

**2026 APPALACHIAN
LAND INSTITUTE**



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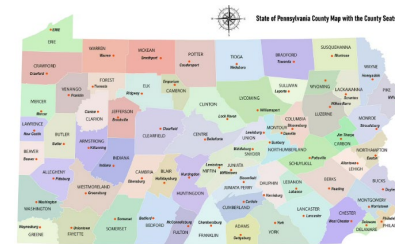
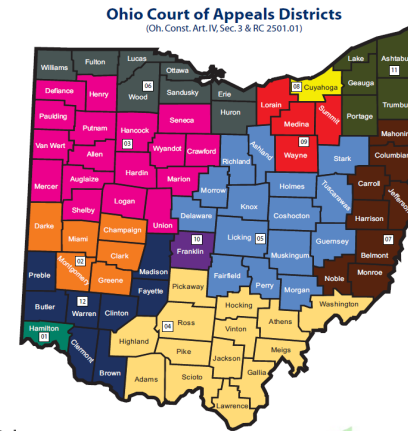
Appalachia Litigation Update

Alexander T. McElroy
Managing Shareholder



Cases

- I. Ohio Dormant Mineral Act
 - I. Cardinal Minerals Cases (Ohio)
 - II. Ohio River Resources, LLC v. Westfall (Ohio)
- II. Ohio Marketable Title Act
 - I. 1803 Resources, LLC v. Lineback (Ohio)
 - II. Long Point Energy, LLC v. Gulfport Energy Corp. (Ohio)
 - III. Chestnut Ridge v. Miller (Ohio)
 - IV. Whitney v. Baker (Ohio)
- III. Deed Interpretation
 - I. Racer v. Antero Res. Corp. (WV)
 - II. Grim v. Loub (WV)
 - III. Min. Dev., Inc. v. SWN Prod., LLC (Ohio)
- IV. Trespass
 - I. Briggs v. SW. Energy Prod. Co. (Briggs II) (PA)
- V. Market Enhancement Clauses
 - I. Grissoms, LLC v. Antero Res. Corp. (PA)



Marketable Title Act and the Dormant Mineral Act

Ohio Marketable Title Act:

- ▶ The Act was adopted to simplify and facilitate land title transactions by extinguishing ancient claims and interests in land that have become stale.

Ohio Dormant Mineral Act:

- ▶ A part of the Ohio Marketable Title Act.
- ▶ The Act was adopted to encourage the development of Ohio's natural resources by declaring the mineral estate "abandoned" after a period of non-use and reunifying the mineral estate (except coal) with the surface estate.



2006 Amendment

The 2006 Amendment provides for a multi-step process to be completed before the oil and gas estate can be deemed abandoned.



2006 Amendment Process

1) Surface owner serves notice by certified mail to each mineral interest holder, or if that is not possible, then notice by publication.

2) The surface owner must then wait 30 days.

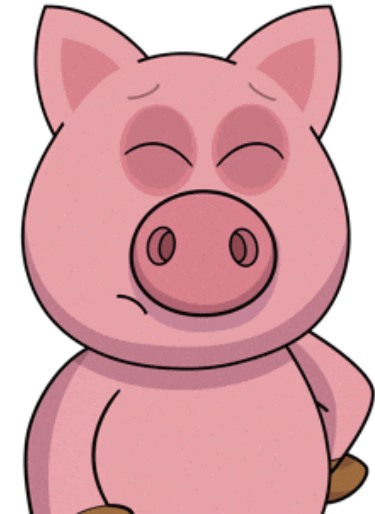
Between days 30 and 60, the Surface Owner must file an Affidavit of Abandonment.

3) A mineral interest holder may preserve their interest by filing a Claim to preserve, or affidavit describing a savings event within prior 20 years

2006 Amendment Process

4) If the mineral interest holder(s) fails to file a claim to preserve or affidavit the surface estate holder must then file “A Notice of Failure to File a Mineral Interest.”

Fail



Patient
Pig

Record of Mineral Interest Shall Cease to be Notice

- ▶ 5) Immediately after the Notice of Failure to File a Mineral Interest, the mineral interest will vest in the owner of the surface and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it (emphasis added).
- ▶ Prior to 2014, the recorder was required to note that the mineral interest had been abandoned on the deed itself

"This mineral interest abandoned pursuant to affidavit of abandonment recorded in Volume 57 Page 83 of the Official Records of Monroe County, Ohio." - Official Records - Vol. 15 Pg. 31 - Letter to Claim Mineral Interest

Affidavit of Abandonment - Official Records - Vol. 57 Pg. 83

Subscribed and sworn to before me this 1st day of June, 2014, at _____, Ohio.

Notary Public

Dormant Mineral Act Cases



Cardinal Minerals, L.L.C. v. Blatt

2025-Ohio-1159, 7th District Court of Appeals, March 31, 2025

Parties:

- Cardinal Minerals, LLC (Plaintiff)
- Susan B. Blatt, *et al.* including SWN (Defendants)
- Facts:
 - ▶ In 1959, Peter and Elsie Tomolonis sold 64 Acres in Monroe County excepting and reserving one half of the oil and gas
 - ▶ An abandonment action under Ohio's Dormant Mineral Act was filed in 2012 by Robert Binegar
 - ▶ In 2021 Cardinal Minerals purchased the purported mineral rights from the Tomolonis heirs and challenged the abandonment



Cardinal Minerals, L.L.C. v. Blatt

2025-Ohio-1159, 7th District Court of Appeals, March 31, 2025

- ▶ Robert P. Binegar's abandonment was done by publication, instead of notice by certified mail
- ▶ The reservation deed was marked with the appropriate abandonment language by the county recorder.
- ▶ Cardinal Minerals also acquired other interests and filed quiet title actions in Cardinal Minerals, LLC v. Menno D. Miller 2024-Ohio-2133, and Cardinal Minerals, LLC v. Joseph M. Miller, 2024-Ohio-3121, which both reached the 7th District Court of Appeals.

Cardinal Minerals, L.L.C. v. Blatt

2025-Ohio-1159, 7th District Court of Appeals, March 31, 2025

- ▶ The court held that:
 - ▶ The doctrines of champerty and maintenance



barred Cardinal's claims, as Cardinal was created solely to pursue litigation over abandoned mineral rights.

Cardinal Minerals, L.L.C. v. Blatt

2025-Ohio-1159, 7th District Court of Appeals, March 31, 2025

- ▶ The severed oil and gas rights had been abandoned due to the abandonment process completed by Robert Binegar.
- ▶ As a result, Cardinal lacked standing because the Tomolonis heirs did not own anything of record at the time they quitclaimed interests to Cardinal
- ▶ This holding also created a Catch-22 for the heirs who conveyed their interest. They could no longer challenge the abandonment because they conveyed any potential right to challenge to Cardinal



Application of Cardinal to Other Cases



Ohio River Res., LLC v. Westfall

2025-Ohio-2379 , 7th District Court of Appeals, June 26, 2025

Parties:

- Ohio River Res., LLC (Plaintiff)
- Westfall, *et al.* including Diversified and Ohio Gas (Defendants)
- Facts:
 - ▶ Ohio River claimed to have acquired an oil, gas, and mineral reservation (the "Jackson Interest") created in 1912.
 - ▶ Kevin and Janet Westfall acquired the surface property in 1987 and initiated abandonment proceedings via notice by publication for the Jackson Interest in 2013.
 - ▶ Ohio River alleged the Westfalls' abandonment process was defective because the Westfalls failed to use reasonable diligence in their search for the Jackson Interest Holders, and the notice and affidavits of abandonment did not contain the correct volume and page number of the recorded instrument on which the Jackson Interest was based, as required by R.C. 5301.56.



Ohio River Res., LLC v. Westfall

2025-Ohio-2379 , 7th District Court of Appeals

- ▶ The Defendants Kevin and Janet Westfall, Ohio Gas Co, LLC and Diversified Production, LLC filed a motion for judgment on the pleadings and argued that the alleged the abandonment **had to have been challenged by an heir of the original reserving party, and could not be contested by a post-abandonment purchaser of a royalty interest**
- ▶ Holding:
 - ▶ The court agreed with the Defendants, and relied on its prior decisions in Cardinal.
 - ▶ It found that Ohio River, **as a subsequent purchaser of record of an abandoned mineral right**, lacked standing to challenge the abandonment process because the abandonment was complete before Ohio River acquired its interest.

How does this reasoning apply to the Marketable Title Act?

- ▶ Ohio's Marketable Title Act automatically extinguishes interests if there is an unbroken chain of title of record to an interest in land for forty years, unless certain exceptions apply
- ▶ There are multiple exceptions to the Ohio Marketable Title Act, and any one exception can result in the breaking of the 40 year chain, thus preserving an interest that was created prior to the starting point, called the "root of title"



1803 Res., LLC v. Lineback

2025-Ohio-3271 , 7th District Court of Appeals, September 5, 2025

Parties:

- 1803 Resources, LLC (Plaintiff)
- Adrienne Lineback, *et al.* including Gulfport (Defendants)
- Facts:
 - ▶ A 1922 warranty deed created two royalty interests: the Charles Baker Royalty and the Baker Family Royalty.
 - ▶ 1803 Resources acquired portions of these interests from heirs of the original reservationists.
 - ▶ A 1934 deed (root of title) identified both royalty interests by name but contained errors in describing them, which were repeated throughout the chain of title.
 - ▶ Unlike in Cardinal Minerals, there was no recorded notice of abandonment of the mineral interests in the public record.

1803 Res., LLC v. Lineback

2025-Ohio-3271 , 7th District Court of Appeals, September 5, 2025

- ▶ Defendants argued that the Baker Interests had been extinguished under the Marketable Title Act, and that the plaintiff was engaged in champerty and maintenance, and therefore 1803 did not have standing
- ▶ The trial court held in favor of the Defendants, but the 7th District Court of Appeals overturned that decision.

1803 Res., LLC v. Lineback

2025-Ohio-3271 , 7th District Court of Appeals, September 5, 2025

▶ Holding:

- ▶ It held that the doctrines of champerty and maintenance did not apply to 1803
- ▶ It held that the Baker Interests were not extinguished under the Marketable Title Act
- ▶ Part of the decision turned on the fact that there was no recorded notice of abandonment of the mineral interests in the public record.

Long Point Energy, LLC v. Gulfport Energy Corp.

Case No. 2:20-cv-4644, Southern District of Ohio, February 11, 2026

- ▶ Issue was whether Long Point owned the oil and gas under a reservation which the Defendants claimed was extinguished under the Ohio MTA.
- ▶ Holding:
 - ▶ Held in favor of the Plaintiff Long Point
 - ▶ Unlike in Cardinal cases, Long Point purchased actual property interests, not just litigation rights, because unlike Cardinal, this involved the MTA and there was no deed notation
 - ▶ The 1971 Root of Title Deed specifically referenced the oil and gas reservation, preserving it under MTA

Which Deed is the Root of Title?



Chestnut Ridge v. Miller

2026-Ohio-1018 , 7th District Court of Appeals, March 24, 2026

Parties:

- Chestnut Ridge 156 LLC(Plaintiff-Appellant)
- Doris E. Miller, *et al.* (Defendants)

Facts:

- ▶ In 1946 the Mineral Rights were severed on 28 acres
- ▶ 1970 and 1972: Surface deeds conveyed the property without referencing mineral severance
- ▶ 1981: Divorce decree conveyed surface rights without referencing minerals
- ▶ 1982 deed conveyed the property
- ▶ 1997: Erla Kuester's will distributed mineral interests to church, university, and family.
- ▶ 2017-2022: Various oil and gas leases executed by competing claimants.

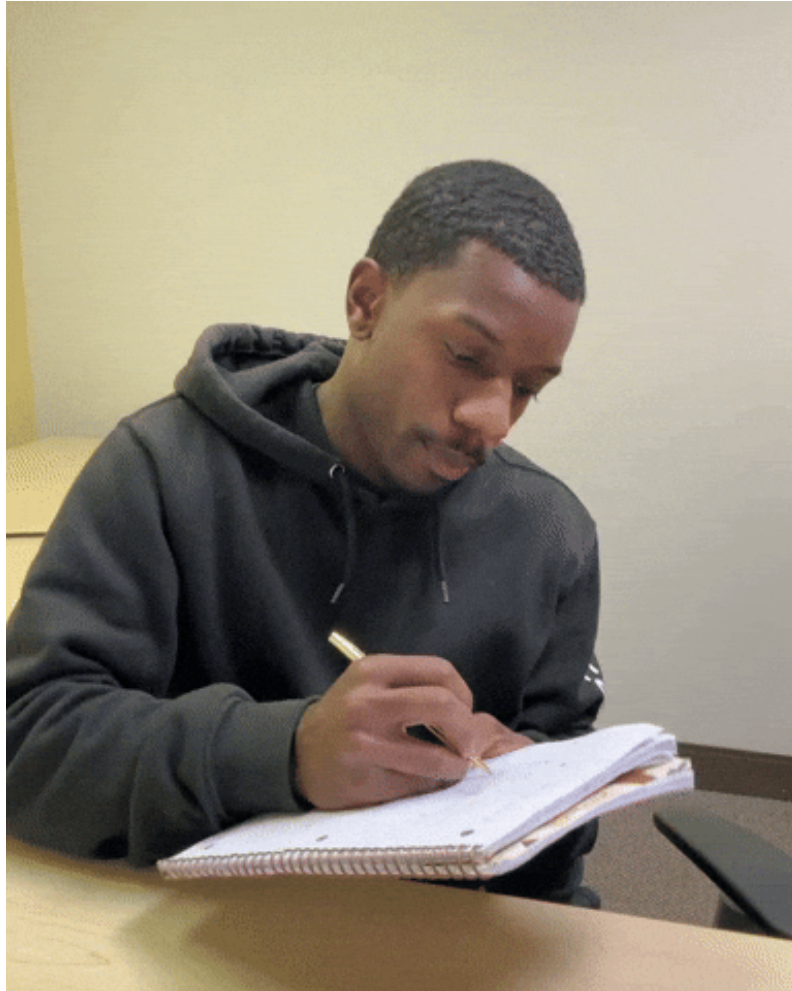


Chestnut Ridge v. Miller

2026-Ohio-1018 , 7th District Court of Appeals, March 24, 2026

- ▶ Plaintiff attempted to quiet title claiming that the severed mineral interests had been extinguished under the Ohio Marketable Title Act
- ▶ Defendants argued a 1982 deed was the root of title, and the residuary clause Erla Kuester's will qualified as exceptions to the Marketable Title Act, and the trial court agreed.
- ▶ Holding
 - ▶ On appeal, the 7th district overturned the trial court, and said that the analysis does not stop at the most recent root of title (being the 1982 deed)
 - ▶ The Court of Appeals stated that the MTA requires a court to continue to review every potential root of title deed within a chain of title up to the severance deed in order to determine if an interest in mineral rights was extinguished
 - ▶ The case was therefore remanded back to the trial court to conduct such a review

One other Case to Note



Whitney v. Baker

2026-Ohio-1035 , 7th District Court of Appeals, March 25, 2026

- ▶ Whether a severed interest had been extinguished under the MTA, or DMA
- ▶ The reservation was referenced throughout chain of title, with minor variations
- ▶ Included a specific reference to book and page but it was not contained within the references
- ▶ Holding:
 - ▶ Minor deviations that clarify rather than obscure the reserved interest do not defeat specificity of a reservation
 - ▶ The volume and page citation provided additional guidance to locate the original reservation
 - ▶ The DMA claim failed because defendants conceded inadequate search efforts in the original notice by publication

Deed Interpretation Cases



Racer v. Antero Res. Corp.

2025 W. Va. App. LEXIS 23, WV Intermediate Court, Feb. 28, 2025

Parties:

- Steve Racer and Susan Racer (Plaintiff)
- Antero Res. Corp. and Lazy S Farms, LLC (Defendant)

Facts:

- ▶ George B. Dawson held oil and gas executive rights, and a 50% NPRI, in 47 acres
- ▶ George passed away around 1983, with his interests going to his various heirs
- ▶ In 1990, the court ordered that the tract be sold at auction by the executor, and it was sold to Ralph E. Phillips
- ▶ The original deed conveyed the "surface only," but a Corrective Deed removed that restriction thus conveyeing all interests, including the 50% oil and gas royalty, to Ralph E. Phillips
- ▶ However, despite the corrective deed, the royalty interest remained assessed in George B. Dawsons' heirs when it should have been assessed in Ralph E. Phillips after the corrective deed



Racer v. Antero Res. Corp.

2025 W. Va. App. LEXIS 23 (W. Va. App. Feb. 28, 2025)

- ▶ The property was eventually transferred to Lazy S Farms, LLC
- ▶ The taxes on the 50% oil and gas eventually went delinquent because they were still assessed in the heirs
- ▶ Plaintiffs acquired the interest at a delinquent tax sale, and claimed an interest in them

Racer v. Antero Res. Corp.

2025 W. Va. App. LEXIS 23, WV Intermediate Court, Feb. 28, 2025

▶ Holding

- ▶ The Circuit Court held that the heirs intended to convey, and actually did convey, all of George B. Dawson's interest
- ▶ On appeal the Intermediate Court upheld the ruling, finding that even if the Surface Deed was ambiguous, the subsequent Corrective Deed was not, and all interests were conveyed
- ▶ The court stated when a deed expresses the intent of the parties in clear and unambiguous language, a court will apply that language without resort to rules of interpretation or extrinsic evidence
- ▶ Thus, the tax assessments in the name of George B. Dawson's heirs and subsequent delinquent tax sale had no effect on the oil and gas title

Grim v. Loub

2025 W. Va. App. LEXIS 35, WV Intermediate Court, Feb. 28, 2025

Parties:

- Scott F. Grim, Jeffrey M. Grim, Darnell Fulks, Cindy Fulks,
- Bryan J. Suter, and Martha J. Suter (Plaintiffs)
- Kathy A. Loub (Defendant)

Facts:

- ▶ In a 1946 deed to Paul Eddy, the grantors excepted and reserved one-half (1/2) of all the oil and gas, with the chain of title recited in the subsequent paragraph
- ▶ In a 1966, a deed from Paul Eddy and Thelma Eddy, to G. Ralph Eddy and Ethel L. Eddy (Eddy-Eddy Deed) contained almost identical reservation language for one-half (1/2) of all the oil and gas
- ▶ However, the subsequent paragraph then stated “EXCEPTING from said tract all oil, gas, mining rights, easements and rights of way conveyed, leased, reserved or excepted by the grantors' predecessors in title”



Grim v. Loub

2025 W. Va. App. LEXIS 35, WV Intermediate Court, Feb. 28, 2025

▶ Question Presented

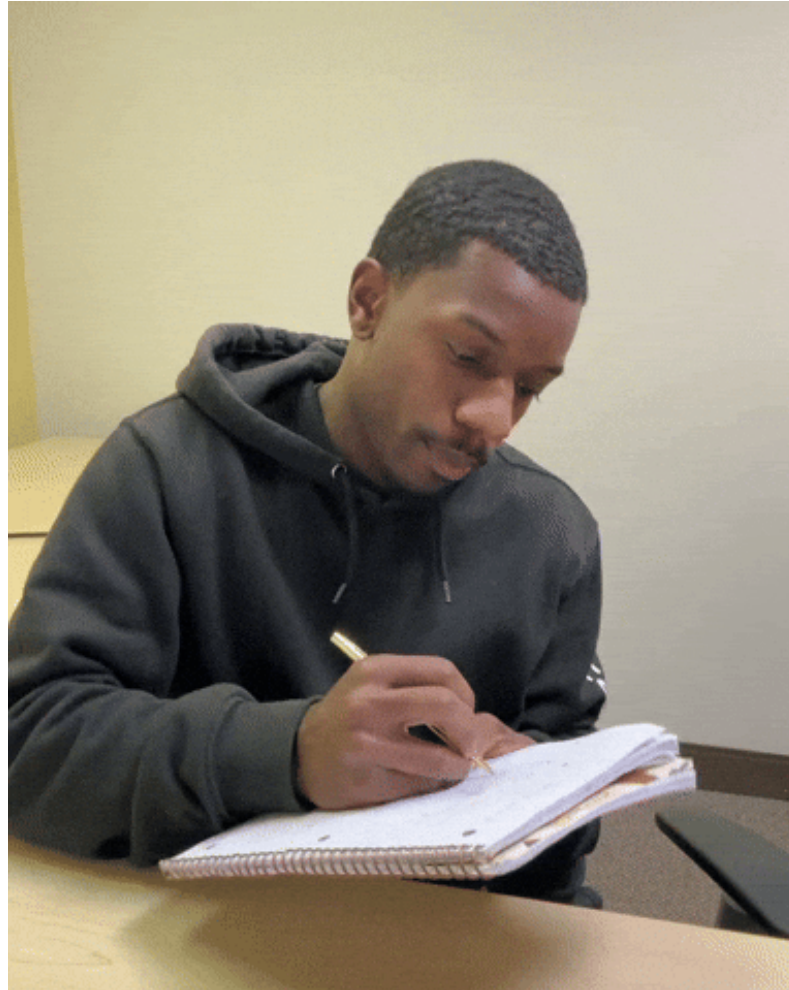
- ▶ Whether Paul Eddy and Thelma Eddy intended to actively except and reserve the remaining one-half of the oil and gas

▶ Holding

- ▶ The Intermediate Court, affirming the Circuit Court, held that the Eddy-Eddy Deed created a second reservation of the remaining one-half (1/2) interest
- ▶ Found that the only reasonable interpretation was that one-half of interest in the oil and gas was reserved to Paul E. Eddy and Thelma B. Eddy
- ▶ It found that such an interpretation harmonizes all parts of the deed
- ▶ The ruling was somewhat contrary to the well known Duhig Rule, but was based on specific interpretation of the deeds

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Another Case to Note



Min. Dev., Inc. v. SWN Prod. (Ohio), LLC

2025-Ohio-395, 7th District Court of Appeals, February 6, 2025

Parties:

- Mineral Development Inc. (Plaintiff)
- SWN Production, *et al.* (Defendants)

Facts:

- ▶ In 1918, a deed reserved a “1/16 of oil and gas or 1/2 of the Royalty from future wells drilled on these premises.”
- ▶ The property was unitized, and the successor to the 1918 royalty interest sought to receive royalties from all four wells in the unit.
- ▶ The lessee argued that the reservation would not apply to a wellhead located on the surface of different premises, and alternatively, that the reservation in 1918 did not intend to cover such wells



Min. Dev., Inc. v. SWN Prod. (Ohio), LLC

2025-Ohio-395, 7th District Court of Appeals, February 6, 2025

Holding:

- ▶ A horizontal well traversing beneath the surface plainly qualifies as a well drilled "on the premises" for purposes of a deed reserving a royalty interest in oil and gas production.
- ▶ A landowner's pooling and unitization agreement in a lease does not exclude a non-participating royalty interest from receiving lease royalties.
- ▶ The lease's pooling and unitization clause causes operations on any part of the unit to be treated as operations on each separate tract.

Trespass



Briggs v. SW. Energy Prod. Co. (Briggs II)

2025 U.S. Dist. LEXIS 52005, Federal Middle District PA, Mar. 21, 2025

Parties:

- Adam, Paula, Joshua, and Sarah Briggs (Plaintiff)
- Southwestern Energy Prod. Co. (SWN) (Defendant)
- Facts:
 - ▶ In June of 2013, SWN hydraulically fractured a wellbore on land adjacent to land owned by the Plaintiffs' predecessors-in-title
 - ▶ Plaintiffs' were leased by SWN from July 18, 2008 to July 18, 2013, but they were not included in the unit
 - ▶ Plaintiffs alleged that after fracturing the well in June 2013, and by failing to include them, SWN was improperly extracting natural gas from Plaintiff's land and was committing trespass against them

Briggs v. SW. Energy Prod. Co. (Briggs II)

2025 U.S. Dist. LEXIS 52005, Federal Middle District PA, Mar. 21, 2025

- ▶ Prior History - Briggs I (657 Pa. 38, 42, 224 A.3d 334, 336 (2020))
 - ▶ The case went to the PA Supreme Court which held that the hydraulic fracturing can be considered trespass, but only if the plaintiff landowner can prove the driller caused **physical intrusion on the property**
 - ▶ In Briggs I the Plaintiffs had not alleged that a physical intrusion occurred thus the PA Supreme Court held that the rule of capture applied, and SWN had extracted the natural gas under the adjacent property through legal and permissible means
- ▶ Briggs II
 - ▶ After Briggs I, the Plaintiffs went back and filed a new complaint alleging that a physical intrusion occurred, which was removed to Federal Court
 - ▶ The Middle District held that there was no trespass because the fracturing occurred while the Plaintiffs were under lease, and the fracturing was a past harm, and not a continuing one
 - ▶ The case has been appealed to the Third Circuit

Market Enhancement Clauses



Grissoms, LLC v. Antero Res. Corp.

133 F.4th 605, United States Court of Appeals for the Sixth Circuit, April 2, 2025

Parties:

- The Grissoms, LLC (Plaintiff)
- Antero Resources Corporation (Defendant)

Facts:

- ▶ Antero Resources Corporation entered into oil and gas lease agreements with 370 Ohio landowners.
- ▶ The lease agreements contained “Market Enhancement Clauses” requiring Antero to pay the landowners royalties based on the “gross proceeds” of the oil, gas, and other hydrocarbon products sold.
- ▶ Antero deducted the costs of “processing” (separating purified natural gas) and “fractionation” (separating the non-methane gases) from the landowners' royalties.

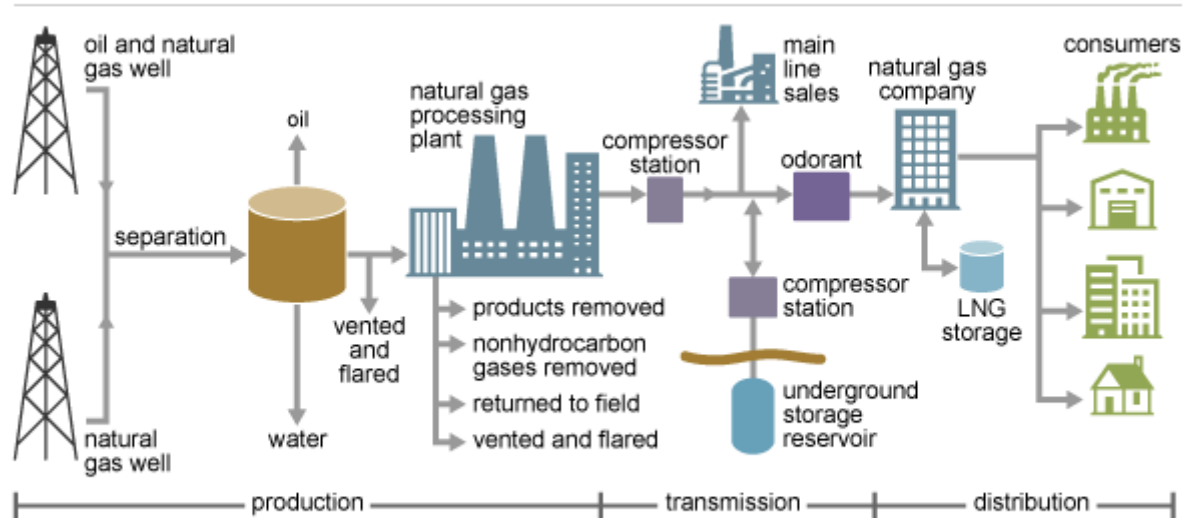


Grissoms, LLC v. Antero Res. Corp.

133 F.4th 605, United States Court of Appeals for the Sixth Circuit, April 2, 2025

- ▶ The "Market Enhancement Clause" in each lease permitted Antero to deduct some value-enhancing costs from the landowners' royalty payments, the same clause said that Antero may not deduct the costs of "transform[ing] the product into marketable form."

The natural gas production and delivery



Data source: U.S. Energy Information Administration



Grissoms, LLC v. Antero Res. Corp.

133 F.4th 605, United States Court of Appeals for the Sixth Circuit, April 2, 2025

▶ Holding

- ▶ The lease contemplated multiple "products" (oil, purified natural gas, and various other gases like ethane, propane, etc.), and prohibits Antero from deducting the costs of transforming these products into marketable form.
- ▶ The unrefined gas mixture from the wellhead is not a "marketable product" because there is no established market for such a mixed, unprocessed product.
- ▶ It held that the various gas products only become marketable after being separated through processing and fractionation.
- ▶ Thus, the court held that separating the methane and fractionating the non-methane gases are essential steps to transform these products into marketable form, rather than merely enhancing their value in an existing market.

Takeaways

- ▶ Dormant Mineral Act
 - ▶ If an interest has been abandoned following the 2006 DMA procedures, it cannot be challenged by a third party that attempted to acquire those interests
- ▶ Marketable Title Act
 - ▶ Since the MTA is self executing, and nothing is filed of record, there is no recorded extinguishment and the decisions in Cardinal and Ohio River cannot be applied in the same way
- ▶ Deed Interpretation
 - ▶ Ohio Royalty Reservations - A royalty reservation for all future wells drilled “on the premises” includes wells drilled pursuant to horizontal drilling and unitization
 - ▶ WV Royalty Reservations - If the intent of the parties is apparent in clear and unambiguous language, the court will not resort to rules of interpretation or extrinsic evidence
- ▶ Market Enhancement Clauses
 - ▶ Market Enhancement Clauses do not necessarily permit the deduction of post-production costs

Thank You

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