 43085 | (614) 846.1391
 www.shumwayresources.com

Emens & Wolper would like to thank Marty Shumway of Shumway Resources, LLC for providing the Utica Status Map, above.