



# EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" <sup>SM</sup>  
"The Family Business Law Firm" <sup>SM</sup>

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## *Oil & Gas, Solar, Pipeline, and Energy Newsletter September 2018*

Dear Clients, Friends, and Colleagues:

In this issue of our Newsletter we report on several activities that are causing major concerns for landowners. This information is provided under the heading CURRENT LANDOWNER ISSUES beginning on page 4, where we report on:

- I. Cabot Oil & Gas Corporation Subject of “Gasland” Movie; and
- II. Gas Pricing in Royalty Payments;
- III. TransCanada Mowing Takes Tillable Acreage.

Sincerely,

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

**Continuing Landowner Royalty Owner Alert:** Royalty owners receiving checks for royalty payments should be following procedures that document everything related to their royalty payments and will likely want to timely notify the relevant oil and gas producers if there appears to be any problems with the payments. Those landowners should also be aware of the four-year statute of limitations in which to claim incorrect or unpaid royalties.

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## EXPLORATION AND DEVELOPMENT UPDATE

### **EMENS & WOLPER UPCOMING MEETINGS AND PRESENTATIONS**

**Thursday, November 8, 2018**

*Starting at 6:00 p.m.*

Union Local Middle School

66859 Belmont Morristown Rd.  
Belmont, OH 43718

This meeting will focus primarily on legal issues affecting landowners, lessors, and mineral owners in Belmont, Monroe, Guernsey, Noble, Harrison and Jefferson Counties, Ohio.

**January or February, 2019**

**Date To Be Announced**

*Starting at 6:00 p.m.*

Wintersville Fire Station

286 Luray Dr.  
Wintersville, OH 43935

The date for a meeting is planned for early 2019 will be announced in our next Newsletter. This meeting will focus on legal issues affecting landowners, lessors, and mineral owners in Jefferson, Carrol, Columbiana, Harrison, Guernsey, Belmont, and Monroe Counties, Ohio.

**Chesapeake Energy Corporation ("Chesapeake") has Announced Sale of Its Utica Shale Assets to Encino Acquisition Partners, LLC ("Encino"):** Chesapeake announced on July 26, 2018 that it has entered into an agreement to sell its interests in the Utica Shale play located in eastern Ohio to Encino, a private oil and gas company headquartered in Houston, Texas (Encino's Ohio operating entity appears to be EAP Ohio, LLC ("EAP") for approximately \$2 Billion). The sale is currently expected to close in the fourth quarter of 2018. Chesapeake announced that the pending sale of its Utica Shale acreage of 933,000 acres would be its last major asset sale in an attempt to reduce its debt. Chesapeake recently closed the second quarter of 2018 with a net loss for stockholders in the amount of \$40 Million. According to the Ohio Department of Natural Resources, Chesapeake has drilled 762 wells into the Utica Shale, more than any other company in Ohio. For more information, see <http://investors.chk.com/2018-07-26-Chesapeake-Energy-Corporation-Agrees-To-Sell-Utica-Shale-Position-For-2-0-Billion-Provides-Powder-River-Basin-Update-And-2018-Updated-Guidance> (Chesapeake's Press Release) and <https://www.ohio.com/akron/business/breaking-news-business/chesapeake-pending-sale-of-ohio-utica-shale-property-to-cut-debt-by-12-2-billion>.

Although Chesapeake has announced its agreement with Encino to sell its Utica Shale acreage, it appears Chesapeake will continue to drill certain Utica Shale wells. A subsidiary of Chesapeake Energy Corporation, Chesapeake Exploration, L.L.C., recently applied to the Ohio Department of Natural Resources for permits to drill two new horizontal wells in Washington Township, Columbiana County, Ohio. For more information, see <http://www.morningjournalnews.com/news/local-news/2018/08/chesapeake-leaving-but-not-done-drilling-yet/>.

Numerous landowners have told us that they have received requests from Chesapeake for the landowner's consent to assign the landowner's lease to EAP. Landowners will likely want to learn much about Encino and EAP.

**Ascent Resources – Utica, LLC ("Ascent") Purchasing Assets from CNX Gas Corporation ("CNX Gas") Bringing Transfer Fees to Ohio Counties:** In late June of 2018, Ascent, based in Oklahoma City, Oklahoma, and founded by the late Aubrey McClendon, announced that it would be buying 113,400 Utica Shale acres from CNX Gas, which includes 93 producing oil and gas wells for \$1.5 billion. A large portion of the acreage to be purchased is located in Jefferson County, Ohio with other acreage being in Belmont, Noble, and Harrison Counties. Jefferson County Deputy Auditor, E.J. Conn has stated that he believes the sale will be "the biggest [real estate transfer] in the history of Jefferson County" with an estimate of \$305 Million worth of transfers taking place according to said Auditor. For more information, see <https://marcellusdrilling.com/2018/07/ascent-1-5b-oh-utica-deal-yields-1-4m-in-fees-for-2-counties/>.

**The Ohio Power Siting Board ("OPSB") Approves Natural Gas Power Plant in Cadiz, Ohio:** On June 1, 2018 the OPSB approved Harrison Power, LLC to construct a 1,050 MW natural gas powered electric generation facility in Cadiz, Ohio. The approved power plant is expected to be located on a 90-acre parcel within the Cadiz Industrial Park. It has been announced that the facility will interconnect to the regional electric transmission grid through a 138 kv transmission line to AEP Ohio Transmission Company's Nottingham Substation. The project is expected to begin construction in October 2018 and become operational by June 2021. For more information, see <https://marcellusdrilling.com/2018/06/ohio-approves-900m-harrison-county-power-plant-in-cadiz-oh/>.



# EMENS & WOLPER LAW FIRM

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## 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.)

**Top 25 Producing Utica Shale Gas Wells in Q2 of 2018:** Natural gas production in the second quarter of 2018 was up 42% over the second quarter of 2017. This increased production (which amounted to 554.3 Bcf) was announced to be an all-time high for gas produced in any quarter in Ohio. By comparison, in the first quarter of 2018, 531 Bcf of gas was reported as produced to the Ohio Department of Natural Resources. Ascent Resources – Utica, LLC (“Ascent”) continues to own a majority of the top 25 gas-producing wells in the state. Currently Ascent owns 18 of the top 25 gas-producing wells. More information on these top 25 gas-producing wells can be found below and at <https://marcellusdrilling.com/2018/08/top-25-producing-gas-oil-wells-in-ohio-utica-for-2q18/>.

OWNER NAME	COUNTY	WELL NAME	GAS (MCF)
ASCENT RESOURCES UTICA LLC	BELMONT	BOROVICH W RCH BL 1H	3,168,398
ASCENT RESOURCES UTICA LLC	BELMONT	BOROVICH W RCH BL 3H	2,974,278
ASCENT RESOURCES UTICA LLC	JEFFERSON	CLUB SE SMF JF 8H	2,758,910
ASCENT RESOURCES UTICA LLC	JEFFERSON	CERMAK NE SMF JF 3H	2,660,368
CHESAPEAKE EXPLORATION LLC	HARRISON	HANCHIN 9-11-4 5H	2,418,097
ASCENT RESOURCES UTICA LLC	BELMONT	SIDWELL S WHL BL 6H	2,373,959
ASCENT RESOURCES UTICA LLC	JEFFERSON	CLUB NE SMF JF 5H	2,322,496
ECLIPSE RESOURCES ILP	MONROE	HERRICK EAST 11H	2,249,876
ASCENT RESOURCES UTICA LLC	JEFFERSON	HARR E MTP JF 5H	2,210,593
ASCENT RESOURCES UTICA LLC	JEFFERSON	HARR W MTP JF 3H	2,200,351
ASCENT RESOURCES UTICA LLC	JEFFERSON	CERMAK NE SMF JF 5H	2,195,060
ASCENT RESOURCES UTICA LLC	JEFFERSON	HARR W MTP JF 1H	2,174,658
ASCENT RESOURCES UTICA LLC	JEFFERSON	CLUB NE SMF JF 7H	2,145,142
ASCENT RESOURCES UTICA LLC	JEFFERSON	PHILLIPS NE MTP JF 6H	2,142,739
ASCENT RESOURCES UTICA LLC	JEFFERSON	BATES S CRC JF 5H	2,127,366
ASCENT RESOURCES UTICA LLC	JEFFERSON	PHILLIPS N MTP JF 4H	2,071,190
ASCENT RESOURCES UTICA LLC	BELMONT	WHEELING VALLEY W WHL BL 4H	2,044,420
ASCENT RESOURCES UTICA LLC	BELMONT	WHEELING VALLEY W WHL BL 2H	2,044,147
RICE DRILLING D LLC	BELMONT	SON-UVA DIGGER 2	1,973,202
CNX GAS COMPANY LLC	MONROE	BAUMBERGER LARRY E & BOBBY SWITZ18BHSU	1,970,148
CNX GAS COMPANY LLC	MONROE	BAUMBERGER LARRY E & BOBBY SWITZ18DHSU	1,968,158
ASCENT RESOURCES UTICA LLC	JEFFERSON	STONE SE CRC JF 6H	1,963,222
CNX GAS COMPANY LLC	MONROE	BAUMBERGER LARRY E & BOBBY SWITZ18FHSU	1,941,295
ASCENT RESOURCES UTICA LLC	JEFFERSON	RECTOR MTP JF 4H	1,934,470
RICE DRILLING D LLC	BELMONT	TUNA NUT 1H	1,932,164

**University of Cincinnati Study Finds No Negative Effects on Groundwater from Hydraulic Fracturing:** A multi-year study completed by the University of Cincinnati reported that there were no impacts to groundwater from hydraulic fracturing in eastern Ohio. The study originally hypothesized that methane concentrations in drinking water would increase as the number of shale wells in an area were drilled. However, the study found that “the dominant source of [methane] in groundwater in the Utica Shale region is biogenic, and that neither the [methane] concentration nor its source change with an increasing number of shale gas wells or with changing distance to shale wells.” The study was based on 180 water samples from farms, with most being taken from Carroll County, Ohio. University of Cincinnati professor, Amy Townsend-Small, announced “I’m really sad to say this but some of our funders, the groups that had given us funding in the past, were a little disappointed in our results.” For more information, see ROYALTY OWNERS ACTION REPORT “Peer-Reviewed Study Finds No Groundwater Contamination from Fracking in Ohio” (May 2018).



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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.

**Eclipse Resources Corporation (“Eclipse”) Announced Merger with Former Magnum Hunter Resources Corporation (“Magnum Hunter”):** In December 2015, Magnum Hunter filed for bankruptcy. After emerging from bankruptcy in May of 2016, Magnum Hunter renamed itself to Blue Ridge Mountain Resources, Inc. (“Blue Ridge”) in January 2017. On August 28, 2018 Eclipse announced that it would be merging with the newly-named Blue Ridge. The merger would take Blue Ridge’s approximately 99,000 acres of mostly undeveloped Marcellus and Utica Shale acreage and combine it with the 128,000 Marcellus and Utica Shale acres held by Eclipse.

Eclipse, known for drilling the longest on-shore lateral well to date, and Blue Ridge announced in a joint press release that the merger is estimated to create one of the largest Utica Shale operators in the United States. The merger would allow Eclipse and Blue Ridge to produce an estimated 500-560 MMcfe of gas per day and is expected to take place in the fourth quarter of 2018. For more information, see <https://marcellusdrilling.com/2018/08/eclipse-resources-merging-with-former-magnum-hunter/>.

It was recently reported by Marcellus Drilling News that nearly all of Eclipse’s top-level executives would be leaving the newly-formed company after the Eclipse and Blue Ridge merger. Reportedly, only one engineer from Eclipse, Oleg Tolmachev, would remain in an executive position, COO, after the merger. The remaining executive positions would be filled by Blue Ridge personnel. For more information, see <https://marcellusdrilling.com/2018/08/eclipses-top-brass-not-sticking-around-after-blue-ridge-merger/>.

**Hess Corporation (“Hess”) Competes Sale of Utica Shale Acreage to Ascent Resources – Utica, LLC (“Ascent”):** Hess announces on August 31, 2018 that it completed its previously-announced sale of its Utica Shale acreage to Ascent for approximately \$400 Million. Hess has announced that the money will be used to “invest in the company’s higher return growth opportunities in Guyana and the Bakken and to fund the previously announced share repurchase program.” For more information, see <https://www.businesswire.com/news/home/20180831005030/en/Hess-Completes-Sale-Utica-Acreage>.

## CURRENT LANDOWNER ISSUES

**Cabot Oil & Gas Corporation (“Cabot”) Announces Plans to Drill Oil and Gas Wells in Ohio:** Cabot appears to be continuing to seek amendments and ratifications to old gas storage leases and oil and gas leases to drill a few exploratory oil and gas wells in the north central part of the state. This year, Cabot obtained permits and began to drill exploratory wells in Ashland County, Ohio. Although Cabot officials have not officially announced what formation Cabot is planning to drill, the applications for permits to drill oil and gas wells filed with the Ohio Department of Natural Resources indicate that Cabot may, at least initially, be interested in drilling into the Rome or Knox Formations.

George Stark, director of external affairs for Cabot, recently acknowledged that Cabot was the subject of the 2010 documentary, “**Gasland**,” which followed a number of families who filed lawsuits against Cabot for allegedly causing increased methane levels in the Plaintiffs’ drinking water. Cabot recently announced that it received approval to take water from the Black Fork River to use when fracturing the wells it plans to drill. For more information, see <http://www.indeonline.com/news/20180617/looking-for-gas-oil-in-ohio-where-few-are>.

Over the past year Cabot has offered to landowners at least five different documents with titles like “Oil and Gas Lease Amendment and Ratification” which appear to benefit Columbia Gas as well as Cabot. Our law firm has not approved any Cabot oil and gas leases/amendments and we are concerned for landowners who may sign such documents. We suggest that landowners contacted to sign a Cabot lease/amendment consult with an experienced oil and gas attorney or with the Mohican Basin Landowners Association.

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## CURRENT LANDOWNER ISSUES (CONT.)

Please visit our website  
for Educational Articles  
[www.emenswolperlaw.com](http://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)

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**Gas Pricing in Royalty Payments:** We have been advised by numerous landowners that they believe they are receiving less than an adequate price for their natural gas. Please see the "Continuing Landowner Royalty Alert" on Page 1 of this Newsletter.

**TransCanada Mowing Takes Tillable Acreage:** At an Ohio Farm Bureau meeting in Lorraine County in which we participated on August 15, 2018, more than 20 farm owners complained about the treatment they have received from TransCanada regarding mowing around old Columbia oil and gas wells. The landowners said that their leases do not provide for the mowing which takes tillable land out of production. Landowners having this problem may wish to consult with their attorney or the Ohio Farm Bureau.

### PIPELINE UPDATE

**Landowner Files Lawsuit Against Nexus Gas Transmission ("Nexus") as the Nexus Pipeline is Claimed to be Nearing Completion:** As we discussed in the June 2018 Edition of this Newsletter, construction of the \$2.1 Billion, 36-inch in diameter Nexus Pipeline appears to have begun in October 2017. The 255-mile natural gas pipeline begins near Hanoverton in Columbiana County and is to connect to existing natural gas pipelines in Ontario, Canada when completed. Some landowners along the pipeline's route have been dissatisfied with the manner in which the pipeline has been installed. One landowner, Oakway Farm, filed a lawsuit on July 10, 2018 in the Common Pleas Court of Stark County, Ohio against Nexus claiming that Nexus contractors caused erosion and crop damages on the landowner's property while constructing the Nexus Pipeline. The Complaint alleges that Nexus pumped thousands of gallons of water and silt from an adjoining property onto Oakway Farm's land, causing damages in excess of \$25,000. The suit comes just a few weeks before Nexus announced that the Nexus Pipeline was 80% complete and on track for an in-service date in the third quarter of 2018. For more information, see <http://www.cantonrep.com/news/20180716/farm-sues-nexus-over-soil-erosion> and <https://marcellusdrilling.com/2018/07/nexus-pipeline-update-now-80-complete-on-schedule-for-3q18/>.

**The Federal Energy Regulatory Commission ("FERC") Approves Two Key Rover Pipeline Laterals:** After months of refusing to allow Rover to put four laterals into service, the FERC recently approved two Rover Pipeline laterals – the Burgettstown Lateral in southwestern Pennsylvania and the Majorsville Lateral in northern West Virginia. While the Rover Pipeline mainline has been in service since June 2, 2018, the FERC refused to allow Rover to place these laterals into service for months because, according to the FERC, Rover failed to complete required restoration activities along the pipeline route. Energy Transfer Partners, L.P., the parent company of Rover, has announced that with the lateral approvals, it may now complete 100% of the long-haul contractual commitments beginning September 1, 2018. Now, only two laterals on the Rover Pipelines project, the CGT Lateral and the Sherwood Lateral, are left to be approved by the FERC. For more information, see <https://marcellusdrilling.com/2018/08/ferc-finally-approves-2-key-rover-pipeline-laterals-sept-1-start/>.

### 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.

### LEGAL UPDATE

In reporting on these cases, we are reporting only what they case indicated (unless otherwise stated) even though quotation marks are not always shown.

**Federal Court Rejects Takings Challenge to Ohio's Statutory Unitization Law:** In *Kerns v. Chesapeake Exploration, L.L.C. et al.*, N.D. Ohio No. 5:18 CV 389 (June 13, 2018), the United States District Court for the Northern District of Ohio ("NDOH") dismissed a Complaint filed by a group of landowners against Chesapeake Exploration, L.L.C. ("Chesapeake") and the Chief of the Ohio Department of Natural Resources, Division of Oil and Gas Resources Management, Richard J. Simmers, ("Chief") by holding that the Ohio forced-unitization statute, Ohio Revised Code § 1509.28, does not violate the Fifth Amendment or the Fourteenth Amendment of the United States Constitution.

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## LEGAL UPDATE (CONT.)

In *Kerns*, a group of Ohio landowners (the "Plaintiffs") owned 127 acres of surface and oil and gas minerals in Harrison County, Ohio ("Property"). On November 10, 2014, Chesapeake filed a unitization application with the Ohio Department of Natural Resources ("ODNR") which was approved by the ODNR Chief on July 13, 2015. On December 16, 2016, the Chief issued a drilling permit to Chesapeake which included part of the Plaintiffs' property. Chesapeake subsequently drilled a well pursuant to the permit and has since been producing oil and/or gas from the Property. In the Plaintiffs' Complaint, the Plaintiffs alleged that the application for forced-unitization filed by Chesapeake and the Chief's approval of such application "is unconstitutional as applied to [Plaintiffs] because it authorizes an impermissible taking of their property in violation of the Fifth and Fourteenth Amendments." *Id.* at p. 20.

Per the NDOH, the "Takings Clause" of the Fifth Amendment, applied to the states through the Fourteenth Amendment, states that private property shall not be taken for public use without just compensation. The Supreme Court of the United States ("Supreme Court"), however, has held that it is "undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas," even if those regulations affect the rights of individual landowners. *Id.* at p. 20-21. The Supreme Court has also held that "legislation regulating the retrieval and use of oil and gas is permissible in part because states may utilize their police powers to protect correlative rights and reduce waste." *Id.* at p. 21. Here, the NDOH found that the forced unitization procedure of Ohio Revised Code § 1509.28 is designed to "protect the correlative rights of landowners, including Plaintiffs, and it was passed as a valid exercise of Ohio's police powers." *Id.* at p. 26. Otherwise, "landowners would be left with no mechanism for retrieving oil in a way that avoids waste and contemplates the rights of their neighbors." *Id.* at p. 24.

While the *Kerns* decision was unsurprising, the decision marks a significant win for oil and gas producers in the State of Ohio. The forced unitization procedure has been upheld against Constitutional scrutiny in many states including Michigan, Utah, Oklahoma, Colorado, and Arkansas but *Kerns* is the first decision to squarely consider Ohio's procedure and to establish law, at least in federal courts, that is consistent with these states.

**Seventh District Court of Appeals Holds that Forced Unitization of an Existing Oil and Gas Lease may be a Breach of the Lease:** In *Am. Energy-Utica, L.L.C. v. Fuller*, 2018-Ohio-3250 (7th Dist.), the Court of Appeals for the Seventh District of Ohio ("7th Dist. Court") reversed a decision of the Common Pleas Court of Guernsey County, Ohio, to hold that an oil and gas company's use of the Ohio forced unitization statute on an existing oil and gas lease is a breach of such lease. The case indicated Ronald Fuller is the owner of a 94.5-acre tract of land in Londonberry Township, Guernsey County, Ohio ("Property") and that on or about June 3, 1981, Fuller, and his now-deceased wife, leased the Property to D.B. Shaffer & Associates, Inc. for three years as "long thereafter as oil and gas, or either of them, is produced" therefrom ("Lease"). *Id.* at ¶ 4, 6. Prior to execution of the Lease, the landman acting on behalf of D.B. Shaffer & Associates, Inc., made handwritten notes on the Lease to modify the terms therein. Robinson crossed out the standard pooling provision in the lease and hand wrote in its place "UNITIZATION BY WRITTEN AGREEMENT ONLY!" and "Each well will hold only 40 acres after the primary term of this lease expires." *Id.* at ¶ 7. Under the terms of the Lease, a well known as the "Fuller No. 1 Well" was drilled on the Property in 1981 which has continued to produce oil and gas since being drilled.

Through successive conveyances and assignments, American Energy-Utica ("AEU") (which is now known as Ascent Resources – Utica, LLC) became the holder of the Utica, Point Pleasant, and Trenton formations under the Lease in 2013. AEU subsequently requested Fuller execute an amendment to the Lease allowing AEU to unitize the Property into larger units to allow deep horizontal drilling into the Utica Shale. No agreement was reached.

In July of 2015, Fuller was served with notice from the Ohio Department of Natural Resources ("ODNR") that AEU filed an application pursuant to Ohio Revised Code § 1509.28 to force a portion of the Property into a 462-acre Utica Shale unit known as the "Henry Unit." On August 13, 2015, Fuller filed a claim in the Guernsey County Common Pleas Court against AEU by alleging that the application filed with the ODNR for the Henry Unit amounted to a breach of the handwritten notes in the Lease written by Robinson. Both AEU and Fuller filed opposing Motions for Summary Judgment which were denied until December 4, 2017 when the trial court granted summary judgement for AEU. The trial court held that "R.C. 1509.28 permits the unitization of the lease" and dismissed Fuller's breach of contract claim. *Id.* at ¶ 25, 36.

On appeal, the 7th Dist. Court agreed with the trial court that Ohio Revised Code § 1509.28 permits the unitization of a lease, but also held that doing so without the agreement of Fuller amounted to a breach of the Lease. The 7th Dist. Court reviewed a prior decision of the Supreme Court of Ohio, *Burtner-Morgan-Stepens Co. v. Wilson* (1992), 63 Ohio St.3d 257, in which the Supreme Court of Ohio reviewed the application of Ohio Revised Code Chapter 1509 to an existing oil and gas lease. Here, the Supreme Court of Ohio unanimously held that pursuant to Section 28, Article II of the Ohio Constitution, a statute could not retroactively be applied to an oil and gas lease regarding the distribution of royalties. Using the same reasoning, the 7th Dist. Court held that AEU's use of Ohio Revised Code § 1509.28 by filing an application for a permit for unitization without Fuller's agreement retroactively impaired the obligations in the Lease.

*Fuller* appears to be a significant win for landowners in Ohio who currently are subject to oil and gas leases which limit the rights of oil and gas companies. Although the 7th Dist. Court agreed that the forced pooling provisions of Ohio Revised Code § 1509.28 are available to oil and gas company even when there exists an oil and gas lease for the property, the oil and gas company's use of the statute may constitute a breach of the lease which would require an "appropriate remedy." *Id.* Unfortunately, the 7th Dist. Court does not give any indication as to what an "appropriate remedy" may be so landowners and practitioners will want to be on the lookout for what types of remedies may be available.

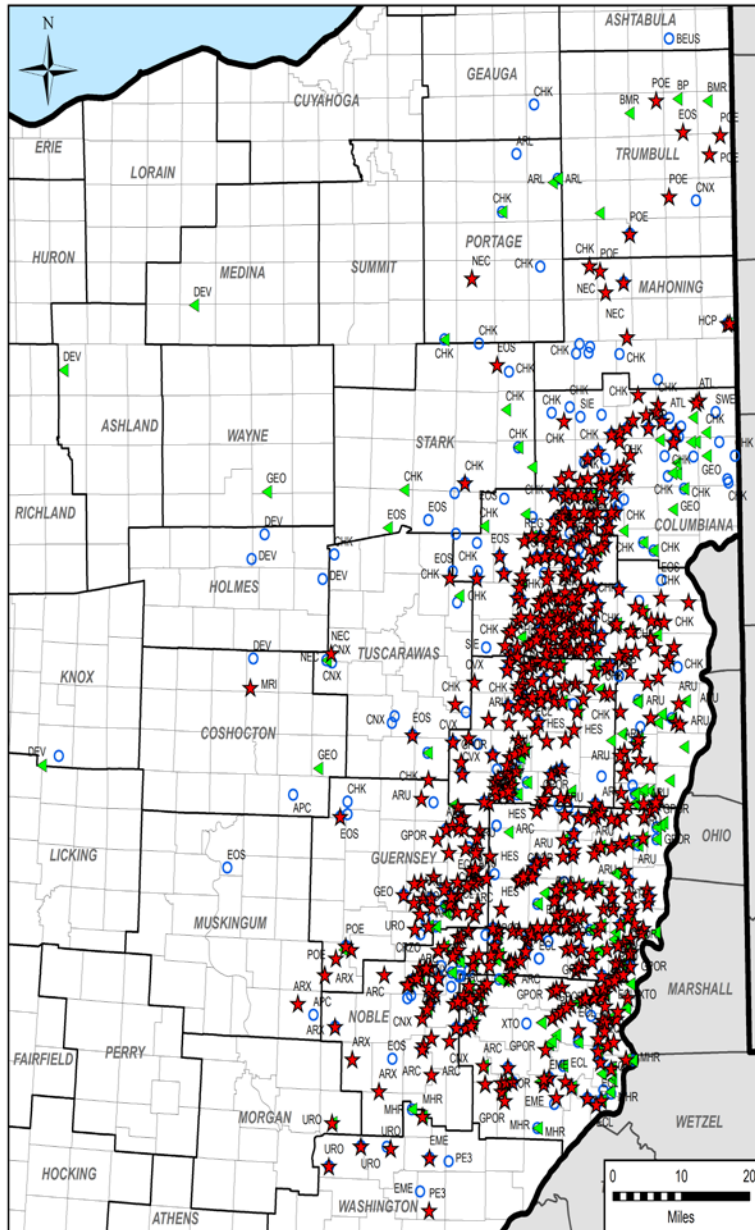


# EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" <sup>SM</sup>  
 "The Family Business Law Firm" <sup>SM</sup>

## LEGAL UPDATE (CONT.)

**Supreme Court of Ohio Upholds Franklin County Court of Elections' Decision to Exclude Measure from Ballot:** In State ex re. Bolzenius v. Preisse, Slip Opinion No. 2018-Ohio-3708, the Supreme Court of Ohio held that a voter initiative creating a "Community Bill of Rights" for the City of Columbus was properly excluded from the November 2018 ballot. The voter initiative, had it been included on the ballot and enacted into law, would have "prohibit[ed] most hydrocarbon-extraction activities within the city and impose[d] strict liability on any government or corporation that violate[d] its terms." State law specifically reserves the right to regulate oil and gas activity at the state level. Thus, local governments, including city governments, do not have the right to create new causes of action which could be brought into court. The voter initiative in Bolzenius would have authorized any resident of the City of Columbus to enforce a new cause of action by bringing such claim to court. Thus, the voter initiative exceeded the legislative power of the City of Columbus and was declared unconstitutional. For more information, see <https://marcellusdrilling.com/2018/09/oh-supreme-court-rules-columbus-anti-utica-ballot-measure-illegal/> and <https://www.vorysenenergy.com/2018/09/articles/energy/columbus-proposed-community-bill-of-rights-exceeds-the-citys-legislative-power/>.



## UTICA HORIZONTAL WELL STATUS THROUGH 9/1/2018

- ★ PRODUCING (2,009)
- ▲ DRILLING; DRILLED (395)
- PERMITTED OR NOT DRILLED (477)

OPERATOR	LBL	PROD	PMT	DRLG	DRLD	TOT
AMERICAN ENERGY UTICA LLC	AEU	0	2	0	3	5
ANADARKO E & P ONSHORE LLC	APC	0	1	0	3	4
AMERICAN PETROLEUM PRTR OH LLC	APP	0	1	0	1	2
ANTERO RESOURCES CORPORATION	ARC	200	26	10	25	261
ASCENT RESOURCES UTICA LLC	ARU	279	36	15	41	371
ARTEX OIL COMPANY	ARX	0	6	0	1	7
ARSENAL RESOURCES LLC	ARL	2	5	0	1	8
ATLAS NOBLE LLC	ATL	7	4	0	1	12
BEUSA ENERGY LLC	BEUS	0	1	0	0	1
BRAMMER ENGINEERING INC	BMR	0	2	0	0	2
BP AMERICA PRODUCTION COMPANY	BP	0	1	0	0	1
CHESAPEAKE EXPLORATION LLC	CHK	664	82	59	80	885
CNX GAS COMPANY LLC	CNX	73	3	3	5	84
CARRIZO (UTICA) LLC	CRZO	3	0	0	0	3
CHEVRON APPALACHIA LLC	CVX	10	0	0	0	10
DEVON ENERGY PRODUCTION CO	DEV	9	0	0	0	9
ECLIPSE RESOURCES I LP	ECL	149	13	5	19	186
EM ENERGY OHIO LLC	EME	23	0	0	0	23
ENERVEST OPERATING LLC	EOS	25	0	0	1	26
EQUINOR USA ONSHORE PROP. INC.	EQU	26	0	0	1	27
EQT PRODUCTION COMPANY	EQT	4	0	0	0	4
GEOPETRO LLC	GEO	5	0	0	0	5
GULFPORT ENERGY CORPORATION	GPOR	315	35	28	49	427
HILCORP ENERGY COMPANY	HCP	48	3	3	5	59
HESS OHIO DEVELOPMENTS LLC	HES	76	3	5	6	90
HG ENERGY LLC	HGE	7	0	0	0	7
HALCON OPERATING COMPANY INC	HK	4	0	0	0	4
TRIAD HUNTER LLC	MHR	22	0	1	4	27
M & R INVESTMENTS OHIO LLC	MRI	1	0	0	0	1
NORTHWOOD ENERGY CORP	NEC	6	0	0	0	6
PDC ENERGY INC	PDC	9	0	0	0	9
PROTÉGÉ ENERGY III LLC	PE3	2	0	0	0	2
PIN OAK ENERGY PARTNERS LLC	POE	12	0	0	1	13
RICE DRILLING D LLC	RDD	97	8	5	19	129
R E GAS DEVELOPMENT LLC	REG	39	3	3	5	50
SIERRA RESOURCES LLC	SIE	3	0	0	0	3
STATOIL USA ONSHORE PROP INC	STO	9	0	0	1	10
SWEPI LP	SWE	1	0	0	0	1
UTICA RESOURCE OPERATING LLC	URO	24	2	2	5	33
XTO ENERGY INC.	XTO	60	3	5	6	74
<b>TOTALS</b>		<b>2214</b>	<b>240</b>	<b>144</b>	<b>283</b>	<b>2881</b>



KEY	DESCRIPTION
PROD	PRODUCING
PMT	PERMITTED
DRLG	DRILLING
DRLD	DRILLED

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