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Oil & Gas, Real Estate, Solar, Easements/Rights of Way Newsletter – January 2021

IN THIS ISSUE

Dear Clients and other Friends,

We hope everyone had a Merry Christmas and a wonderful New Year! We are excited that 2021 brings us another new year to serve you. We hope you find the information contained in this Newsletter informative.

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

Landowner Alert: On November 13, 2020 Gulfport Energy Corporation and its affiliates filed for chapter 11 bankruptcy. A Claims Bar Date has been set by the Bankruptcy Court. For more information, see page 5 of this Newsletter.

Utica Gas Webinar Presented by Barry Browne: As we have previously mentioned in this Newsletter, Heidi Kemp in our St. Clairsville, Ohio office, is a board member of the Ohio Chapter of the National Association of Royalty Owners ("NARO"). Another board member of the Ohio Chapter of NARO will be presenting a webinar titled "Following Utica Natural Gas from Wellhead to Sale Point" on January 21, 2021 at 7:30 p.m. EST. There is no cost to view the webinar for NARO members. Non-members will be charged $25. Please let us know if you would like any additional information.

The Number of Solar Projects in Ohio Continues to be Increasing: We are continuing to receive more and more calls regarding Leasing, Options to Lease, and Rights of Way for Solar projects in Ohio. As we have stated earlier, we encourage landowners not to be "blinded" by what might appear to large acreage payments, but to focus more on the many, many years that solar projects tie up the land and the obligations of the landowners to the entities that provide the financing to the solar project, including mortgages. Please view our website (www.ewjjlaw.com) for more information related to solar agreements.

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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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EXPLORATION AND DEVELOPMENT UPDATE

Natural Gas Prices See Large Monthly Gain: Natural Gas prices are on the rise due to the decrease in supply after increase demand in 2020. On August 31, 2020, the October natural gas futures settled at $2.63 per million British thermal units (climbing approximately 46%), which was the largest one-month percentage rise since September 2009. While natural gas production continues to increase in Ohio, it appears that country-wide, "[n]atural gas production has fallen as producers have cut back on drilling and completion activities as a result of lower oil and natural gas prices, according to the EIS." The EIS "estimates that output declined to 86.8 billion cubic feet per day in July, down 9.5 billion from the peak in November of 2019." Now, the market looks to rebound with the production of oil now being a major target for the production of natural gas. Furthermore, "[a]dditional supplies of natural gas have emerged from the Permian Basin that produces natural gas associated with targeted oil production." For more information, see *Natural Gas Posts Biggest Monthly Gain Since 2009*, BARRON'S, September 7, 2020, p. M6.

Investing in the Oil Industry Appears "Dicey" Due to COVID-19: Due to the COVID-19 virus, it appears that investors are split with regard to their position on investing in oil companies. Some commentators argue that, on one hand, people are selling and getting out of their oil investments because there is a large shift away from fossil fuels toward renewable energy options. The Wall Street Journal cited money manager Jacinto Hernandez stating that the future of fossil-fuel investing depends on the virus and consumer behavior. Hernandez recently sold $1 billion worth of oil and gas stocks due to the COVID-19 virus, and its impact on the global demand for oil. Other commentators, such as Canadian private equity investor Adam Waterous, argue that, on the other hand, the impact of the COVID-19 virus on the oil and gas industry is an opportunity. The Wall Street Journal cited Waterous stating this was the time to buy, demand will bounce back, and when it does, prices will spike later this decade.

Regardless of the COVID-19 virus, investing within the oil and gas industry has been a major topic of discussion due to the efforts of conscientious climate change advocates and the shift towards renewable energy and electric cars. As such, the major oil companies have directed their spending in two different ways: Exxon Mobil Corp. ("Exxon") has continued to invest in fossil fuels, and believes "oil demand will increase for years to come." Exxon Chief Executive Darren Woods stated, "We conclude that the needs of society will drive energy use in the years ahead – and ongoing need for the products we produce." Exxon has further decided not to invest their money into converting into the green energy space, but decided to invest their money into reducing fossil emissions by reducing the carbon intensity of their fossil fuels through technologies such as carbon capture. On the other hand, BP PLC ("BP"), believes that the demand for oil may have already peaked, and plans to reduce oil and gas production by 40% over the next decade, converting over to green energy. BP and Royal Dutch Shell PLC have pledged to reach net-zero carbon emissions, and plan to do so by using oil proceeds and cutting dividends to free up cash.

Overall, whether people continue to invest in oil companies will ultimately be decided once the true impact of the COVID-19 virus on the industry can be seen. Whether oil demand increases back to pre-COVID-19 levels will be a true sign of whether the industry will rebound and, thus, be attractive to investors. For more information, see *The Dicey Economics of Oil*, THE WALL STREET JOURNAL, December 12-13, 2020, pgs. B6-B7.

Emens Wolper Jacobs & Jasin
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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.

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Possible Short-Term Comeback for Coal: Many commentators believe that coal may be used to offset the recent increase in price of natural gas. As of September 8, 2020, natural gas was priced around $2.50 per million British thermal units, which is nearly 70% higher than the lowest point in 2020. However, this is due to the stronger than expected power demand.

The United States Energy Information Administration is estimating that coal's share in energy market will increase and natural gas' share in the energy market will decrease in 2021. RBC analyst Christopher Louney stated he estimated "natural gas burn for electricity could decline 2% year over year in 2021 while coal generation picks up 6%."

Despite this estimation, other experts feel that this increase in natural gas will be here to stay, although phasing coal out may take a long time. Experts state this shift to natural gas will vary significantly by region. Specifically, the Midwestern and Southeastern power markets are already seeing a switch back to coal due to the pipelines being at a capacity, leading to regional gaps in natural gas prices. On the other hand, the Northeast is closer to fry gas basins and has not seen any signs of coal switching yet.

Overall, coal may see a short term comeback as natural gas prices increase; however, due to still lower natural gas prices and high regulatory standards, over the long term, coal use is expected to be phased out to natural gas. For more information, see *Electricity Gives Coal a Charge*, THE WALL STREET JOURNAL, September 8, 2020, 2020, pg. B10.

Supreme Court of Ohio Holds that the Ohio Department of Natural Resources ("ODNR") Undertook a "Takings" Without Compensation: The Supreme Court of Ohio recently held that the ODNR undertook a taking property without just compensation owned by the American Water Management Services ("AWMS"). After 2014, the ODNR suspended two water injection wells located in Trumbull County, Ohio due to two low-level earthquakes believed to be caused by the wells. ODNR then allowed one of the wells to be reopened, but denied AWMS the right to open the second well.

As a result, AWMS appealed the closure to the courts. The ODNR asked for the case not to be heard and stated the AWMS could reopen the well if it submitted an "acceptable comprehensive plan." The action ultimately was appealed to the Supreme Court of Ohio, where the court found that the actions of the ODNR constituted a taking. Initially, the Eleventh District Court found no taking to have occurred; however, the Supreme Court of Ohio found that the court improperly applied the so-called *Penn Central* Test and failed to consider the economic impact on AWMS from the ODNR's suspension order. For more information, see https://marcellusdrilling.com/2020/09/oh-supremes-say-odnr-guilty-of-takings-re-trumbull-injection-well/.

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 Q3 of 2020: Natural gas production in the Third Quarter of 2020 was approximately 19.234 Bcf higher than the Second Quarter of 2020. Natural gas production amounted to approximately 588.630 Bcf in the Third Quarter of 2020 compared to 569.396 Bcf natural gas production in the Second Quarter of 2020. Ascent Resources – Utica LLC ("Ascent") owns 18 of the top 25 gas-producing wells in the state. 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
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	PACKER NW MTP JF 1H
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	HENDERSON E RCH BL 6H
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	HENDERSON W RCH BL 4H
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	PACKER N MTP JF 3H
ASCENT RESOURCES UTICA LLC	HARRISON	GREEN	SHEPORGI GRN HR 3H
ASCENT RESOURCES UTICA LLC	HARRISON	GREEN	SHEPORGI E GRN HR 5H
ASCENT RESOURCES UTICA LLC	BELMONT	RICHLAND	HENDERSON W RCH BL 2H
GULFPORT APPALACHIA LLC	BELMONT	PEASE	STARVAGGI 210725 1A
GULFPORT APPALACHIA LLC	BELMONT	PEASE	STARVAGGI 210727 4A
ASCENT RESOURCES UTICA LLC	JEFFERSON	WAYNE	PUGGLE E WYN JF 4H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WAYNE	PUGGLE W WYN JF 2H
ASCENT RESOURCES UTICA LLC	JEFFERSON	MT. PLEASANT	PACKER NE MTP JF 5H
EAP OHIO LLC	JEFFERSON	SALEM	NEWBURN 26-10-3 10H
ASCENT RESOURCES UTICA LLC	JEFFERSON	CROSS CREEK	HAMMACK CRC JF 4H
ASCENT RESOURCES UTICA LLC	BELMONT	WHEELING	MATUSEK S WHL BL 4H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WELLS	CECELIA SE WEL JF 8H
EAP OHIO LLC	JEFFERSON	ROSS	R KIRK 32-11-3 6H
ASCENT RESOURCES UTICA LLC	BELMONT	WHEELING	MATUSEK W WHL BL 2H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WAYNE	PUGGLE E WYN JF 6H
ASCENT RESOURCES UTICA LLC	JEFFERSON	WELLS	CECELIA SE WEL JF 6H
ASCENT RESOURCES UTICA LLC	BELMONT	WHEELING	MATUSEK E WHL BL 6H
GULFPORT APPALACHIA LLC	BELMONT	PEASE	MCKEEGAN 210947 4A
GULFPORT APPALACHIA LLC	BELMONT	PEASE	STARVAGGI 210727 3B
GULFPORT APPALACHIA LLC	BELMONT	PEASE	MCKEEGAN 211723 1A
ASCENT RESOURCES UTICA LLC	BELMONT	WHEELING	PANG NW WHL BL 3H

Top 25 Oil Producing Utica Shale Wells in Q3 of 2020: Oil production in the Third Quarter of 2020 was 530,996 bbl higher than the Second Quarter of 2020. Oil production amounted to 5,713,477 bbl in the Third Quarter of 2020 compared to 5,182,481 bbl in the Second Quarter of 2020. EAP, Ohio, LLC ("EAP"), Ascent, Eclipse Resources I LP ("Eclipse"), and Gulfport Appalachia LLC ("Gulfport"), own all of the top 25 oil-producing wells in the State. EAP owns 8, Ascent owns 10, Eclipse owns 5, and Gulfport owns 2. 14 of the top 25 oil-producing wells are located in Guernsey County, with the remaining 11 in Harrison, Carroll, and Monroe Counties. More information on the these top 25 oil-producing wells can be found at http://oilandgas.ohiodnr.gov/production#QUART.

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Gulfport Energy Corporation ("Gulfport") Filed for Chapter 11 Bankruptcy: On November 13, 2020 Gulfport and more than ten affiliate companies filed for chapter 11 bankruptcy. The bankruptcy comes less than five months after Chesapeake Energy Corporation filed chapter 11 bankruptcy. Chapter 11 bankruptcy is the "reorganization" bankruptcy which allows the debtor to keep its business alive and pay creditors over time. Recently the Bankruptcy Court set a "Claims Bar Date." The Claims Bar Date is the date before which any claim must be made in Gulfport's bankruptcy, is January 26, 2021. If any claim is not brought against Gulfport prior to the Claims Bar Date, such claim is likely waived and can no longer be brought against Gulfport. Please note that there are specific rules related to filing a claim within the Bankruptcy Court. For more information, see https://dm.epiq11.com/case/gulfport/info.

If you believe you have or may have a claim against Gulfport or any of its affiliated entities, we urge you to contact knowledgeable legal counsel to protect your rights. Without taking actions related to Gulfport's chapter 11 bankruptcy, you may be deemed to have waived your claim.

UTILITIES/EASEMENTS/RIGHTS OF WAY UPDATE

Considerations for Pipeline Easements: Pipelines are typically constructed pursuant to an easement. Generally, the easement gives the easement holder the right to build and maintain the pipeline, but it does not give the holder of the easement complete land ownership.

As new pipelines are being built, the existing pipelines begin to age and, in some cases, deteriorate. The holders of an easement are often required to maintain and use the pipeline in order to keep the easement. However, when the holders of the easement fail to do so, they can lose the right to the easement. Courts generally use two factors to consider whether an easement no longer exist; (1) contractual statements, and (2) appearance of intent.

If an easement is found to no longer exist, any new easement may now have to be negotiated and acquired through eminent domain with all the property owners now impacted by the easement. This brings about potential issues with regard to appraisals of the land.

Appraisers cannot look at the historical easement or assume that the same rights exist. Instead the issue must be carefully researched and when appropriate, the appraisers may need to base their appraisals on if the easement did not exist. This would result in the appraisal determining the value of the easement itself and also any damages to the remainder that are present. For more information, see *New Pipelines and Prior Easements*, RIGHT OF WAY, July/August 2020.

Utilities in the United States Appear to be Using Less Hydrocarbons in Favor of Green Energy: Utilities in the United States are increasing their interest to divert away from power plants and pipelines and go more toward green hydrogen made from wind and solar energy in order to reduce harmful carbon emissions. Hydrogen is usually produced from coal or natural gas through carbon emitting processes; however, the production of green hydrogen eliminates those emissions by using renewable energy to strip hydrogen atoms from water molecules through a process called electrolysis. Currently only 1% of the hydrogen produced is green.

While this new technology may be more environmentally-friendly, it is not as cost efficient as natural gas, though the utilities consider the conversion to this type of energy a long-term investment. As of now hydrogen obtained through electrolysis typically costs between three and six times as much as hydrogen derived from fossil fuels. Experts predict that as time goes on and more investments are made into this technology, the price will increase for green hydrogen, and it will become the better option for power.

Recently, Florida-based NextEra Energy, Inc., the nation's largest owner of wind and solar farms, announced its plants to invest $65 million in a project in Florida which will use excess solar energy to produce hydrogen. The plant is expected to be online in 2023. This appears to be exciting news because we are aware of NextEra contemplating projects here in Ohio as well. For more information, see *Utilities Look to Switch to Green Hydrogen*, THE WALL STREET JOURNAL, September 8, 2020, 2020, pg. B10.

LEGAL UPDATE

The Legal Update below is longer than we typically include in this Newsletter. However, the two Supreme Court of Ohio ("Supreme Court") decisions discussed below were decided after our last Newsletter and are very important.

The Ohio Marketable Title Act ("MTA") and the Ohio Dormant Mineral Act ("DMA") May Both Be Used to Terminate Severances of Oil and Gas: The MTA was enacted in 1961 and "provides that a person who has an unbroken chain of title of record to any interest in land for at least 40 years has a 'marketable record title' to the interest. R.C. 5301.48." *West v. Bode*, Slip Opinion No. 2020-Ohio-5473, ¶ 15. The DMA was enacted in 1989 "to provide a method for the termination of dormant mineral interests and the vesting of their title in surface owners, in the absence of certain occurrences within the preceding 20 years." *Id*. at ¶ 21. Questions had arisen in Ohio whether the MTA could be used to terminate severances of oil and gas after the enactment of the DMA. In *Bode* the Supreme Court of Ohio ("Supreme Court") affirmed the Seventh District Court of Appeals by holding the MTA and the DMA are not in irreconcilable conflict and a landowner may utilize both statutes in attempting to terminate historic severances of oil and gas.

Bode involved a 1902 sale of one-half of the royalty interest underlying a property in Monroe County, Ohio to C.J. Bode and George T. Nalley. The surface of the property and the other half-of the oil and gas royalty was conveyed to Wayne West and Rusty West after successive conveyances, "subject to all . . . reservations of record." *Id*. at ¶ 5. In February of 2017, the Wests filed a lawsuit against the heirs of Bode and Nalley claiming that the severed one-half oil and gas royalty was extinguished pursuant to the MTA. John L. Christman, Katherine Haselberger, and Charlotte McCoy intervened in the lawsuit, claiming to be the successors-in-interest to Nova A. Christman, who was conveyed a 1/16th interest in the oil and gas royalty pursuant to a 1944 auditor's deed.

The parties filed competing motions for summary judgment. The trial court entered summary judgment in favor of Christman's successors-in-interest claiming that the more-specific provisions of the DMA were in irreconcilable conflict with the more-general MTA and, thus, the later enacted DMA controlled to the exclusion of the MTA. The Seventh District Court of Appeals reversed the trial court and held that the MTA and the DMA "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." *Id*. at ¶ 10.

The Supreme Court reviewed R.C. 1.51 which states "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, unless the general provision is the later adoption and the manifest intent is that the general provision prevail." The Supreme Court noted that while the MTA and DMA are different statutory mechanisms, "[t]here is nothing in the statutory language of either act to preclude a mineral-interest holder from ensuring compliance with both the Marketable Title Act and the Dormant Mineral Act. Each statute sets out simple actions that a holder of a mineral interest may take to perpetually preserve that interest. The differences between the acts do not create any obstacle to giving effect to both, which is what R.C. 1.51 directs us to do." *Id*. at ¶ 12. Thus, the Supreme Court held that the MTA and DMA are not in irreconcilable conflict and both statutes may be used to terminate severances of oil and gas.

The Supreme Court's decision in Ohio in *Bode* is significant. The decision makes it clear that the owners of property in Ohio have multiple avenues to clear title to oil and gas under their properties. Historically, the ownership of oil and gas minerals have been the subject of numerous lawsuits, which may now be decided pursuant to the MTA. Clearing the titles to oil and gas should reduce the frequency in which oil and gas companies take oil and gas leases from multiple claimants or hold oil and gas royalties in suspense due to unclear titles.

LEGAL UPDATE (CONT.)

The DMA Requires "Reasonable Diligence" to Locate Holders of Oil and Gas Prior to Resorting to Publication of Notice: The DMA "provides that unless a severed mineral interest is in coal or is coal related, the interest is held by the United States, the state or any other political body described in the statute, or a saving event enumerated in R.C. 5301.56(B)(3) has occurred within the preceding 20 years, [a severed oil and gas] mineral interest 'shall be deemed abandoned and vested in the owner of the surface of the lands' if the surface owner has satisfied the requirements of R.C. 5301.56(E)." *Gerrity v. Chervenak*, Slip Opinion No. 2020-Ohio-6705, ¶ 9. In *Gerrity* the Supreme Court affirmed the Seventh District Court of Appeals by unanimously holding that a surface owner need only exercise "reasonable diligence" in attempting to locate potential holders of a severed oil and gas mineral interest prior to resorting to the publication provisions of R.C. 5301.56(E).

Gerrity involved a 1961 reservation of oil and gas made by T.D. Farwell creating a severed oil and gas interest underlying property in Guernsey County, Ohio now owned by the Chervenak Family Trust. In 2012, a title search was completed related to the property which identified Jane F. Richards, the daughter of Farwell, as the owner of the severed oil and gas based upon a certificate of transfer recorded in October of 1965 in Guernsey County, Ohio. The certificate of transfer listed Richards as a resident of Cleveland, Ohio, in Cuyahoga County, Ohio. There were no other records in Guernsey County, Ohio which referenced the severed oil and gas. Richards died in 1997, a resident of Florida. The Chervenaks attempted to serve Richards notice by certified mail of their claim to the oil and gas at her last known address – in Cleveland, Ohio. The certified mail was returned, marked "Vacant-Unable to Forward." In May of 2012, the Chervenaks then published notice in the local newspaper of Guernsey County, Ohio. After the Chervenaks filed an affidavit of abandonment in Guernsey County, Ohio, the Recorder made a marginal notation on the severance deed that the severance of oil and gas had been deemed abandoned.

In 2017, Gerrity, the only heir of Richards, filed a quiet title action claiming that the Chervenaks failed to comply with the notice requirements of the DMA. Gerrity argued that the DMA "requires strict compliance, such that a surface owner must identify and attempt service by certified mail on every holder of a mineral interest. He argues that the act does not apply unless all holders are identified." *Id.* at ¶ 12. The Supreme Court rejected this argument by "reading R.C. 5301.56 as a whole and in light of the General Assembly's codified legislative intent." *Id.* at ¶ 13. By the plain language of the DMA, "the statute operates *anytime* service of notice by certified mail 'cannot be completed to any holder.'" *Id*. at ¶ 24. "When it appears from the outset that service of notice cannot be completed by certified mail, as when a holder is unidentifiable or unlocatable, R.C. 5301.56(E)(1) permits service of notice by publication." *Id*.

The Supreme Court, however, refused to "adopt a bright-line rule that defines the steps a surface owner must take to identify and locate holders of a severed mineral interest to comply with R.C. 5301.56(E)(1)." *Id*. at ¶ 31. Rather, the Supreme Court followed the lead of the Seventh District and held that a surface owner must exercise "reasonable diligence" and "whether a party has exercised reasonable diligence will depend on the facts and circumstances of each case." *Id*. Nevertheless, the Supreme Court indicated that the "[r]eview of public-property and court records in the county where the land subject to a severed mineral interest is located will generally establish a baseline of reasonable diligence in identifying the holder or holders of the severed mineral interest." *Id*. at ¶ 36. However, there may be "circumstances in which the surface owner's independent knowledge or information revealed by the surface owner's review of the public-property and court records would require the surface owner, in the exercise of reasonable diligence, to continue looking elsewhere to identify or locate a holder." *Id*.

The Supreme Court's decision in *Gerrity* is a significant win for both the oil and gas industry and landowners seeking to utilize the DMA. If the Supreme Court had required strict compliance, as Gerrity argued, the DMA would likely have been rendered unworkable because the holders of oil and gas are often unidentifiable or unlocatable due to the oil and gas being fractionalized to heirs over multiple generations. However, because the Supreme Court refused to adopt a bright-line rule as to what constitutes "reasonable diligence," each case will likely need to be litigated on its own facts and circumstances to determine if the landowner complied with the requirements of R.C. 5301.56(E).