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Beware the Ides of March – Pa. Appellate Court Allows AG to Pursue UTPCPL Claims Against Oil and Gas Operators

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On March 15, 2019, an *en banc* panel of Pennsylvania's Commonwealth Court issued an opinion addressing several questions of first impression concerning oil and gas leasing activities and Pennsylvania's Unfair Trade Practices and Consumer Protection Law (the "UTPCPL"). The case, *Anadarko Petroleum Corp. v. Commonwealth of Pennsylvania*, ___ A.3d ___, 2019 WL 1211892 (Pa. Cmwlth. Mar. 15, 2019), is most notable for its holding that oil and gas leasing activities are subject to the UTPCPL, and that the Pennsylvania Attorney General may pursue UTPCPL claims based on such activities. The court also held that some, but not all, common law antitrust violations may be actionable under the UTPCPL. Absent the allowance of an appeal by the Supreme Court of Pennsylvania, the case will return to the trial court for adjudication.

EXECUTIVE SUMMARY

While the case is far from over, unless the Commonwealth Court is reversed on appeal or the defendants obtain a remarkable result upon remand, *Anadarko Petroleum* raises the specter of serious future legal actions against oil and gas lessees and their leasing contractors. *Anadarko Petroleum* permits the Attorney General - and by extension, county district attorneys - to pursue claims against operators and their contractors for actions and behaviors that arguably constitute "deceptive conduct" under the UTPCPL's "catch-all" provision. UTPCPL claims could be based on, for example, alleged misstatements as to the current market rate for signing bonuses and royalties in a particular area, or the deductibility of post-production costs from royalties under a particular lease.

Given the severe penalties for violating the UTPCPL (discussed below), operators and their leasing contractors must exercise caution whenever communicating directly with landowners. Operators should consider providing mandatory training for their employees and contractors addressing best practices for avoiding claims under the UTPCPL.

THE UTPCPL

To appreciate the significance of *Anadarko Petroleum*, a brief overview of the UTPCPL is necessary. The UTPCPL is Pennsylvania's consumer protection law.[1]

As recently reiterated by the Supreme Court of Pennsylvania, it was created to "even the bargaining power between consumers and sellers in commercial transactions" and "is to be construed liberally to effectuate that goal." [2]

It attempts to achieve that goal by declaring certain "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce" to be "unlawful." [3]

The methods, acts and practices declared "unlawful" are listed in subsection (4) of the UTPCPL's definition section, which defines "unfair methods of competition" and "unfair or deceptive acts or practices." [4]

These two broad categories are broken down into a list of twenty-one subcategories of unlawful methods, acts and practices, the last of which is known as the "catch-all" provision. The catch-all provision makes it unlawful to engage in "any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." [5]

Of course, "fraudulent or deceptive conduct" cannot establish a violation of the UTPCPL unless it occurs in "the conduct of [a] trade or commerce[.]" [6]

The UTPCPL defines "trade" and "commerce" as meaning "the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and includes any trade or commerce directly or indirectly affecting the people of this Commonwealth." [7]

For enforcement, the UTPCPL authorizes "the Attorney General or a District Attorney" to bring an injunction action under the UTPCPL if he or she "has reason to believe that any person is using or is about to use any method, act or practice declared ... to be unlawful" under the UTPCPL and that "proceedings would be in the public interest[.]" [8]

If a court issues a permanent injunction in response to a proceeding initiated by the Attorney General or a District Attorney, it has the discretion to "direct" the defendant to "restore to any person in interest any moneys or property, real or personal," that the defendant acquired by means of conduct that violates the UTPCPL. [9]

If the court finds that the defendant "is willfully using or has willfully used a method, act or practice declared unlawful" under the UTPCPL, the Attorney General or District Attorney may also recover, on the Commonwealth's behalf, a civil penalty not exceeding \$1,000 per violation where the victim is under 60 years of age, or not exceeding \$3,000 per violation where the victim is 60 years of age or older. [10]

Although not relevant in *Anadarko Petroleum*, the UTPCPL also allows "[a]ny person who purchases or leases goods or services primarily for personal, family or household purposes" to seek redress for conduct that violates the UTPCPL.[11]

The statute of limitations for private UTPCPL claims is six years;[12] substantially longer than the two-year period applicable to fraudulent and negligent misrepresentation claims[13] and the four-year period applicable to breach of contract claims.[14] In a private cause of action under the UTPCPL, the court may, in its discretion, award the plaintiff "up to three times the actual damages sustained," as well as any additional relief it deems "necessary or proper[.]" including costs and reasonable attorney fees.[15]

Moreover, the entry of a "permanent injunction, judgment or order" by a court in UTPCPL proceedings brought by the Attorney General constitutes prima facie evidence in a private cause of action that the defendant engaged in conduct that violates the UTPCPL.[16]

It is unclear whether an oil and gas lessor could ever assert a viable cause of action under the UTPCPL in connection with an oil and gas lease, given the "personal, family or household purposes" requirement. To date, oil and gas lessors have been successful in defending against such claims.[17]

THE ATTORNEY GENERAL'S LAWSUIT

Pennsylvania's Attorney General initiated the proceedings in *Anadarko Petroleum* by filing a complaint in the Bradford County Court of Common Pleas in December 2015.[18]

In May 2016, the Attorney General filed a Second Amended Complaint that raises claims against Chesapeake Energy Corp., Anadarko Petroleum Corp., and various entities related to each of them (Chesapeake Energy Corp. and its related entities are collectively referred to as "Chesapeake," and Anadarko Petroleum Corp. and its related entities are collectively referred to as "Anadarko").

As explained by the Commonwealth Court, the Second Amended Complaint alleges that Chesapeake and Anadarko "agreed to split the portion of 'northeast Pennsylvania within the Marcellus Shale gas play' between them, so that [they] would each effectively have exclusive areas in which to seek mineral rights leases, without the fear that the other would tender competing offers to private landowners who were prospective lessors." [19]

With that general backdrop, the Second Amended Complaint advances the following claims:

Count I - alleges that Chesapeake violated the UTPCPL by taking "inflated deductions for post-production costs" from royalty payments, and by "engaging in deceptive and misleading practices in connection with [their] lease obligations with those landowners."

Counts II and VI - allege that Chesapeake (Count II) and Anadarko (Count VI) violated the UTPCPL "by misrepresenting the applicability of deductions and the meaning of the Market Enhancement Clause," causing the landowners to believe that they were signing leases free of deductions.

Count III - alleges that Chesapeake and Anadarko violated the UTPCPL by participating "in a joint commercial venture aimed at allocating exclusive areas of operation within geographic areas of mutual interest to one or the other of them," which had "the effect of denying Pennsylvania landowners the benefit, inherent in a freely competitive marketplace, of the exercise of individual choice in the acquisition of oil and gas leases, and depriving those landowners of their freedom to meaningfully choose otherwise available market options." Count III further claims that in "engaging in" the joint venture, the defendants "acted in restraint of trade or commerce in the oil and gas lease acquisition market by fixing, controlling, and/or maintaining at artificial and non-competitive levels, the acreage signing bonus and the royalties to be paid to Pennsylvania landowners."

Count IV - alleges that Chesapeake and Anadarko, as "Joint Venture Defendants," violated the UTPCPL "by unfairly and deceptively misrepresenting the presence or absence of competition for the acquisition of oil and gas leases, and by representing to" landowners that acreage signing bonuses and royalties they had been offered were "competitive and fair."

Count V - alleges that Chesapeake and Anadarko violated "the Pennsylvania antitrust common law prohibiting restraint of trade by engaging in an unfair and deceptive joint marketing venture, viz., allocating to each other the option to acquire interests in oil and gas leases already secured by one or the other of them within a particular allocated territory." [20]

As relief, the Second Amended Complaint asks the court to impose sweeping penalties on Chesapeake and Anadarko. In addition to an order enjoining them from "engaging in the acts and practices specifically alleged" and "any other acts and/or practices violative of the UTPCPL," it further seeks to require them to:

- Pay "affected Pennsylvania landowners money wrongfully deducted from royalty checks or otherwise acquired through any violation of the UTPCPL."
- Pay civil penalties of either \$1,000 or \$3,000 to each "victim" (depending on whether the alleged victim was older than 60 at the time of the violation) for each UTPCPL violation found to have been committed by the defendants.
- Forfeit "all profits they have derived as a result of the unfair and deceptive acts" alleged in the lawsuit.

- Be stripped of the right to engage in "any natural gas-related activity or business" in Pennsylvania until all damages, civil penalties and costs have been paid.[21]

THE TRIAL COURT'S ORDER

Chesapeake and Anadarko filed preliminary objections to the Second Amended Complaint. Following briefing and oral argument, the trial court issued an 82-page opinion in which it reached two pertinent conclusions. First, the UTPCPL authorizes the Attorney General to bring legal actions against oil and gas operators for "allegedly engaging in unfair acts or practices in connection with the purchase of oil and gas leases from private landowners[.]"[22]

In reaching this conclusion, the trial court rejected the defendants' argument that purchasing oil and gas leases from Pennsylvania landowners did not constitute "trade" or "commerce" under the UTPCPL because those terms only apply to "sellers," and Chesapeake and Anadarko were the "buyers" with respect to the leases at issue. Second, the trial court held that common law antitrust violations, such as those averred in Counts III and IV of the Second Amended Complaint, could give rise to actionable claims by the Attorney General under the UTPCPL.[23]

Recognizing the case presented questions of first impression, the trial court certified the two issues discussed above for immediate appeal to the Commonwealth Court.[24]

Chesapeake and Anadarko promptly petitioned the Commonwealth Court for permission to take an immediate appeal.

THE COMMONWEALTH COURT'S OPINION

The Commonwealth Court granted the petitions and framed the issues to be considered, as follows: (1) whether a cause of action may be brought under the [UTPCPL] for alleged wrongful conduct by lessees in oil and gas lease transactions; and (2) whether a cause of action may be brought under the [UTPCPL] for alleged antitrust violations.[25]

1. Causes Of Action Under The UTPCPL For Alleged Wrongful Conduct By Lessees In Oil And Gas Transactions

The Commonwealth Court's discussion of the first issue focused on whether Anadarko's and Chesapeake's leasing activities constituted "trade" or "commerce" under the UTPCPL.[26]

The UTPCPL defines "trade" and "commerce" to mean "the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and includes any trade or commerce directly or indirectly affecting the people of this Commonwealth."[27]

Anadarko and Chesapeake principally argued that they were not engaged in "trade" or "commerce" under the UTPCPL because they were not selling oil and gas leases.[28]

Rather, at most they were buyers, or consumers, of oil and gas leases, and their leasing activities were beyond the scope of the UTPCPL.

The Commonwealth Court majority disagreed for two reasons. First, it found that oil and gas leases are, "in essence, sales[.]" and, therefore, the appellants' leasing activities fell within the UTPCPL's definition of "trade" and "commerce." [29]

As highlighted in Judge Anne Covey's concurring and dissenting opinion, this conclusion is not without its problems.[30]

Indeed, the only case cited by the court in support of its conclusion, *Commonwealth v. Monumental Properties, Inc.*, [31]

concerned residential leases, not oil and gas leases, and held that certain actions of the defendant-landlords (the lessors) in relation to their tenants (the lessees), violated the UTPCPL.[32]

Responding to the defendant-landlords' argument that "the leasing of residences [did] not meet the statutory test of 'sale or distribution of ... any property'" and, therefore, was not within the definition of "trade" and "commerce," the Supreme Court emphasized that the UTPCPL was "designed to equalize the market position and strength of the consumer vis-à-vis the seller" and concluded that a "pragmatic reading" of the UTPCPL "dictates that purchasers of rental housing be treated as consumers and, therefore, within the class of persons sought to be protected by the Consumer Protection Law." [33]

As emphasized in Judge Covey's concurring and dissenting opinion, in contrast to the landlords in *Monumental Properties*, Anadarko and Chesapeake were not the lessors (*i.e.*, the "sellers"), but, instead, were the lessees (*i.e.*, the "buyers" or "consumers"). [34]

The Commonwealth Court majority also found that the second clause of the definition of "trade" and "commerce" was not intended to be limited in scope by its first clause.[35]

In other words, the court divided the definition into two clauses, like so:

[T]he advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate // and includes any trade or commerce directly or indirectly affecting the people of this Commonwealth.

It then found that the second clause should be read independently from the first clause.[36]

Thus, the majority held that "trade" and "commerce" under the UTPCPL was broad enough to include "any trade or commerce directly or indirectly affecting the people of this Commonwealth[.]" without limitation.[37]

As explained by the majority, the second clause "operates as a catch-all of sorts, enabling 'trade' and 'commerce' to be defined in terms of common

usage and not just ... through the narrower, more specific language of the first clause." [38]

Next, although the terms "trade" and "commerce" are expressly defined in the UTPCPL, the majority consulted definitions of "trade" and "commerce" contained in Merriam-Webster's Dictionary. [39]

Noting that those definitions include both "buying" and "selling[.]" the court held that Anadarko's and Chesapeake's leasing activities were within the definition of "trade" and "commerce" under the UTPCPL and that the trial court "properly overruled Appellants' demurrers that their behavior in securing these leases was not actionable under the UTPCPL." [40]

Judge Covey's concurring and dissenting opinion again finds the majority's opinion to be problematic for several reasons, not the least of which is its willingness to rely on dictionary definitions to modify statutorily-defined terms. [41]

She explained that the majority's opinion "completely ignores the legislative purpose and erroneously relies on a dictionary definition, thereby undermining the General Assembly's intent. Consequently, the Majority has overstepped its authority by ignoring the statutory definition of 'trade' or 'commerce' and substituting a definition that directly conflicts with the legislature's purpose to protect **consumers**." [42]

1. Causes Of Action Under The UTPCPL For Alleged Antitrust Violations

Having determined that Anadarko and Chesapeake were engaged in "trade or commerce" and that the Attorney General could proceed with claims against them under the UTPCPL, the Commonwealth Court next considered whether Counts III and IV of the Second Amended Complaint raised cognizable claims under the UTPCPL based on alleged antitrust violations.

At the outset of its discussion, the majority found that not all antitrust violations give rise to viable UTPCPL claims, and that to constitute a viable UTPCPL claim, an antitrust violation must fit within one of the enumerated categories of "unlawful" activities identified in the UTPCPL. [43]

The majority summarized Count III as alleging that Anadarko's and Chesapeake's "unlawful joint venture and market sharing agreements violated the UTPCPL through 'impairment of choice and the competitive process[.]'" [44]

More particularly, it alleges that Anadarko and Chesapeake "'created the likelihood of confusion and misunderstanding' amongst the private landowners under whose land the desired natural gas was situated, by eliminating the prospect of competition between potential lessees and

depressing the amount of compensation the landowners received in return for leasing their land to [them]."[45]

The majority viewed Count III to "essentially argu[e]" that the joint venture and market sharing agreements between Anadarko and Chesapeake "intrinsically violated the UTPCPL." [46]

Consequently, it found them to be inadequate to assert a claim under the UTPCPL. [47]

Judge Covey concurred in the majority's conclusion as to Count III. [48]

As to Count IV, however, the majority reached the opposite conclusion. Count IV alleges that "Appellants deceived and acted unfairly towards private landowners by giving them misleading information, and/or failing to disclose information, regarding the open market's true appetite for subsurface mineral rights leases, as well as whether the terms of the agreed-to leases 'were competitive and fair.'" [49]

Those allegations were deemed sufficient to give rise to a claim under the UTPCPL's catch-all provision, which prohibits "[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." [50]

Judge Covey strongly disagreed with the majority's conclusion that antitrust violations may serve as the basis for UTPCPL claims. She observed that the UTPCPL does not purport to provide a remedy for antitrust violations, and that the Pennsylvania legislature has never passed an antitrust statute, despite considering antitrust legislation on twenty-four separate occasions. [51]

Judge Covey further explained that

[b]y affirming the trial court's decision to overrule [Anadarko's and Chesapeake's] demurrers to Count IV, the Majority erroneously interprets the UTPCPL to create a statutory prohibition unapproved by the General Assembly, and wields that unauthorized and un-enacted prohibition to punish **consumers** under the purported authority of a **consumer** protection statute. This is judicial overreach. [52]

BROADER IMPLICATIONS

Operators need to appreciate that under *Anadarko Petroleum*, any misrepresentations or misleading statements to landowners during lease negotiations have the potential to lead to future UTPCPL claims. Although not directly addressed in *Anadarko Petroleum*, the Second Amended Complaint includes two leasing-related UTPCPL counts, Counts II and VI, that are not based on alleged antitrust violations. They allege that Chesapeake and Anadarko each "misrepresented the applicability of deductions and the meaning of the Market Enhancement Clause" in their

leases, causing landowners to believe they were signing leases free of deductions for post-production costs.[53]

Under *Anadarko Petroleum*, each of these claims is allowed to proceed.[54] This is significant because Counts II and VI do not depend on the existence of alleged antitrust activity between two or more operators,[55] but are instead founded on a single operator's alleged misrepresentations to landowners during lease negotiations.

Additionally, claims under the UTPCPL are not subject to the same rules and defenses as traditional breach of contract claims. For example, when a landowner alleges that a landman made representations to them concerning the terms of their lease that are inconsistent with the lease's actual terms, the lessee is often able to rely on the parol evidence rule to prevent evidence of pre-execution representations from being considered by the court.[56]

But the parol evidence rule will not provide a defense to a UTPCPL claim, and the landowner's testimony could form the basis for a viable UTPCPL claim.

CONCLUSIONS AND RECOMMENDATION

Given Anadarko's and Chesapeake's potential exposure to liability in the *Anadarko Petroleum* case, it appears highly likely that they will file petitions of allowance of appeal with the Supreme Court of Pennsylvania. If they do, there is a good chance that the Supreme Court will grant those petitions to clarify the scope and potential application of the UTPCPL to oil and gas leasing activities. Of course, if the Supreme Court does, observers will have to wait a while before seeing finality on those issues. If it does not allow an appeal, or the case is otherwise resolved, the Commonwealth Court's opinion in *Anadarko Petroleum* will be controlling and operators will need to be prepared to defend against possible future UTPCPL claims.

Regardless, operators should consider providing mandatory, documented training for their employees and leasing contractors to make it clear that misrepresentations and misleading statements are not acceptable. They should also consider providing materials to their employees and leasing contractors that can serve as best-practice guides for those who have attended the training and to new employees. If UTPCPL claims are ever raised against the operator and/or its contractors, the training and materials will be extremely helpful in defending them.

[1]

Knight v. Springfield Hyundai, 81 A.3d 940, 949 (Pa. Super. 2013).

[2]

Commonwealth v. Shapiro v. Golden Gate National Senior Care, LLC, 194 A.3d 1010, 1023 (Pa. 2018).

[3]

73 P.S. § 201-3.

[4]

73 P.S. § 201-2(4).

[5]

73 P.S. § 201-2(4)(xxi). Although the Supreme Court of Pennsylvania has not yet directly addressed the issue, the Commonwealth Court and the Superior Court have both held that a plaintiff need not plead and prove common law fraud to state a claim under the UTPCPL's catch-all provision. *See Commonwealth v. Percudani*, 825 A.2d 743, 747 (Pa. Cmwlth. 2003); *Krishnan v. Cutler Group, Inc.*, 171 A.3d 856, 893 (Pa. Super. 2017). According to the Superior Court, "misleading conduct" that creates a likelihood of confusion or misunderstanding is sufficient to establish a claim under the catch-all provision. *Bennett v. A.T. Masterpiece Homes at Broadsprings, LLC*, 40 A.3d 145, 154-55 (Pa. Super. 2012).

[6]

73 P.S. § 201-3.

[7]

73 P.S. § 201-2(3).

[8]

73 P.S. § 201-4.

[9]

73 P.S. § 201-4.1. If the defendant violates the terms of an injunction, upon petition of the Attorney General or a District Attorney, the court must order the defendant to "forfeit and pay to the Commonwealth a civil penalty of not more than" \$5,000 per violation. 73 P.S. § 201-8. The court may also, in its discretion and in response to a petition filed by the Attorney General or a District Attorney, "order the dissolution, suspension or forfeiture of the franchise or right to do business" of the defendant, and appoint a receiver of the company's assets. 73 P.S. § 201-9.

[10]

73 P.S. § 201-8 (b).

[11]

73 P.S. § 201-9.2.

[12]

See Morse v. Fisher Asset Management, LLC, ___ A.3d ___, 2019 WL 1219367, at *4 (Pa. Super. Mar. 15, 2019); 42 Pa. C.S.A. § 5527(b).

[13]

See 42 Pa. C.S.A. § 5524(7).

[14]

See 42 Pa. C.S.A. § 5525(a)(8).

[15]

73 P.S. § 201-9.2.

[16]

Id.

[17]

See, e.g., Hagerman v. Anadarko E & P Co., LP, Civil No. 4:CV-12-0919, 2012 WL 6138479, at *4 (M.D. Pa. Nov. 15, 2012) ("we find that Plaintiffs have not satisfied the threshold element required to bring a private action under the UTPCPL since they failed to allege facts that the oil and gas lease was "primarily for personal, family or household purposes"), *report and recommendation adopted*, Civil No. 4:12-CV-919, 2012 WL 6138482 (M.D. Pa. Dec. 11, 2012).

[18]

See Commonwealth of Pennsylvania v. Chesapeake Energy Corp., No. 2015IR0069 (Bradford Cty. Dec. 15, 2017) [hereinafter, the "Trial Court Opinion"], at 2. A copy of the Trial Court Opinion is available [here](#).

[19]

Anadarko Petroleum, 2019 WL 1211892, at *1.

[20]

Trial Court Opinion, at 4-6.

[21]

Id. at 6-7.

[22]

See id. at 16-33; *see also Anadarko Petroleum*, 2019 WL 1211892, at *2 (discussing the Trial Court Opinion).

[23]

See Trial Court Opinion, at 47-50; *see also Anadarko Petroleum*, 2019 WL 1211892, at *2 (discussing the Trial Court Opinion).

[24]

Trial Court Opinion, at 73-75. The appeal was properly taken to the Commonwealth Court, as the proceedings were brought by the Pennsylvania Attorney General. *See* 42 Pa. C.S.A. § 762(a)(1).

[25]

Anadarko Petroleum, 2019 WL 1211892, at *2.

[26]

The Commonwealth Court's majority opinion in *Anadarko Petroleum* was authored by Judge Ceisler, and received the full support of four of the seven judges who participated on the *en banc* panel. Two of the remaining judges concurred in the result only, suggesting that although they agreed with the result reached by the majority, they did not agree with all of the

reasoning expressed in the opinion. Judge Covey issued a concurring and dissenting opinion in which she concluded that the Attorney General had not stated any legally viable claims against the Appellants under the UTPCPL.

[27]

73 P.S. § 201-2(3).

[28]

Anadarko Petroleum, 2019 WL 1211892, at *3.

[29]

Id. at **4-5.

[30]

Id. at **9-11.

[31]

Commonwealth v. Monumental Properties, Inc., 329 A.2d 812 (Pa. 1974).

[32]

Id. at 820 ("We hold that the leasing of residences falls within the ambit of the [UTPCPL].").

[33]

Id. at 820, 822 (emphasis added).

[34]

Anadarko Petroleum, 2019 WL 1211892, at *9.

[35]

Id. at *4.

[36]

Id. at **4-5.

[37]

Id.

[38]

Id. at *4.

[39]

Anadarko Petroleum, 2019 WL 1211892, at *4.

[40]

Id. at **5-6. The Commonwealth Court did not address whether Count I of the Second Amended Complaint, which alleges that Chesapeake violated certain lease obligations to lessors after they entered into leases, as the claim was beyond the scope of the issues being considered on appeal.

[41]

See id. at *10.

[42]

See id. at *11 (emphasis in original).

[43]

Id. at *6; *see also* 73 P.S. § 201-2(4).

[44]

Anadarko Petroleum, 2019 WL 1211892, at *7 (quoting the Second Amended Complaint).

[45]

Id. (quoting the Second Amended Complaint)

[46]

Id. (emphasis in original).

[47]

Id.

[48]

Id. at *8.

[49]

Anadarko Petroleum, 2019 WL 1211892, at *7.

[50]

Id. (quoting 73 P.S. § 201-2(4)(xxi)).

[51]

Id. at *12.

[52]

Id. at *12 (emphasis in original).

[53]

Trial Court Opinion, at 4-6 (summarizing Counts II and VI of the Second Amended Complaint).

[54]

Anadarko Petroleum, 2019 WL 1211892, at *6 (holding that the trial court properly overruled Anadarko's and Chesapeake's "demurrers that their behavior in securing these leases was not actionable under the UTPCPL").

[55]

For further discussion on antitrust matters relating to oil and gas leasing activities, *see* Matthew C. Blickensderfer, Kenneth J. Witzel, Michael D. Brewster, Jeffrey P. Kramer, *What Do You Mean We Can't Do That? Antitrust Law Implications for Upstream Joint Development Arrangements*, 39 Energy & Min. L. Inst. Chapter 8.

[56]

See, e.g., Yocca v. Pittsburgh Steelers Sports, Inc., 854 A.2d 425, 436-37 (Pa. 2004) ("Once a writing is determined to be the parties' entire contract, the parol evidence rule applies and evidence of any previous oral or written negotiations or agreements involving the same subject matter as the contract is almost always inadmissible to explain or vary the terms of the contract."); *Willison v. Consolidation Coal Co.*, 637 A.2d 979, 982 (Pa. 1994) ("It is well established that the intent of the parties to a written contract is to be regarded as being embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement."). While fraud in the execution creates an exception to the parol evidence rule, fraud in the inducement - *e.g.*, evidence that a landman made a false representation that induced the landowner to enter into a lease - does not. *See Yocca*, 854 A.2d at 437 n.26.