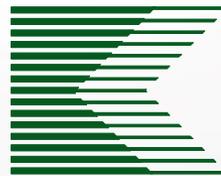




2022 NARO OHIO Legal Update

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Matthew W. Onest

- Director-Shareholder
- Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A.
- Matthew Onest has more than ten years' experience protecting the interests of manufacturers, businesses of all sizes, property owners, and energy companies in all aspects of civil litigation. He has significant trial experience in many courts in the State of Ohio. Matthew is also a member of the firm's litigation and appellate practice group and has successfully handled appellate cases before the Ohio Supreme Court, and Ohio's Fifth, Seventh, Ninth, Eleventh, and Twelfth District Courts of Appeal. Matthew also practices in several federal courts throughout the United States. Though experienced in a wide variety of legal matters, Matthew focuses his practice mainly in energy litigation, business litigation, and real estate litigation.



Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A.

- Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A. has provided exceptional legal counsel to clients throughout widely diversified industries on local, regional, and national levels. With six Ohio locations, our firm is comprised of over 50 attorneys, practicing over 25 specialty areas of law. For over five decades, our firm and our attorneys have been consistently recognized by a variety of highly regarded organizations and trade publications for an unwavering commitment to professionalism and passion for the practice of law.



Topics

1. Uptick in Leasing and Drilling After Pandemic
2. Expansion of Leasing Areas
3. Forced Pooling/Unitization
4. Increased Caselaw on Oil and Gas Law



Uptick in Leasing

- There has been an uptick in leasing over the last year, most likely due to the increase in commodities prices.
- Post-pandemic commodity price surge
- Easing of Prices
- Comparison to the 2012-2016 Boom



Expansion of Target Areas

- Eastern and Southeastern Dominance
- Central and Eastern Guernsey
- Eastern Tuscarawas
- Higher Commodities' Prices = More Opportunities
- Higher Commodities' Prices = More Players



Forced Pooling/Unitization

- State procedure used to force unleased landowners' mineral rights in units.
- Basic outline of procedure
 - Producer seeks order for unit operations from the ODNR's Chief;
 - Producer needs to have 65% of the lands committed on a voluntary basis;
 - In practice it seems like a rubber stamp process;
 - Unleased landowners are given a 12.5% gross royalty and an 87.5% net interest subject to 200% return on share of initial drilling and equipping costs.



Forced Pooling/Unitization

- Several courts have upheld the process as not being a taking under the Ohio Constitution.
- However – there may be an ability to sue a producer who includes leases in the unit which contain a restriction on unitization:
 - Prohibitions
 - Acreage maximums



Forced Pooling/Unitization

- Landowners are approached to amend older leases which contain acreage restrictions.
- They should make sure an oil and gas attorney reviews the original lease to make sure amending the lease does not give away favorable royalty calculation terms.



Forced Pooling/Unitization

- 2022 Amendment – set 60-day deadlines for hearing and decisions
- 2021 Proposed Amendment – significant overhaul which is apparently dead
 - Very favorable to the producer



Calculation of Royalties

- Zehentbauer/Bounty Cases – effectively adopted the “at-the-well” rule when the lease’s royalty references the “wellhead”
 - Use of the words “wellhead” or ”at the well” will now likely result in net proceeds royalty.
- Areas to focus when negotiating a gross royalty provision:
 - Location
 - Gross revenue
 - Direct and indirect costs
 - Affiliate sales
- Market Enhancement Clause



Lease Expiration Claims

- Arbitration clauses do not apply to claims that an oil and gas lease expired.
- Paying Quantities Cases
 - Still very difficult for landowners to win.
 - Very limited scope of expenses to be considered.
- Commencement of Operations – very broad, but can be restrained by the lease’s terms.



Surface Use Agreements

- *Zimmerman Dairy Farms, LLC v. Protégé Energy III, LLC*, 2022-Ohio-1282 (4th Dist.)
- Significant damages award to landowner based on failed surface reclamation activities.
- Emphasizes the need to work through certain provisions in leases and surface use agreements: (1) continuing duty to restore; (2) commercially reasonable efforts; (3) topsoil stockpiles.



Depth Restrictions

- Some leases contain depth restrictions—giving the lessee only specified depths.
- One recent issue – the lessee’s failure to capture the Point Pleasant and then drilling into that formation to produce the Utica Shale.
- July 2021 – Belmont County jury awards landowner about \$40 Million in damages against Rice Drilling and Gulfport Energy.
- TERA, LLC v. Rice Drilling D, LLC, etc., Belmont County Common Pleas case



Mineral and Royalty Ownership

- Ohio Dormant Mineral Act
 - Gerrity case
 - Fonzi case
- Ohio Marketable Title Act
 - Erickson
 - Peppertree case



QUESTIONS?