

# Fracking Report

May 2014 Volume 1, Issue #1

**5th Circuit Panel Vacates Summary Judgment, Remands To Decide Intervenor's Status**

NEW ORLEANS — A unanimous Fifth Circuit U.S. Court of Appeals panel ruled May 7 that an Eastern District of Texas judge lacked jurisdiction over an assignment of rights dispute among natural gas well operating companies because a nondiverse intervenor destroyed subject-matter jurisdiction; the panel vacated a summary judgment order and remanded the lawsuit with instructions to determine if the intervenor is an indispensable party. **SEE PAGE 4.**

**Wyoming Supreme Court Defines Trade Secrets, Remands Fracking Fluid Disclosure Case**

CHEYENNE, Wyo. — The Wyoming Supreme Court issued a unanimous opinion March 12 vacating a lower ruling that the components of hydraulic fracturing fluid are exempt from disclosure as trade secrets and instructing the lower court to apply the federal definition of trade secrets to review a Wyoming Oil & Gas Conservation Commission order denying requests for disclosure of the chemicals in the fluid; the mandate issued March 28. **SEE PAGE 5.**

**Order To Produce Seismic Data Affirmed; Water Well Suit Fact Discovery Ends May 23**

SCRANTON, Pa. — Phase 1 fact discovery in a lawsuit in the U.S. District Court for the Middle District of Pennsylvania alleging contamination of residential water wells with hydraulic fracturing chemicals closes May 23; a motion by the natural gas extraction company defendants for reconsideration of an October 2013 order to produce seismic data and open hole logs was denied in January. **SEE PAGE 7.**

**Louisiana Appeals Panel Rules Plaintiffs Lack Standing To Seek Restoration Damages**

LAKE CHARLES, La. — A unanimous Third Circuit Louisiana Court of Appeal panel on May 7 affirmed summary judgment against surface estate owners seeking damages from oil and natural gas operators for allegedly failing to restore the surface estate; the panel applied the subsequent purchaser doctrine and concluded that the plaintiffs lack standing to seek damages for alleged injuries before they purchased the subject land. **SEE PAGE 10.**

**Legacy Oil Pollution Claims Dismissed Without Prejudice In Louisiana Federal Court**

NEW ORLEANS — Defense motions to dismiss were granted in part on April 22 with leave to amend in a well field legacy contamination lawsuit pursued by landowners in the U.S. District Court for the Eastern District of Louisiana. **SEE PAGE 12.**

**Oklahoma Class Plaintiffs Appeal Dismissal Of Claims For Waste Hauling Pollution**

DENVER — Class action representatives of an Oklahoma action alleging fly ash and produced water contamination filed an appellant brief April 21 in the 10th Circuit U.S. Court of Appeals seeking reversal of an order denying remand under the local controversy exception to the Class Action Fairness Act of 2005 or, alternatively, vacating summary judgment for defendants for failing to state a claim. **SEE PAGE 15.**

**Texas Supreme Court Remands Attorney Fee Award Dispute Arising From Royalty Suit**

AUSTIN, Texas — The Supreme Court of Texas issued a *per curiam* opinion on April 25 remanding an attorney fee dispute with instructions for the trial court to develop a record sufficient to calculate attorney fees with the lodestar method; the disputed attorney fees are from a lawsuit to enforce an assignment of working interests in oil and natural gas producing wells. **SEE PAGE 18.**

**Natural Gas Operator Held Liable To Indemnify Driller For Contamination Litigation**

COLUMBUS, Ohio — A natural gas operating company sued by a drilling company with which it contracted to spud wells in West Virginia is liable under the drilling contract to reimburse settlement and litigation costs for a related well-water contamination lawsuit naming both companies as defendants, the presiding U.S. District Court for the Southern District of Ohio judge ruled April 16. **SEE PAGE 19.**

# Mealeys Litigation Report 1 07

**Donald G. Gifford**



## **Mealeys Litigation Report 1 07:**

**Suing the Tobacco and Lead Pigment Industries** Donald G. Gifford, 2010-06-02 The topic how tort law evolved over time into a system that allowed for a moment at least a *parens patriae* form of massive litigation against corporations is exceedingly interesting and important Gifford's treatment of this topic is highly informative engaging insightful very current and wise David Owen Carolina Distinguished Professor of Law and Director of Tort Law Studies University of South Carolina In *Suing the Tobacco and Lead Pigment Industries* legal scholar Donald G Gifford recounts the transformation of tort litigation in response to the challenge posed by victims of 21st century public health crises who seek compensation from the product manufacturers Class action litigation promised a strategy for documenting collective harm but an increasingly conservative judicial and political climate limited this strategy Then in 1995 Mississippi attorney general Mike Moore initiated a *parens patriae* action on behalf of the state against cigarette manufacturers Forty five other states soon filed public product liability actions seeking both compensation for the funds spent on public health crises and the regulation of harmful products Gifford finds that courts through their refusal to expand traditional tort claims have resisted litigation as a solution to product caused public health problems Even if the government were to prevail the remedy in such litigation is unlikely to be effective Gifford warns furthermore that by shifting the powers to regulate products and to remediate public health problems from the legislature to the state attorney general *parens patriae* litigation raises concerns about the appropriate allocation of powers among the branches of government Donald G Gifford is the Edward M Robertson Research Professor of Law at the University of Maryland School of Law

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Fidelity & Casualty Company; Arco Industries Corporation v. American Motorists Insurance Company, 456 MICH 305 (1998), 1998 105981 106678      *Asbestos Bankruptcy Trusts* Lloyd S. Dixon, Geoffrey McGovern, Amy Coombe, 2010 This report describes the creation organization and operation of asbestos personal injury trusts and compiles publicly available information on the assets outlays and governing boards of the 26 largest trusts The authors find that the publicly available information provides a rich source of information on trust activity but that more detailed information is needed to determine their impact on important compensation outcomes      **Legal Newsletters in Print** Arlene L. Eis, 2000      **New Serial Titles**, 1999 A union list of serials commencing publication after Dec 31 1949      *Ulrich's International Periodicals Directory* Carolyn Farquhar Ulrich, 1999      Books and Periodicals Online, 2001      Law Books in Print: Subject index A-I, 1997      *Law Books in Print: Author index* Nicholas Triffin, 1997      Law and Legal Information Directory Gale Group, 2004 Law and Legal Information Directory provides descriptions and contact information for institutions services and facilities in the law and legal information industry      **Insurance Coverage Disputes** John H. Mathias, Jr., John D. Shugrue, Thomas A. Marrinson, 2024-08-28 A comprehensive guide to the issues that can arise at every stage of a coverage dispute from the initial inquiry to complex questions of law evidence procedure and strategy      **Current Law Index**, 2005      **The Standard Periodical Directory**, 2003

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