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Pa. AG Can't Sue Oil & Gas Companies Under UTPCPL on Behalf of Landowners

Attorney General Josh Shapiro sued the defendants under the UTPCPL because together they allegedly "impaired the competitive process which deprived Pennsylvania landowners from receiving an acreage signing bonus and royalty which would have been competitive and fair absent the agreement to allocate territories."

By Max Mitchell | March 26, 2021



A Northern Oil and Gas rig in the Williston Basin

The Pennsylvania Supreme Court has ruled that the state Attorney General's Office had no legal basis to sue oil and gas drilling companies on behalf of landowners under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

In a 6-1 majority opinion (<http://www.pacourts.us/assets/opinions/Supreme/out/J-52A-2020mo%20-%20104727686130819923.pdf?cb=1>), the justices overturned a Commonwealth Court ruling rejecting preliminary objections from defendants Anadarko Petroleum Corp. and Chesapeake Energy Corp.

According to the majority opinion by Justice Sallie Mundy, Attorney General Josh Shapiro sued the defendants under the UTPCPL because together they allegedly "impaired the competitive process which deprived Pennsylvania landowners from receiving an acreage signing bonus and royalty which would have been competitive and fair absent the agreement to allocate territories." The OAG also alleged that Anadarko's conduct in the joint venture and in its individual capacity were unlawful under UTPCPL Section 3 because it "constituted unfair or deceptive acts or practices."

The Commonwealth Court had affirmed the trial court's ruling that the attorney general's UTPCPL claims based on Anadarko's conduct in securing oil and gas leases were "legally viable," Mundy said. The court reasoned that Anadarko's conduct constituted "'trade' and 'commerce'" under UTPCPL Section 2(3) because the "leases were, in essence, sales." The Commonwealth Court supported its conclusion by pointing to the state Supreme Court decision in *Creamer v. Monumental Properties*, in which the high court "concluded residential leases are sales that are regulated by the UTPCPL."

However, Mundy said the Commonwealth Court misapplied *Monumental Properties* and erred by using the common usage definitions of "trade" and "commerce" as opposed to the statute-specific language.

"First, the Commonwealth Court failed to recognize that the first part of Section 2(3) contains the definitions of trade and commerce. When the phrase 'trade or commerce' appears in the second part of Section 2(3), it carries the specialized meaning of 'the advertising, offering for sale, sale or distribution ...' contained in the first part," Mundy said.

"Second, defining trade and commerce to include both buying and selling renders superfluous the first part of the definition, which defines trade and commerce as only selling," she added. "This violates the statutory construction principle that '[w]e are not permitted to ignore the language of a statute, nor may we deem any language to be superfluous.' In fact, resorting to a dictionary or ordinary usage for the definition of trade and commerce ignores and renders superfluous the very legislative act of providing a definition for those terms."

Additionally, Mundy said the Commonwealth Court mistakenly took *Monumental Properties* to mean that the UTPCPL regulates both the buyer and seller in a lease transaction. She said this misunderstanding was predicated on a misreading of *Danganan v. Guardian Protection Services*. Anadarko, as a lessee, was not subject to the UTPCPL, Mundy said.

Shapiro's office did not respond to a request for comment. Jared Bayer of Cozen O'Connor represents Anadarko and Daniel Brier of Myers, Brier & Kelly represents Chesapeake. They did not respond to requests for comment.

Justice Kevin Dougherty dissented (<http://www.pacourts.us/assets/opinions/Supreme/out/J-52A-2020do%20-%20104727686130819856.pdf?cb=1>).

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