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THE SHALE PLAY TODAY



News & Insights from the Marcellus and Utica Shales



Pa. Litigation Update

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This summer was anything but a sleepy period for decisions from Pennsylvania courts on issues important to the oil and gas industry. Here are summaries of four cases issued in July and August - one from the Third Circuit Court of Appeals, one from a federal trial court, and two from the Pennsylvania Superior Court - that will impact operations in the oil and gas industry throughout the Commonwealth.

Vodenichar v. Halcon Energy Properties, Inc.,
2013 WL 4268840 (3d Cir. Aug. 16, 2013)

In a precedential opinion, the Court of Appeals for the Third Circuit issued a ruling on the "home state" and "local controversy" exceptions to federal subject matter jurisdiction under the Class Action Fairness Act (CAFA). This case presented a situation familiar to the industry - Pennsylvania residents entering into leases with companies based out of state and litigation ensuing relating to the formation of the leases. Plaintiffs, landowners in Mercer County, Pennsylvania, engaged defendants Morascyzk & Polochak and Co-xPrise, dba CX-Energy (the "Agent Defendants") to act as their agents in negotiating oil and gas leases

In The News



Lease Contests in the W.Va. Shale

Gas Plays

by [Joseph V. Schaeffer](#), as published in the ABA ***Energy and Natural Resources Litigation Committee Newsletter***, August 2013

Over the past 18 months, landowners have filed independent actions in West Virginia state courts to invalidate oil and gas leases, some, if not all, of which have been removed to the federal court for the Northern District of West Virginia. See *Heller v. TriEnergy, Inc.*, 877 F.Supp.2d 414 (N.D.W.Va. 2012) (removed from Marshall County); *Holmes v. Chesapeake Appalachia*, No. 5:11-CV-123, 2012 WL 3647674 (N.D.W.Va. Aug. 23, 2012) (removed from Ohio County); *Davis v. EQT Prod. Co.*, No. 5:12-CV-051, 2012 WL 6111694 (N.D.W.Va. Dec. 10, 2012) (Hancock County). The facts and causes of actions in the plaintiffs' complaints are substantially similar. In each case, plaintiffs signed leases between 2006-2008 on unfavorable or below-market terms and now wish to void those leases on various theories, including improper acknowledgment and recordation, fraud, and unconscionability.

[Read the full article on our website.](#)



Shell Taking Bids for Beaver Co., Pa. Ethane Cracker Plant

with defendant Halcon Energy Properties, Inc. Under the leases negotiated by the Agent Defendants, Halcon was permitted to reject any lease pursuant to certain identified conditions. Subsequently, Halcon rejected many of the leases on a basis - the geology - that was not set forth in the leases, claiming that the operative language was fraudulently omitted from the leases by the Agent Defendants.

Initially, the Plaintiffs sued only Halcon in federal court, asserting diversity jurisdiction as Halcon was a Delaware corporation headquartered in Texas (the "First Action"). After Halcon indicated that it intended to join the Agent Defendants as "necessary parties," the plaintiffs moved to dismiss the First Action to file a new complaint against both Halcon and the Agent Defendants in state court (the "Second Action"). In response to the filing of the Second Action in state court, Halcon removed it to federal court pursuant to CAFA, 28 U.S.C. § 1332(d).

[Read the full article on our website.](#)

Shell began the two-month bidding period for an ethane cracker in Beaver County, Pa. earlier this week. The company is trying to determine how much ethane would be available in the area should it choose to build a cracker plant there.

[Read more.](#)



DEP & Landfill Owners Not Alarmed by Marcellus Waste at Landfills

One percent of all landfill-bound Marcellus waste last year tripped radioactivity alarms at landfills. Drill cuttings comprised most of the waste, but sludge (a mixture of flow-back water, frack sand and other fluids) was also included. Experts believe the sludge likely was the cause of increased radiation counts. However, most of this waste eventually was deemed safe enough and buried in regular landfills. So far, the DEP and landfill owners are not concerned.

[Read more.](#)



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Featured Shale Team Member



James A. Walls
(Morgantown, W.Va.)

Jim has more than 20 years of experience representing energy clients in litigation and commercial matters, and he has tried numerous cases to verdict in state and federal courts in and around West Virginia. He has been recognized for excellence in his law practice by Chambers USA, The Best Lawyers in America and Super Lawyers. Jim also is a Fellow in the Litigation Council of America. [View his full professional biography.](#)

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