



# LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman

---

For this month's edition of the Wildcatter, we have two cases from Ohio that are of interest.

In Tera, LLC v. Rice Drilling D, LLC (2023-Ohio-273; 7th Dist.), the Court of Appeals for Ohio's 7th district was asked to overturn the significant award of monetary damages in favor of a landowner based on a trespass claim. The lease at issue expressly reserved all the oil and gas rights "in all formations below the base of the Utica Shale," while production indicated that the wellbores had penetrated the Point Pleasant formation. The trial court found that such penetration violated the reservation language of the lease, resulting in the trespass. The Operators involved appealed on various grounds, conceding that the Point Pleasant formation is now considered a distinct rock formation, but was not considered separate from the Utica Shale at the time the leases at issue were executed in 2013 and 2014, and that the term "Utica Shale" held special meaning at that time in Ohio, allowing for the use of extrinsic evidence (evidence outside the lease document) to interpret the lease. The court of appeals agreed with the trial court that the term "Utica Shale" was entirely unambiguous and that no extrinsic evidence was warranted to interpret the same and upheld the trial court's decision. The appeals court went on to indicate that some of the factors regarding the calculation of damages required further analysis at trial and remanded to the trial court with some instructions on damages calculations. The key takeaway being, at least at this time, in Belmont County, Ohio, leases covering the "Utica Shale" will not cover the Point Pleasant formation.

In Chartier v. Rice Drilling D, LLC (2023-Ohio-272, 7th Dist.), the Court was once again confronted with a Marketable Title Act issue involving oil and gas. The Court decided that the reservation language within the root-of-title period called for by the Marketable Title Act did not serve to preserve reserved oil and gas for two distinct reasons: first, the underlying reservation at issue arose from a corrective deed that reserved oil and gas from the land, when the same had not been reserved in the original deed subject to correction; and second, a determination that the reservation language was not "specific" under Blackstone v. Moore, and therefore was a "general" reservation not preserved under the Marketable Title Act. Because of these factors, the court of appeals found in favor of the surface owners against the holders of the severed mineral interest. Despite this finding, the decision appears to be of questionable authority. First, the case makes no mention of Erickson v. Morrison, which found that a reference to a reservation only needs to provide notice to a title examiner that a preexisting interest exists and is locatable by a standard title search. Second, the Court appears to ignore the fact that subsequent parties repeated the reservation language from the corrective deed, calling in to question what expectation subsequent grantees realistically had to receive oil and gas rights under the land. Additionally, as of March 9, the case has been accepted for judicial review by the Ohio Supreme Court (case # 2023-0343), so we will continue to track and watch this one.

As always, bring us your feedback and suggestions for any additional topics you want to see covered.

Nik Tysiak  
Chair – Legislative and Regulatory Committee  
MLBC

