

WEEKLY HIGHLIGHTS AT-A-GLANCE**FEDERAL – Administrative Law Decision**

- **National Labor Relations Board (NLRB) – Independent Contractor.** NLRB's *Sisters' Camelot, et al.* decision (published Oct. 23, 2015). Ordinarily, the U.S. Department of Labor or taxing authorities first come to mind in independent contractor misclassification cases, but this recent NLRB decision outlines an 11-factor test under which the Board may find, pursuant to the National Labor Relations Act, an employer-employee relationship exists rather than an independent contractor agreement. Although the facts of the case do not specifically apply to landmen, the NLRB factor test may readily be applied to future cases involving the landman profession. [Read more and access the NLRB decision.](#)

JUDICIAL

- **Louisiana – Fiduciary Duty.** In a victory for landmen and lessees, on October 14, 2015, the Louisiana Supreme Court reversed the state appellate court decision in *John C. McCarthy, et al. v. Evolution Petroleum Corporation, et al.*, by reinstating the trial court decision to hold that no fiduciary obligation extends from lessee to lessor, specifically in terms of disclosing plans for leases. The appellate court's decision, had it been upheld, would have imposed an unprecedented fiduciary duty on landmen that would have had a chilling effect on mineral transactions within the state. [Read more.](#)
- **Pennsylvania – Oil & Gas Deed Reservations.** With implications for landmen, title curative, and suspension of payments, on October 9, 2015, a three-judge panel of the state Superior Court, in *Wright v. Misty Mountain Farm LLC*, held that a reservation of oil, gas and mineral rights in a deed does not terminate merely because the lease under which those rights were previously leased has expired. [Read more.](#)
- **Texas – Overriding Royalty Payments.** Last week, the Texas Independent Producers & Royalty Owners Association filed an amicus brief asking the Texas Supreme Court to re-hear the high-profile royalties case, *Chesapeake Exploration, LLC v. Hyder*, to correct what it calls an erroneous decision on the calculation of overriding royalty interests. [Read more.](#)

State-by-State Legislative Session Overview

Illinois, Massachusetts, Michigan, Ohio and Pennsylvania are in regular session. The **District of Columbia** Council and the **U.S. Congress** are also in regular session.

New Jersey is currently in recess and is expected to reconvene on November 9.

California's special sessions on health and transportation have yet to adjourn, though the legislature has adjourned for the year and will not reconvene until January 4, the [Los Angeles Times](#) reports. **Florida** convened its third special session on October 19 to redraw House and Senate districts, and is expected to adjourn November 6. **Alaska** is expected to convene a third special session on October 24 to consider details of the Alaska LNG Project.

The following governors have bill signing deadlines on the dates provided: **North Carolina** Republican Gov. Pat McCrory has until October 30 to act on any bills still pending approval upon adjournment, or that were presented after adjournment. **South Carolina** Republican Gov. Nikki Haley has until January 14 to act on legislation or it becomes law without signature. **Maine** Republican Gov. Paul LePage has until January 16 to act on any bills sent to him on July 16. All other legislation has been acted on. **Montana** Democratic Gov. Steve Bullock has 0 days from presentment to act on legislation or it becomes law without signature. **New York** Democratic Gov. Andrew Cuomo has 10 days from presentment to act on legislation or it becomes law without signature. **Tennessee** Republican Gov. Bill Haslam has 10 days from presentment, Sundays excepted, to act on legislation or it becomes law without signature.

Alabama, Florida, the Kansas House, Kentucky and the Tennessee House and Senate are now pre-filing for the 2016 legislative session.

The following states are currently holding interim committee hearings: **Alabama, Alaska, Arizona, Arkansas, the California Assembly and Senate, Colorado, Connecticut, the Florida House and Senate, the Georgia House and Senate, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, the Mississippi House and Senate, the Missouri House and Senate, Montana, Nebraska, Nevada, New Hampshire House and Senate, New Mexico, the New York Assembly, North Dakota, the Oklahoma House and Senate, the South Carolina House and Senate, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.**

Endangered Species

Massachusetts [SB 468](#), sponsored by Sen. Bruce Tarr, R-Gloucester, is scheduled to be considered on October 28 in the Joint Environment, Natural Resources and Agriculture Committee at 1:00 p.m. The bill would add new sections to the Massachusetts Endangered Species Act to prohibit the Division of Fisheries and Wildlife from promulgating any regulations which could result in the restriction or taking of land unless the regulation were promulgated in accordance with certain existing processes and the land were deemed a significant habitat, as defined. The division would further be required to rescind any such existing restrictions that do

not comply with those requirements. The division would have 180 days from the passage of this bill to comply with these provisions.

Landmen

Pennsylvania [SB 991](#), sponsored by Sen. Andy Dinniman, D-West Chester, was introduced and referred to the Senate Consumer Protection and Professional Licensure Committee on September 21. The bill would provide for the mandatory registration of land acquisition brokers. A land acquisition broker would be defined as someone who does any of the following in the course and scope of their business:

- Acquires or manages oil, gas, or mineral interests.
- Performs title or contract functions related to the exploration, exploitation, or disposition of oil, gas, or mineral interests.
- Negotiates for the acquisition or divestiture of oil, gas, or mineral rights, including the acquisition or divestiture of land or oil, gas, or mineral rights for a pipeline.
- Negotiates business agreements that provide for the exploration for or development of oil, gas, or minerals.

The bill would establish and maintain a state registry of land acquisition brokers with registration brokers operating in the state, which would be available for public inspection on the Pennsylvania Real Estate Commission's website. The commission would also be instructed to establish an initial registration application fee and a biennial renewal fee, which each applicant would have to submit along with specified information, including a list of any other state or other jurisdiction in which the applicant holds or has held a similar registration or license and a list of any other state or jurisdiction in which the applicant has had a similar registration or license suspended or revoked.

If enacted, SB 991 would take effect 60 days after final passage and approval.

Lands

Wisconsin [AB 319](#) was heard in the Assembly Energy and Utilities Committee on October 21 and is scheduled for another hearing in that committee at 9:00 a.m. on October 27. Details from the October 21 hearing are not yet available. The bill would extend current laws relating to the condemnation of land for the construction of high-voltage transmission lines to include condemnation for natural gas distribution and transmission lines. It would impose a 90-day deadline for the utility and the owner of the land to agree on the fair market value of the land to be conveyed, except that this deadline could be extended by an additional 90 days if the two parties agree.

Oil and Gas

General Oil and Gas

Michigan [HR 170](#), primarily sponsored by Rep. Leslie Love, D-Detroit, and others, was introduced and referred to the House Natural Resources Committee on October 21. The resolution would memorialize the U.S. Congress to enact legislation that would ban crude oil shipments on the Great Lakes and order a comprehensive review of the Great Lakes pipelines and spill response times.

Leasing

North Carolina [HB 924/SL 2015-276](#) was signed by Republican Gov. Pat McCrory on October 20. Section 5 of the new law provides for upset bids for leases of mineral deposits on state lands not underwater. The Department of Administration or other entity designated by that department is required to solicit competitive bids for leases of mineral deposits, including a process for upset bids. An upset bid is defined as an increased or raised bid whereby a person offers to lease such mineral rights for an amount exceeding the highest bid received, either in response to the initial solicitation for competitive bids or the last upset bid, by a minimum of five percent. The process for making an upset bid for a mineral lease and for soliciting counter-bids is laid out by this section as well. The department is further directed to require any lessee of mineral deposits in state lands to diligently conduct continuous mining operations for minerals subject to the lease for the duration of the entire lease. This section took effect immediately upon enactment.