



Jeremy A. Mercer

partner

Jeremy is an experienced commercial litigator who, for more than a decade, has focused on energy, with an emphasis on oil and gas litigation. His extensive experience in the shale and hydraulic fracturing arena spans the Commonwealth of Pennsylvania and includes work in administrative proceedings, state trial and appellate courts, and federal trial and appellate courts.

He represents E&P operators in the Marcellus and Utica Shale plays and frequently speaks at energy-related CLEs and industry trade group meetings. His work on behalf of the industry includes counseling on local zoning ordinances, applications and challenges, defending against lease invalidity claims, defending royalty and failure to develop claims, defending litigation matters alleging contamination and health effects from drilling operations, defending class actions and mass plaintiff actions, pursuing injunctive actions, enforcing access rights, rights-of-way and easements, prosecuting trespass actions against activists, and counseling clients on their obligations relative to government agencies and regulations.

In addition to his work on behalf of the industry, Jeremy represents clients in general commercial disputes in state and federal courts in Ohio and Pennsylvania. He also represents individuals and charitable organizations pro bono, including representing plaintiffs in civil rights litigation in federal court.

Jeremy previously served as a law clerk to United States Magistrate Judge Nancy A. Vecchiarelli in the United States District Court, Northern District of Ohio and to the Franklin County (Ohio) Municipal Court. Jeremy is a frequent author on industry-related topics.

REPRESENTATIVE MATTERS

Defense of an E&P company against a multi-plaintiff litigation alleging environmental contamination, breach of contract, personal injury, negligence strict liability, nuisance and medical monitoring:

- Obtained a first-in-the-nation summary judgment decision finding that hydraulic fracturing is not subject to strict liability

CONTACT

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SOCIAL MEDIA

Blogs
energylawreport.com

EDUCATION

Ohio State University College of Law, J.D., *with honors*, 2000

Youngstown State University, B.A., *summa cum laude*, 1997

SERVICES

Energy

- Coal and mineral rights
- Oil and gas

Litigation

- Appellate and Supreme Court practice
- Arbitration and mediation
- Class actions, mass torts and MDLs
- Commercial litigation
- E-Discovery
- Environmental litigation
- Health Care litigation

- Obtained summary judgment on claims of breach of contract, personal injury, negligence, nuisance, and medical monitoring
- Obtained directed verdict on negligence claims that went to trial
- Obtained new trial through successful post-trial motion

Representation of E&P companies in state and federal courts across Pennsylvania:

- Obtained a defense verdict in a jury trial alleging claims of fraud, fraudulent inducement, negligent inducement, tortious interference, and other tort claims related to an oil and gas lease
- Defended the above defense verdict on appeal before Superior Court (decision pending)
- Obtained an appellate victory overturning a summary judgment order in an oil and gas lease validity dispute
- Obtained a dismissal of declaratory judgment (the court refused to read the Pugh clause into the lease), slander of title (the statute of limitations had expired and the recording of the Memorandum of Lease did not result in an on-going tort), and breach of duty of good faith and fair dealing claims (not an independent cause of action)
- Obtained a dismissal of an entire case on the basis that shut-in payments on vertical, non-fraced, and non-producing wells perpetuated the lease into the secondary term (successfully defended dismissal in appeal to the U.S. Court of Appeals for the Third Circuit)
- Obtained trial court order enforcing settlement agreement reached days before trial on claims that oil and gas lease had expired
- Defending the above order on appeal before Superior Court (case pending)
- Defending against a multi-plaintiff case wherein plaintiffs are claiming water and property damages as a result of gathering line installation and operation
- Defended against a class action case and a multi-plaintiff case claiming a breach of lease for the failure to pay bonus payments where drafts were issued but not funded and leases were surrendered
- Defended against claims that a preexisting lease precluded enforcement of an oil and gas lease with an E&P company (the plaintiff voluntarily withdrew the case)
- Obtained a dismissal of all contract claims as well as anticipatory trespass, negligence per se, and gross negligence claims in a contamination and nuisance-type case related to the development of Marcellus wells near the plaintiff's property
- Obtained a summary judgment on private nuisance, negligence, and strict liability claims related to injuries allegedly suffered as a result of nearby gas development operations
- Obtained a summary judgment on a breach of contract action where a right-of-way holder attempted to prevent the use of a pipeline to transport non-native gas across the property
- Obtained a voluntary dismissal of a lawsuit challenging post-production expenses
- Prosecuted and defended quiet title actions
- Obtained a voluntary dismissal with prejudice of a lawsuit challenging the validity of an oil and gas lease (dismissal before the decision on a pending motion to dismiss)

Obtained a preliminary injunction on behalf of an E&P company against an environmental activist so as to prevent interference with operations or the entering of well sites, well pads, or access roads:

- Obtained an enforcement of stipulated injunction, despite the activist's subsequent objections to injunction

- Successfully defended trial court decision in Pennsylvania Superior Court

Advised and represented E&P and service companies regarding various issues related to seismic testing, including:

- Alleged damage to township roads during seismic testing using a vibrosis truck
- Interactions with townships (ordinance reviews, demonstrations of equipment, road usage, etc.)
- Challenges to and suit regarding denial of permits
- Interactions with landowners relative to seismic access and damage claims

Non-oil & gas related experience:

- Defend international entity in multi-million dollar breach of contract action related to coal purchase agreement
- Obtained dismissal for lack of jurisdiction over international entity in multi-million dollar personal injury claim
- Defended electricity transmission company in multi-plaintiff action seeking declaration that rights-of-way were abandoned
- Represent hospital in contract and tort case against physician and his company related to services previously performed and defend counterclaims asserted therein
- Defend organ procurement organization against tort claims by parents of organ donor
- Represent individual asserting multi-million dollar claim for services rendered in procuring sale of company

BAR ADMISSIONS

- Ohio
- Pennsylvania
- West Virginia
- U.S. Court of Appeals for the Second Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Eastern District of Pennsylvania
- U.S. District Court for the Middle District of Pennsylvania
- U.S. District Court for the Northern District of New York
- U.S. District Court for the Northern District of Ohio
- U.S. District Court for the Southern District of Ohio
- U.S. District Court for the Western District of Pennsylvania
- U.S. Tax Court
- Supreme Court of the United States

PRESENTATIONS

- “Round-Up of Recent Royalty Decisions,” Institute for Energy Law, Sept. 15, 2021
- “First Things: Case Assessment, Forum Selection and Interim Relief,” Federal Practice Institute 2020, University of Pittsburgh School of Law, Oct. 23, 2020
- “The In-House Perspective on the Energy Industry – 2020 and Beyond,” 11th Law of Shale Plays Conference, Sept. 10, 2020
- “Ethics – Changing Law Firms: Be Careful What You Leave Behind and Other Considerations,” Republican National Lawyers Association 19th National Election Law Seminar, July 11, 2020
- “From Complaint to Closing, Ethical Issues from the *Ely v. Cabot Oil & Gas Case*,” Youngstown State University Foundation Annual Seminar for Professionals, Nov. 20, 2019

- “First Things: Case Assessment, Forum Selection and Interim Relief,” Federal Practice Institute 2019, University of Pittsburgh School of Law, Oct. 25, 2019
- “From Complaint to Closing, Ethical Issues from the *Ely v. Cabot Oil & Gas Case*,” 17th Annual Energy Litigation Conference, Institute for Energy Law, Nov. 8, 2018
- “Litigation Update for the Shale Plays,” 9th Law of Shale Plays Conference, Institute for Energy Law, Sept. 5, 2018
- “From Complaint to Closing, Ethical Issues from the *Ely v. Cabot Oil & Gas Case*,” 10th Annual Oil & Gas Law Colloquium, Pennsylvania Bar Institute, June 28, 2018
- “From Complaint to Closing, Ethical Issues from the *Ely v. Cabot Oil & Gas Case*,” 2nd National Young Energy Professionals' Law Conference, Institute for Energy Law, April 7, 2018
- “From Complaint to Closing, Ethical Issues from the *Ely v. Cabot Oil & Gas Case*,” Washington County Bar Association Winter Bench Bar, Jan. 19, 2018
- “From Complaint to Closing, Ethical Issues from the *Ely v. Cabot Oil & Gas Case*,” Pennsylvania Bar Association Federal Practice Committee, Allegheny County Bar Association, Dec. 21, 2017
- “From Complaint to Closing, Ethical Issues from the *Ely v. Cabot Oil & Gas*,” 8th Law of Shale Plays Conference, Institute for Energy Law, Sept. 7, 2017
- “Pennsylvania’s Oil & Gas Conservation Law: Impact on Utica Shale Development,” 9th Annual Oil & Gas Law Colloquium, Pennsylvania Bar Institute, June 21, 2017
- “A Step-by-Step Journey Through the Trial of a Federal Case,” Pennsylvania Bar Association Federal Practice Committee, Aug. 30, 2016
- “It Takes a Village (... with a Cornfield and a Gas Well) – Municipalities and Energy as Volatile Bankruptcy Ingredients,” William J. O’Neill Regional Bankruptcy Institute, June 7, 2013
- “Low Cost Natural Gas: Will Prices Stay Down? What Will Be the Impact on Renewables Development? - Potential Impacts of Local Environmental Concerns About Fracking and New Pipeline Capacity on Supply: Updates on Recent Challenges and Outcomes in Producing Areas,” Fourth Annual Conference on New Developments in Renewable Energy in the Midwest, Law Seminars International, Aug. 16, 2012

PUBLICATIONS

- “Pennsylvania Supreme Court holds abandonment analysis improper where oil and gas lease provided remedies for conduct at issue,” *The POIGA Press*, May 2021
- “Pennsylvania’s Supreme Court holds unfair trade practices and consumer protection law does not apply to oil and gas companies acquiring oil and gas leases,” *Energy Law Advisor*, May 2021
- “Under scrutiny: PA Superior Court splits from own precedent and allows unilateral oil & gas lease severance in Montgomery,” *Pratt’s Energy Law Report* (Vol. 17-8): *A.S. Pratt Publication*, *LexisNexis*, Sept. 14, 2017
- “Pennsylvania revokes Act 13 ordinance review power,” *Energy Law Advisor*, Institute for Energy Law, November 2014
- “Third Circuit holds that shut-in royalty provision of lease bars suit where non-producing wells were shut-in,” *Energy Law Advisor*, Institute for Energy Law, September 2014
- “Act 13 - a ‘fractured’ Pennsylvania Supreme Court decision on Pennsylvania’s Oil and Gas Act,” *LexisNexis*, Feb. 25, 2014
- “Infrastructure challenges in developing the Marcellus Shale in Pennsylvania,” *Global Infrastructure*, Vol. VI, Winter 2012

PROFESSIONAL ASSOCIATIONS

- Allegheny County Bar Association, Environmental & Energy Law Section Council Member

- Federal Bar Association
- Federalist Society
- Pennsylvania Bar Association, Zone 12 Delegate to PBA House of Delegates, Federal Practice Committee, Executive Council Member
- Republican National Lawyers Association

HONORS | AWARDS

- *Pennsylvania Super Lawyers*®
- *Pittsburgh Business Times*, Who's Who in Energy, 2014-2016
- Youngstown State University Geography Department, David T. Stephens Outstanding Alumni Award, 2017

COMMUNITY

- Center for Victims, Board of Directors, Audit and Executive Committees, several ad hoc committees, 2004-2012, 2019-2020
- Gamma Theta Upsilon, Honorary Member
- Practical Law Company, Advisory Board, 2013-present
- Indian Meadows Homeowners Association, Board Member, Secretary, 2018; President, 2019-present