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Pa. Justices Scrap AG's Royalty Case Against Anadarko

By **Matt Fair**

Law360 (March 25, 2021, 3:36 PM EDT) -- The Pennsylvania Supreme Court ruled Wednesday that the state's consumer protection law did not allow Attorney General Josh Shapiro to pursue claims against Anadarko Petroleum Corp. for allegedly misrepresenting lease deals struck with landowners.

The justices ruled 6-1 that the Unfair Trade Practices and Consumer Protection Law only allowed for claims against "sellers" and thus could not be brought to bear on the driller, which had acted more in the role of a buyer when it acquired mineral rights from landowners in the state.

"The legislature chose to define trade and commerce as only acts of selling for purposes of the UTPCPL," Justice Sallie Mundy wrote for the majority. "We may not disregard this policy choice."

Shapiro's office initially filed suit against another driller, Chesapeake Energy Corp., and a group of affiliates in December 2015, alleging they misrepresented lease deals struck with landowners by promising certain royalty payments before later deducting post-production and other costs. The complaint was amended two months later to add claims against Anadarko, including allegations that the company conspired with Chesapeake over what turf they each were allowed to control in northern Pennsylvania.

The companies argued that the state's consumer protection law could not be brought to bear on the leases at issue in the case because the landowners had effectively acted as sellers in the leasing transactions and not as consumers.

Two lower courts, however, rejected those arguments and ruled that they believed the case should be allowed to move forward.

The case has since been stayed with regard to Chesapeake after the company filed for bankruptcy protection.

Anadarko, meanwhile, was acquired by Occidental Petroleum Corp. in 2019.

The Pennsylvania Commonwealth Court, which heard the attorney general's case against the companies on appeal two years ago, ruled that the leases did fall under the UTPCPL thanks to statutory language signaling the law was meant to apply to "any trade or commerce directly or indirectly affecting the people of this commonwealth."

While the Commonwealth Court agreed that dictionary definitions of "trade" and "commerce," which would include both buying and selling, should be used when reading the words, the justices ruled on Wednesday that the statute specifically defined the terms only in connection with the selling of goods or services.

"The Commonwealth Court erred in discarding the specialized legislative definition of trade and commerce," Justice Mundy said.

In invalidating the state's claims against the drillers Wednesday, however, the justices left unanswered a second question raised as part of the appeal, which dealt with whether the UTPCPL

allows the attorney general's office to pursue antitrust remedies against alleged offenders.

In a dissenting opinion, Justice Kevin Dougherty said he believed that Anadarko should be considered a seller in the transactions because the company had been actively attempting to sell its drilling services.

"Unlike the majority, my interpretation is consistent with our mandate to liberally construe the UTPCPL to achieve its objective of preventing unfair and deceptive practices," he said.

At the same time Shaprio's office was pursuing claims against Anadarko and Chesapeake under the UTPCPL, Chesapeake struck an \$8 million settlement with landowners in August 2018 to resolve class claims over allegedly inflated costs and fees that were deducted from the royalty checks.

A spokesperson for Shaprio said the attorney general's office planned to reach out to members of the legislature to discuss potential amendments to the UTPCPL.

"We are reviewing this opinion and have plans to engage legislators on this matter to update Pennsylvania laws to better protect those misled by corporations like this one," the spokesperson said.

A representative for Occidental declined to comment.

Anadarko is represented by Stephen Cozen and Jared Bayer of Cozen O'Connor.

Chesapeake is represented by Daniel Brier and Donna Walsh of Myers Brier & Kelly LLP, D. Alicia Hickok and Seamus Duffy of Faeger Drinker Biddle & Reath LLP and Daniel Donovan of Kirkland & Ellis LLP.

The commonwealth is represented by Howard Hopkirk, Norman Marden, Tracy Wertz and Joseph Betsko of the Pennsylvania Office of Attorney General.

The case is Commonwealth of Pennsylvania v. Chesapeake Energy Corp., case number 81 MAP 2019, before the Pennsylvania Supreme Court.

--Editing by Aaron Pelc.