



# LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman

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Hello friends – only two relevant developments to report on this time – one in Ohio and one in Pennsylvania.

First, in *French v. Ascent Resources-Utica, LLC*, 2023-Ohio-3228 (7th Dist.), the Court of Appeals took an appeal from Ascent regarding the trial court's summary judgment, finding that several leases on the land of French (and others) had expired. Ascent argued that the leases had been unitized as part of an existing unit, and therefore the leases were properly held beyond the primary term. The court found, however, that while a unitization document had been filed, several of the tracts within the unit were not under the control of Ascent, and there was no relationship between Ascent and the lessees of those lands that would allow the Unit to commence operations as conceived. Because of this, Ascent did not meet the operational requirements under the leases to maintain the leasehold rights beyond the primary terms of the leases. Additionally, the Court found there had been no actual drilling activity on the Unit, as no drilling permit had been issued. Consequently, no operations or production occurred on the Unit including the leases, either. The Court therefore upheld the motion for summary judgment against Ascent.

Second – in *Douglas Equipment, Inc. v. EQT Production Company*, 2023 WL 5239153 (Pa. Sup. Court August 15, 2023), the Superior Court was confronted with interpreting the language of a deed relating to a reservation of oil and gas rights. The landowners entered into an oil and gas lease in 1994. Importantly, shut-in payments could not be paid for more than 3 years under the terms of the lease. After executing the lease, the same landowners conveyed the land to Holt and Lee, excepting and reserving “all rights, title and interest” in the underlying lease, except for the free gas privilege. The lessee under the 1994 lease made shut-in payments starting in 2008, and apparently never stopped such payments. In 2016, Holt and Lee leased the land to EQT. The 1994 lease was assigned to LOLA Drilling. The successors to the original landowners under the 1994 lease claimed that the 1994 lease remained in full force and effect. Holt and Lee claimed that the 1994 lease had expired three years after production stopped in 2008, despite the ongoing payment of shut-in payments beyond the three-year period as an at-will lease subject to continuation by mutual consent. The trial court granted summary judgment in favor of EQT, and the original landowners appealed. The Superior Court agreed with the trial court, holding that at-will tenancy is a function of traditional landlord and tenant law, which does not apply in the context of an oil and gas lease. Instead, the Superior Court found that the terms of the lease itself govern the relationship between the parties in this instance, unless the same had been modified. Because there was no clear modification of the terms, the lease terms applied. Consequently, following three years of shut-in payments, the 1994 lease expired some time in 2011, resulting in leasing rights reverting to Holt and Lee and that time. This conclusion effectively affirmed the authority of EQT under the EQT lease to act as sole lessee on the property.

As always, let us know if you come across any interesting developments that should be shared with the membership.

Regards,

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Chair – Legislative and Regulatory Committee

