



LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman

PENNSYLVANIA

Commonwealth v. International Development Corporation, 2022 WL 628284 (Commw. Ct. Pa. 2022). This is a deed interpretation case with some Title Wash sprinkles mixed. In 1894, two individuals (Proctor and Hill) conveyed approximately 2,000 acres in Bradford County to Union Tanning Company, excepting and reserving all the coal, oil and gas. This was unseated lands, and the minerals remained assessed with the surface. After several intervening conveyances, the surface estate became vested in Central Pennsylvania Lumber Company (CPLC). CPLC's surface assessment went delinquent and was sold to Calvin McCauley in 1908. The deed to McCauley effectively "washed" the title to the reserved minerals, which also effectively became vested in McCauley. McCauley subsequently transferred the newly-reunified estates under the 2000 acres back to CPLC in 1910. In 1920, CPLC conveyed the land to the Commonwealth, utilizing the following language:

[t]his conveyance is made subject to all the minerals, coal, oil, gas or petroleum found now or hereafter on, or under the surface on any or all of the lands described in each of the above mentioned parts or divisions [of the 1920 deed]; together with the right and privilege of ingress, egress and regress upon said lands for the purpose of prospecting for, or developing, working or removing the same, as fully as said minerals and mineral rights were excepted and reserved in deed dated October 27, 1894, from ... Proctor [and Hill] to ... Union ...

International Development Corporation became the current successor to CPLC as to the minerals following the above 1920 deed, and the Commonwealth of Pennsylvania continues to own the surface estate to this deed. The case hinges on the interpretation of the above language – is it a reservation benefiting CPLC, or just a limitation on the warranty? The Commonwealth Court determined that, reading the 1920 deed as a whole and in context, the intent of CPLC was clearly to retain for itself the same mineral rights that had originally been reserved by Proctor and Hill in 1894. The Court pointed out that, normally, making a conveyance "subject to" a prior reservation or right does not create a new right. However, in the 1920 deed, CPLC utilized additional language modifying the "subject to" clause that created new rights for itself. As such, the Court effectively vested title to the oil and gas at issue with International Development Corporation, and not the Commonwealth.

WEST VIRGINIA

Antero Resources Corporation v. Irby, 2022 WL 1055446 (S. Ct. W. Va. April 8, 2022). Antero contested the methodology employed by the West Virginia State Tax Commissioner's valuation of three wells located in Doddridge and Ritchie Counties, on appeal from the West Virginia Business Court. A larger valuation dispute had previously been adjudicated and remanded to that court, to which the parties were able to reach agreement, but the current dispute revolves around wells specifically producing both oil and gas. Essentially, West Virginia regulations allow certain deductions from the assessed value of wells.

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Oil wells receive a deduction of \$5,750.00, while gas wells receive deductions of \$150,000.00 or more per year, with the deductible value increasing year over year. The Tax Commission applied the deductions to the Antero oil and gas wells based on the proportion of revenue generated by each individual resource on a per-well basis. For example, for a well that generated 75% of its revenue on gas and 25% of its revenue on oil, the Commission calculated the deduction as follows: 75% of \$150,000.00 plus 25% of \$5,750, for a total well deduction of \$113,937.50. Antero argued that the assessments were not “singular” as required under existing caselaw regarding these producer’s well assessments because a monetary average effectively creates a sliding scale for valuation (an idea that had been previously rejected by the Supreme Court). The real value of the additional oil well deductions equates to millions of dollars in Doddridge and Ritchie Counties. The Supreme Court concluded that the valuation of the “mixed” oil and gas wells was reasonable and not in violation of fairness, upholding the Tax Commissioner’s valuations.

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