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

Dear Clients and other Friends, -- beginning May 4 we are open to serve you: we are following the Governor’s and Our Guidelines.

We all are currently involved in life shattering experiences! Therefore, this Newsletter has a different and much broader approach because we know this virus has caused all of us to worry, to wonder, and to want answers to important questions--some of which go beyond oil and gas leasing, royalty payments and easements. We list questions we have been asked and our responses.

BUT FIRST: Please BE SAFE and follow the advice of medical experts. We will get through this together!

OIL & GAS Questions:

Question 1: Why are the lease bonus and royalty percentages now being offered by oil and gas companies so much lower than several years ago?

Answers:

- a) Oil and Gas companies (“OGC”) in the Utica Shale area have divided up the areas of interest so they don’t bid against each other as they did previously, and
- b) Gas - There is a huge glut (oversupply) of natural gas in our country and supply and demand factors result in the OGC being paid less for each mcf (thousand cubic feet of gas) produced. The NYMEX price for gas has recently been in the \$1.55-\$1.80 per mcf range as opposed to \$2.25-\$3.00 per mcf a while ago. At these prices the OGC drilling/production costs are more than the OGC can sell the gas (unless they have long-term purchase contracts).
- c) Oil - There is also a huge worldwide oversupply of oil, with oil prices well below the prices a number of countries need for their national budget.
- d) The virus pandemic has caused major declines in the use of both natural gas and oil which makes the pricing issues even more difficult for the OGC.

See Page 2 for more Questions and Answers.

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

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*Please visit our website for
Educational Articles
www.ewjjlaw.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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OIL & GAS Questions (Cont.):

Question 2: Might this oversupply, and these lower prices the OGC are receiving for oil and gas, cause the OGC to shut-in wells in the Ohio shale area?

Answer:

- a) This action is certainly a possibility. However, most of the Ohio Shale OGCs have large debt which encourages them to keep producing in order to have the revenue to pay on the debt. But, because of these large debts there is also the possibility that some OGCs may go into bankruptcy.

BUSINESS AND INDIVIDUAL Questions:

The virus pandemic has caused many of our clients and other friends to ask the following more personal questions. EWJJ is answering these questions and helping to solve the related problems:

Question 1: Can my business get a Payroll Protection Program loan (Small Business “PPP” loan)?

Answer:

- a) Yes, if you have less than 500 employees, you should be able to apply. But, you should do it soon as there have been more applications than money available.

Question 2: If my business gets a PPP loan how can I make sure I only have to pay the interest and don't have to pay back the principal?

Answer:

- a) Use at least 75% of the borrowed funds to pay employees (no more than \$100,000 annual salary per employee plus benefits); the other 25% can go toward specific other costs such as rent, utilities or paying contractors.

Question 3: What can I do to protect my family and my land in this difficult time?

Answer:

- a) Make sure you have a fully signed Will and Trust that are up to date and contain what you want to happen if something happens to you. You will also want to make sure your medical advance directives are up to date.

Question 4: What if someone who is supposed to pay me money stops paying and claims that the coronavirus is the reason?

Answer:

- a) That will depend on the specific facts and the language in the documents that are the basis of the person making the claim.



**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 easements proposed by utilities and municipalities;
- We analyze mineral abandonment claims and claims regarding expired leases;
- We review, analyze and negotiate water, sand, timber, gravel, and coal rights agreements;
- We review, prepare and negotiate real estate deeds, mortgages, notes and liens;
- We review, analyze, negotiate sale of minerals and royalties;
- We assist with litigation on all of these matters;
- We work closely with geologists and engineers to obtain their evaluations of oil, gas, gravel, and sand reserves.

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

CARES ACT AND PPP UPDATE

We have reviewed and analyzed the recently-passed Coronavirus Aid Relief and Economic Security Act (“CARES Act”) (also known as the Paycheck Protection Program). There is a summary of the CARES Act on our website which describes the CARES Act and explains who is eligible, how to calculate the loan amount, and what portion of the loan is eligible for forgiveness.

The CARES Act offers federally guaranteed SBA “loans”, up to \$10M, to certain eligible employers which may qualify for forgiveness, up to the full principal borrowed, if the employer maintains payrolls during the crisis or restores payrolls by June 30, 2020. We thought you may find this information helpful during these uncertain times.

If you would like help understanding whether your business is eligible, or if you would like assistance in applying for this loan, please do not hesitate to reach out to us.

SOLAR UPDATE

We are receiving more and more requests for advice from landowners who have been approached about having solar projects on their property. Please see our website and earlier Newsletters for specific warnings to landowners describing how landowner-unfriendly the solar companies’ documents are.

The Ohio Power Siting Board (“OPSB”) Approves Three Utility-Scale Solar Projects in Ohio After Months of Delay: On April 16, 2020, the OPSB voted in favor of a series of certificate application and modification requests filed by large-scale solar developers in the state. The measure gave final approval to three utility-scale solar projects in Ohio — two in Hardin County and one on the border of Brown and Clermont Counties. These three projects include:

1. The Hardin Solar Energy Center (150 MW) to be constructed by Invenergy;
2. The Hardin II Solar Energy Center (170 MW) to be constructed by Invenergy; and
3. The Nestlewood Solar Project (80 MW) to be constructed by Lendlease Energy Development.

In October of 2019 the OPSB delayed the approval of the projects because there “was lack of specificity about the final design of project[s], including lighting and appropriate vegetative screening to hide the solar arrays from adjoining properties. There was also concerns about the impact the project would have on the Kirtland’s snake, a threatened species.” For more information, see <https://www.ocj.com/2020/04/ohio-power-siting-board-clears-the-path-for-three-large-scale-solar-projects/> and <https://energynews.us/2020/04/17/midwest/after-months-of-delay-ohio-solar-projects-gain-siting-boards-approval/>.

EXPLORATION AND DEVELOPMENT UPDATE

Annual Production of Oil and Gas in Ohio Over the Last Decade: In Ohio oil and gas companies are required to report production from wells to the Ohio Department of Natural Resources (“ODNR”). See Ohio Revised Code § 1509.11. The ODNR then publishes information annually (and quarterly for horizontal wells) related to production of oil and gas on its website. The ODNR website states that the “[p]roduction data is compiled based upon the information provided to us by the oil and gas well owners.” To view this information, see <http://oilandgas.ohiodnr.gov/production>.



***Landowner Groups and
Other Ohio Counties
Where Emens Wolper
Jacobs Jasin Law 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, Butler, Carroll,
Columbiana, Crawford,
Defiance, Delaware, Erie,
Fayette, Franklin, Fulton,
Geauga, Guernsey, Hardin,
Harrison, Henry, Highland,
Hocking, Holmes, Huron,
Mahoning, Marion, Meigs,
Miami, Monroe,
Montgomery, Noble, Preble,
Pickaway, Portage, Ross,
Sandusky, Seneca, Stark,
Summit, Trumbull,
Tuscarawas, Union, Warren,
Washington, Wayne, Wood,
and others.

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Top 25 Gas Producing Utica Shale Wells in Q4 of 2019: Natural gas production in the Fourth Quarter of 2019 was approximately 3.724 Bcf higher than the Third Quarter of 2019. Natural gas production amounted to approximately 677.686 Bcf in the Fourth Quarter of 2019 compared to 673.962 Bcf of natural gas production in the Third Quarter of 2019. Ascent Resources – Utica, LLC (“Ascent”) owns 14 of the top 25 gas-producing wells. More information on these top 25 gas-producing wells can be found below and at <http://oilandgas.ohiodnr.gov/production#QUART>.

OWNER NAME	COUNTY	TOWNSHIP	WELL NAME	GAS
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	DARROW W MTP JF 1H	3,233,918
GULFPORT APPALACHIA LLC	BELMONT	WASHINGTON	FANKHAUSER 210035 2A	3,088,427
GULFPORT APPALACHIA LLC	BELMONT	WASHINGTON	FANKHAUSER 210035 3B	3,087,775
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	DARROW S MTP JF 2H	3,044,463
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	DARROW E MTP JF 3H	3,018,271
GULFPORT APPALACHIA LLC	BELMONT	WASHINGTON	FANKHAUSER 210735 4A	2,993,214
ASCENT RESOURCES UTICA LLC	HARRISON	ATHENS	BRAVO SE ATH HR 6H	2,908,112
GULFPORT APPALACHIA LLC	BELMONT	SMITH	DORNON 210642 4B	2,842,561
GULFPORT APPALACHIA LLC	BELMONT	PEASE	LANCE 210967 7A	2,797,501
ASCENT RESOURCES UTICA LLC	HARRISON	ATHENS	BRAVO SW ATH HR 2H	2,790,527
ASCENT RESOURCES UTICA LLC	JEFFERSON	WAYNE	GRISWOLD SW WYN JF 2H	2,771,676
ASCENT RESOURCES UTICA LLC	HARRISON	ATHENS	BRAVO S ATH HR 4H	2,709,065
GULFPORT APPALACHIA LLC	BELMONT	SMITH	DORNON 210033 2B	2,701,897
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	BUDDY SMF JF 5H	2,676,324
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	BUDDY SMF JF 7H	2,656,879
GULFPORT APPALACHIA LLC	BELMONT	SMITH	DORNON 210642 3A	2,635,526
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	FALDOWSKI SE SMF JF 6H	2,632,658
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	DARROW S MTP JF 4H	2,609,649
ASCENT RESOURCES UTICA LLC	JEFFERSON	WAYNE	GRISWOLD S WYN JF 4H	2,608,830
GULFPORT APPALACHIA LLC	BELMONT	SMITH	DORNON 210033 1A	2,605,469
ECLIPSE RESOURCES I LP	MONROE	GREEN	ROTH E 10H	2,580,257
ASCENT RESOURCES UTICA LLC	BELMONT	UNION	BANNOCK UNN BL 4H	2,534,986
ECLIPSE RESOURCES I LP	MONROE	GREEN	ROTH D 8H	2,463,686
RICE DRILLING D LLC	BELMONT	GOSHEN	RAZIN KANE 5	2,398,232
ASCENT RESOURCES UTICA LLC	JEFFERSON	SMITHFIELD	GENO E SMF JF 5H	2,331,818

Top 25 Oil Producing Utica Shale Wells in Q4 of 2019: Oil production in the Fourth Quarter of 2019 was 381,622 bbl lower than the Third Quarter of 2019. Oil production amounted to 6,818,682 bbl in the Fourth Quarter of 2019 compared to 7,200,304 bbl in the Third Quarter of 2019. Eclipse Resources I LP (“Eclipse”), Ascent, EAP Ohio, LLC (“EAP”), and Utica Resource Operating LLC (“URO”) own all 25 of the top 25 oil-producing wells in the state. Currently, Eclipse owns 5, Ascent owns 11, EAP owns 7, and newcomer URO owns 2 of the top 25 oil-producing wells. 16 of the top 25 oil-producing wells are located within Guernsey County with the remaining 9 in Harrison, Belmont, and Carroll Counties. More information on these top 25 oil-producing wells can be found at <http://oilandgas.ohiodnr.gov/production#QUART>.



UTILITIES/EASEMENTS/RIGHTS OF WAY UPDATE

The Number of Utility Projects Appears to be Increasing in Ohio: Recently, we have seen an increasing number of landowners contacted by utilities or municipalities to request that the landowner sell an easement to construct new projects or replace old ones. A utility or municipality may approach a landowner for various types of easements including, but not limited to, electric utility line easements, sewer easements, temporary construction easements, etc. Each type of easement contains differing rights which will be granted to the grantee and each should have specific landowner protections. We have been surprised that so many of these proposed easements are so landowner-unfriendly which need revisions to protect the landowners and their property.

We have seen utilities and municipalities threaten to take such an easement by eminent domain if a landowner is not able to voluntarily agree to sell one. For example, it appears AEP Ohio has filed three lawsuits against landowners in Washington County claiming electric easements. For more information, see <https://www.mariettatimes.com/news/local-news/2020/02/aep-sues-over-land-use/>.

EWJJ AND MINERAL RIGHTS LITIGATION

We have actively represented landowners regarding the terms of their oil and gas lease agreements for more than 40 years. We are not representing out-of-state oil and gas companies. The landowners' need for representation was the foremost concern when the firm decided to get involved in assisting landowners with enforcement of their lease agreements. Our involvement includes litigation to quiet title to the landowner's interest in the oil and gas minerals, whether it be confirming a previous abandonment or defending the landowners' rights against attack from other alleged holders. Many cases also involve the lessors' rights to the bonus payments and/or royalties due pursuant to the terms of their lease.

The Ohio Supreme Court has accepted jurisdiction over two cases which may have a lasting impact on litigation involving oil and gas mineral ownership in Ohio. *Gerrity v. Chervenak*, Case No. 2019-1123, out of Guernsey County is expected to result in guidance to determine what efforts meet the "due diligence" necessary to permit service of notice of abandonment by publication as set forth in subsection (E) of the Dormant Mineral Act ("DMA"), R.C. 5301.56(E). We recently filed a brief as *a friend of the Court* with the Ohio Supreme Court in *Gerrity. West v. Bode*, 2019-1494, out of Belmont County is expected to clarify whether the Marketable Title Act ("MTA"), R.C. 5301.47 *et seq.*, may be used to extinguish historic severances of oil and gas minerals.

Recently we obtained a favorable settlement in the *Soucik v. Gulfport* case, in which the Belmont County Court of Common Pleas ruled in favor of our client, the landowner-lessors, on the issue of ownership of the oil and gas minerals via the abandonment process of the DMA and the extinguishment pursuant to the MTA. We also received a favorable ruling in Monroe County Common Pleas Court on Summary Judgment in defending against an alleged holder's claim. Judge Haas held that the MTA does not conflict with the DMA. He also held that the phrase "also excepting the oil and gas minerals" contained in the Root of Title is a general reference and not a specific reference; therefore, the mineral severance was extinguished pursuant to the MTA.



EWJJ AND MINERAL RIGHTS LITIGATION (CONT.)

In December 2018 and the spring of 2019 we received favorable rulings in three Belmont County cases involving the DMA. In *Gregor v. Rice*, *Roberts v. Rice, et al.* and *Wharton v. Halaq, Rice, Gulfport, et al.*, the Trial Court ruled in favor of the Plaintiffs. In *Gregor* and *Roberts* the Trial Court determined the due diligence performed was satisfactory for purposes of moving to publication of notice of abandonment. Significant to the *Gregor* decision was the fact that Rice had already paid a significant bonus payment to two persons claiming to be successor holders of the severed mineral interest. The alleged successor holders were not of record. Thus counsel's due diligence was determined satisfactory to allow notice by publication. It should be noted that a significant factor in this case was the ability of the attorney that performed the abandonment process to provide specific details of his due diligence by affidavit and during depositions to demonstrate that the alleged holders were not of record to be found for purposes of using certified mail service. In *Roberts* the Trial Court declined to delineate a bright line rule, but based on the facts found "that Plaintiffs took reasonable efforts to locate any heirs to be served by certified mail as a holder." In *Wharton* the Trial Court concluded that the abandonment claims were moot because the mineral interest was extinguished, thus null and void, pursuant to the MTA.

LEGAL UPDATE

Ohio Appellate Court Allows Oil and Gas Operator to "Net-Back" Post-Production Costs to a Royalty Owner When Calculating Royalties: In *Gateway Royalty, L.L.C. v. Chesapeake Exploration*, 2020-Ohio-1311 (7th Dist.), the Court of Appeals for the Seventh District of Ohio ("Seventh District") applied federal-level precedent to royalty calculations to allow an oil and gas operator to "net back" certain post-production costs to a royalty owner.

Gateway v. Chesapeake is a 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 Seventh District's decision holds that an oil and gas operator may continue to "net back" certain costs incurred by a marketing affiliate prior to paying royalties to the royalty owners, when the gas is sold to such marketing affiliate at the wellhead. Such costs allow the company to pay on a significantly lower price than if the royalties paid were based on the prices at the point of sale to a third-party purchaser. The decision appears to be one of the first state court decisions to follow the reasoning behind *Henceroth v. Chesapeake Expl., L.L.C.*, N.D. Ohio No. 4:15CV2591, 2019 WL 4750661 (Sept. 30, 2019) and *Hale v. Chesapeake Expl., L.L.C.*, N.D. Ohio No. 4:18CV2217, 2019 WL 1863670 (Apr. 25, 2019). It appears that oil and gas operators may now have state-level royalty precedent to allow royalties to be paid on lower prices under certain oil and gas leases which contain net royalty provisions.