



Issue 14, 2018

● [Bobby D. Fentress, et al, vs. Exxon Mobil Corporation, et al](#)

"This is an Employee Retirement Income Security Act case alleging a breach of fiduciary duties in the management of a defined contribution plan. Defendants' Motion to Dismiss the Amended Class Action Complaint (Doc. No. 37) is pending."

Why this is important: Climate change proponents now have added ERISA claims as another arrow in their quiver. In this case, Exxon's Employee Stock Ownership Plan ("ESOP") contained a significant amount of Exxon's own stock. The plaintiffs alleged Exxon made materially false and misleading statements regarding its business model's vulnerability to climate change, thereby making the ESOP's investment in Exxon stock "imprudent." The Court rejected the plaintiffs' claim that Exxon mislead investors about the effects of climate change because "there was ample publicly available information about climate change for the market to consider in valuing Exxon's stock." This is an important ruling, as it highlights the more difficult standard climate change proponents must satisfy when bringing their claims in a court of law as compared to the court of public opinion. --- [Nicholas S. Preservati](#)

● [PA Superior Court: Taking Natural Gas Without Permission From Neighboring Property Is Trespass Overturning Rule of Capture for Unconventional Gas Wells](#)

"The PA Superior Court issued an opinion saying Southwestern Energy drilling company trespassed on the property of Susquehanna County landowners by taking natural gas from an adjacent property without permission by rule of capture through its unconventional drilling operations."

Why this is important: On April 2, 2018, the Pennsylvania Superior Court issued a [decision](#) in *Briggs v. Southwestern Energy Production Company*, No. 1351 MDA 2017, reversing a lower court judgment entered in favor of the defendant producer.

In reversing the lower court, the Pennsylvania Superior Court held that the long-established "Rule of Capture" principle did not apply to prohibit a trespass claim by an adjoining unleased landowner against a producer when that producer utilizes hydraulic fracturing for a horizontal well.

The Pennsylvania Superior Court drew a distinction between gas purportedly trapped within shale rock formations and released by fracturing operations and fugacious gas within an underground reservoir released by conventional vertical wells. In remanding the action back to the lower court, the Superior Court held that questions of fact existed concerning the length of subterranean cracks created by hydraulic fracturing, and whether the cracks extended across property lines and released trapped shale gas from the adjoining landowner's tract.

This case should be closely watched because it could dramatically impact the Pennsylvania legal landscape for horizontal drilling. In addition, note the *Briggs* decision refers to *Stone v. Chesapeake Appalachia, LLC*, No. 5:12-CV-102, 2013 WL 2097397

(N.D. W.Va. Apr. 10, 2013), in which the federal District Court for the Northern District of West Virginia found that the Supreme Court of Appeals of West Virginia might determine that hydraulic fracturing associated with horizontal drilling that penetrates adjoining land without the adjoining landowner's consent is not protected by the traditional Rule of Capture. However, the District Court later vacated its ruling based on a settlement between the affected parties. --- [Matthew P. Heiskell](#) and [William M. Herlihy](#)

● [Russia to Return to Full OPEC/Non-OPEC Oil Output Deal Compliance in April](#)

"Russia is planning to fully comply with its commitment to cut oil output under the OPEC/non-OPEC deal this month, Russian energy minister Alexander Novak said, the Prime news agency reported."

Why this is important: Russia's cutback in oil production is good news for our domestic oil industry. Russia is attempting to create an alliance on the oil/natural gas trade with Saudi Arabia, which is rapidly losing market share to shale producers and not only includes the U.S. but also other Western nations. Such reductions in OPEC production only will help enhance the export market for our domestic oil production. This is very good news for our domestic oil industry and should be further encouragement for federal and state governments to remove barriers to export terminals. --- [William M. Herlihy](#)

● [Coal Generation Reaches New High in South Korea](#)

"The South Korean government said the country's coal-fired power generation hit a new high in 2017, helped by three thermal power plants that came online with combined generation capacity of 5.3 GW."

Why this is important: Coal maintains power grid supply dominance in South Korea, with a roughly 16 percent margin over the country's next highest grid supply, nuclear. Coal electric generation in South Korea for 2017 exceeded 2016 figures by more than 3,000 GWh. However, the three new coal plants that accounted for much of the increase were initiatives of the previous Park Geun-hye administration. The new president, Moon Jae-in, ran on a commitment to move the country toward renewable energy and is increasing trade cooperation with Russia for renewable and LNG energy options. The country's latest energy plan calls for an increase in installed capacity of renewable power generation to 58.5 GW by 2030, up from 11.3 GW in 2017 - a jump of almost 420 percent. --- [John C. \(Max\) Wilkinson](#)

● [Nuclear and Coal Energy Company Files for Bankruptcy](#)

"FirstEnergy Solutions, the unit of FirstEnergy Corp. responsible for competitive generation, announced it was filing for Chapter 11 protection."

Why this is important: The Chapter 11 action of FirstEnergy Solutions ("FES") is yet another byproduct of the difficulty coal-fired and nuclear-powered generation have had being competitive in the wholesale market for power. The bankruptcy filing and proposed closure of various plants owned by the unregulated FES subsidiary also square with FirstEnergy Corporation's strategy to focus on providing regulated services. Interestingly, FirstEnergy had proposed one of its regulated affiliates, Mon Power, acquire the Pleasants coal-fired power plant owned by an unregulated FirstEnergy subsidiary, and opponents had argued the plant was a cost risk for ratepayers. FirstEnergy withdrew the request for approval of the transaction in the face of an adverse FERC decision and adverse proposed conditions from the West Virginia PSC. The FES bankruptcy filing arguably confirms the lack of economic vitality of FirstEnergy's wholesale generation assets in the current market model. --- [Derrick Price Williamson](#)

● [Two Crackers, One Valley Could Yield Big Dividends, Business Leaders Say](#)

"The recent announcement that PTT will partner with a South Korean firm, Daelim Industrial, at Dilles Bottom is seen as an indication PTT is getting ready to pull the trigger on the multi-billion dollar project."

Why this is important: The Marcellus and Utica shale formations in the Appalachian Basin produce a higher ratio of natural gas liquids ("NGLs") from horizontal wells than any other domestic field. This leaves many feedstocks for the petrochemical industry vastly underutilized. Some of this NGL production is exported northward to Canada or eastward to New Jersey for refinement in other countries. Part of the Appalachian production is piped or transported by rail to crackers on the Gulf Coast. This short-term dynamic leads to waste because the price of basic NGLs is increased by transportation to either foreign facilities or the Gulf Coast

and then sending the resultant feedstocks back to the U.S. Northeast and Midwest, where these commodities are used in manufacturing. In addition, due to pipeline constraints, up to 20 percent of NGLs produced in Appalachia are wasted in the natural gas stream to be burned for residential and industrial energy requirements. The creation of one or more cracker facilities in the Appalachian Basin eventually will produce cost savings with an abundant and predictable supply of NGLs. --- [William M. Herlihy](#)

● [U.S. Judge Dismisses Exxon Lawsuit to Stop Climate Change Probes](#)

"A federal judge dismissed Exxon Mobil's lawsuit seeking to stop New York and Massachusetts from probing whether the company misled investors and the public about climate change and the potential effects on its business."

Why this is important: U.S. District Judge Valerie Caproni, an Obama judicial appointee, held that Exxon's claims that the New York and Massachusetts attorneys general were pursuing bad faith probes (into whether the company misled investors and the public about climate change) to violate Exxon's constitutional rights were "implausible" and dismissed Exxon's suit with prejudice, precluding the company from re-filing an amended complaint. Judge Caproni's decision is an interesting contradistinction, and arguably a kind of public tete-a-tete, to Judge William Alsup's (a Clinton appointee) recent dismissal of Oakland's and San Francisco's lawsuits against Exxon and other oil companies that alleged a conspiracy by the defendants to suppress climate science. --- [John C. \(Max\) Wilkinson](#)

● [China's Sinopec to More than Double LNG Capacity, Boost Shale Gas Output](#)

"China's Sinopec group, parent of Sinopec Corp, aims to more than double its receiving capacity of liquefied natural gas over the next six years and lift domestic shale gas production by two thirds by 2020."

Why this is important: China is very hungry for natural gas imports for two reasons: (1) they have committed to reducing their carbon/air pollution footprint from the burning of coal in low-technology Chinese power plants, and (2) the increasing standard of living among the hundreds of millions of Chinese citizens with more disposable income. Our export of cheap domestic shale gas to China is a win/win for our domestic industry and the Chinese government. Due to technological and governmental deficiencies, the Chinese natural gas industry is struggling and, even with government subsidies, is operating at a deficit. Exporting cheap shale gas into the Chinese market will stabilize our domestic gas prices and postpone the further development of competing Chinese production. It is important to note the proposed imposition of tariffs by China on U.S. exports does not yet include natural gas or oil products. That is encouraging for our oil/gas industry. --- [William M. Herlihy](#)

● [EIA Energy Statistics](#)

Here is a round-up of the latest statistics concerning the energy industry.

[PETROLEUM](#)

[This Week in Petroleum](#)

[Weekly Petroleum Status Report](#)

[NATURAL GAS](#)

[Short-Term Energy Outlook - Natural Gas](#)

[Natural Gas Weekly Update](#)

[Natural Gas Futures Prices](#)

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Weekly Coal Production

RENEWABLES

Short-Term Energy Outlook

Monthly Biodiesel Production Report

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