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I. INTRODUCTION

This Article addresses developments in Virginia oil and gas law for the period from July 31, 2014 to July 31, 2019. This period is longer than normally addressed by this journal to capture important developments in the law between this update and the last Virginia update published in 2015. At the state level, in *Swords Creek Land Partnership v. Belcher*, the Supreme Court of Virginia concluded coalbed methane ("CBM") is a separate and distinct mineral estate from coal. It held that the meaning of "coal" within an 1887 severance deed was unambiguous and did not intend to convey ownership rights to the CBM.[1] This decision reaffirmed and expanded the Court's previous holding in *Harrison-Wyatt*.[2] In *Dye v. CNX Gas Co.,* the

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Swords Creek Land P'ship v. Belcher, 762 S.E.2d 570, 572–73 (Va. 2014).

2. *Id.* at 572; *see* Harrison-Wyatt, LLC v. Ratliff, 593 S.E.2d 234, 238 (Va. 2004) (holding that CBM within the GOB is a separate estate not passing by a coal-only severance deed).

Court held that a deed conveying "all coal and minerals" was also unambiguous and with the addition of the "and minerals" language constituted a transfer of CBM.[3]

During this period, the Court also ruled on a number of issues relating to the now-pending Atlantic Coast Pipeline ("ACP"). In *Chaffins v. Atlantic Coast Pipeline, LLC*, the Court was asked to determine whether ACP's "notices of intent" to enter landowners' properties to conduct preliminary surveys complied with state requirements, specifically whether the notices "set forth the date of the intended entry" as mandated by statute.[4] The Court held that such notices must set forth a sufficiently definite period for anticipated entry, and that ACP's stated intent to arrive "on or after" a specified date to perform such studies was inadequate.[5] In *Palmer v. Atlantic Coast Pipeline, LLC*, the Court faced two questions: (1) whether *foreign* corporations may exercise the same "entry-for-survey" power described above in *Chaffins*; and (2) whether the statutory provision allowing such authority became unconstitutional in light of post-*Kelo* amendments to the Virginia Constitution.[6] As to the former, the Court held that foreign corporations possess the same entry rights as domestic corporations.[7] As to the latter, the Court held that the post-*Kelo* amendments did not create a constitutional right to exclude ACP from access to landowners' properties.[8] Finally, in *Barr v. Atlantic Coast Pipeline, LLC*, the Court addressed a trial court's statutory interpretation of the entry-for-survey provision, holding that the statute should be read in such a way as to grant natural gas companies at least some discretion in determining the most advantageous pipeline routes.[9] Additionally, the Court reaffirmed the constitutionality of the survey provision, holding that such surveys do not violate the state constitution's takings clause.[10] The Court held that the use of a defined date "range" (as opposed to a singular date) in a notice-of-intent letter did not violate the statute's "date of . . . intended entry" requirement.[11]

3. Dye v. CNX Gas Co., 784 S.E.2d 703, 706 (Va. 2016).

4. Chaffins v. Atl. Coast Pipeline, LLC, 801 S.E.2d 189, 190 (Va. 2017) (quoting VA. CODE § 56–49.01(C)).

5. *Id.* at 193.

6. Palmer v. Atl. Coast Pipeline, LLC, 801 S.E.2d 414, 415, 418 (Va. 2017); *see* VA. CONST. art. I, § 11.

7. *Id.* at 417.

8. *Id.* at 419.

9. Barr v. Atl. Coast Pipeline, LLC, 815 S.E.2d 783, 789 (Va. 2018).

10. *Id.* at 790.

11. *Id.* at 791–92 (*compare with* Chaffins v. Atl. Coast Pipeline, LLC, 801 S.E.2d 189, 193 (Va. 2017) (holding that "on or after" language was impermissible

Finally, a more recent case was heard in the Fourth Circuit regarding the ability of the Forest Service to issue a Special Use Permit and Record of Decision allowing the Atlantic Coast Pipeline to pass through National Forest land and across the Appalachian Trail. Following the Fourth Circuit's decision, the case was granted certiorari for review by the United States Supreme Court, which is now pending.[12]

At the federal level, courts are continuing to navigate the legal quagmire created by *EQT Production Co., v. Adair*[13] and its progeny. Consisting originally of five cases—three with plaintiffs against EQT Production Company ("EQT") and two with plaintiffs against CNX Gas Company, LLC ("CNX")—these cases centered around the issue of class certifications under Federal Rule of Civil Procedure 23(a).[14] Specifically, plaintiffs sought to assert CBM royalty claims against the respective companies.[15] After the Western District of Virginia certified each of the five classes in 2013, the United States Court of Appeals for the Fourth Circuit remanded the cases for a "more rigorous analysis" to determine whether the requirements for class certification had been satisfied.[16] On remand, the Western District certified three of the classes in part (the *Hale*, *Adair*, and *Adkins* classes) and denied certification for the *Addison* and *Kiser* classes.[17] These cases and their impacts are discussed in further detail in Part IV.

II. MINERAL RIGHTS AFTER *SWORDS CREEK* AND *DYE*

In 1990, the Virginia Gas and Oil Act was amended to permit CBM production to go forward in cases where there was conflict or uncertainty as to the ownership of the CBM produced through the use of forced pooling.[18] Following pooling, royalties for conflicting claimants were placed in escrow. The funds remain in escrow until

due to indefiniteness)).

12. *See* Cowpasture River Pres. Ass'n v. Forest Serv., 911 F.3d 150 (4th Cir. 2018), *cert. granted sub nom.* U.S. Forest Serv. v. Cowpasture River Pres. Assn., No. 18-1584, 2019 WL 4889926 (Oct. 4, 2019), and *cert. granted sub nom.* Atl. Coast Pipeline, LLC v. Cowpasture River Pres. Assn., No. 18-1587, 2019 WL 4889930 (Oct. 4, 2019).

13. *See* EQT Prod. Co. v. Adair, 764 F.3d 347 (4th Cir. 2014).

14. Adair v. EQT Prod. Co., 320 F.R.D. 379, 387 (W.D. Va. 2017).

15. *Id.* at 388.

16. *Id*. (citing *EQT Prod. Co. v. Adair*, 764 F.3d at 352).

17. *Id.* at 387.

18. Swords Creek Land P'ship v. Belcher, 762 S.E.2d 570, 571 (Va. 2014); *see* VA. CODE § 45.1-361.1 (2019).

conflicting claimants reach a voluntary settlement, the claimants' interests have been determined by a court of competent jurisdiction, or a final arbitration award has been granted pursuant to state statute.[19] Many of the original conflicting claims are centered around who owns the CBM following a severance of the Coal; Coal and Minerals; or a more exhaustive list of resources.[20]

In *Swords Creek*, the primary issue centered around an 1887 severance deed in which the original grantors conveyed "all of the coal, in, upon, or underlying a certain tract of land."[21] The parties to this appeal were Dollie Belcher, Doris Dye, and Ruby Lawson, successors-in-interest to the grantors (*i.e.* the surface owners), and Swords Creek Land Partnership, the successor-in-interest to the grantees (*i.e.* the coal owner).[22] In 1991, the Partnership entered into a lease agreement which allowed for the extraction of CBM at a royalty rate of 12.5% of the value of the gas produced.[23] In 1992, CNX Gas, LLC, the lessee, petitioned to have a pooling order entered and began production.[24] Royalty payments due to the CBM owners accrued in escrow for nearly twenty years because of conflicting claims. In 2011, the surface owners filed suit in circuit court, alleging that they were the sole owners of the CBM produced and therefore entitled to all existing and future royalty payments.[25] In 2013, the court entered a declaratory judgment awarding ownership of the CBM and its royalties to the surface owners.[26] In its decision, the circuit court held that the language of the 1887 severance deed was "unambiguous" in that it conveyed only the coal and *not* the associated CBM.[27]

On appeal, the Supreme Court of Virginia determined whether the original conveyance of "coal" also included a conveyance of the CBM. A decade prior to *Swords Creek*, in *Harrison-Wyatt, LLC v. Ratliff*, the Court held that a severance deed containing similar language was intended to convey only solid coal, and that the future value of CBM would not have been contemplated in the late 19th century, thereby excluding the possibility that the severance deed

19. *Swords Creek*, 762 S.E.2d at 571; *see* VA. CODE § 45.1-361.22:1 (2019).
20. *See generally The 2010 Pulitzer Prize Winner for Public Service: Bristol Herald Courier*, PULITZER.ORG, https://www.pulitzer.org/winners/bristol-va-herald-courier [https://perma.cc/7MFL-VTMM] (last visited Oct. 2019).
21. *Swords Creek*, 762 S.E.2d at 570.
22. *Id.* at 571.
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.* at 572.
27. *Id.* at 571–572.

grantor intended to convey it.[28] Further, the Court in *Harrison-Wyatt* stated, "[A]lthough CBM has a weak physical attraction to coal and escapes from coal when coal is mined, it is a gas that exists freely in the coal seam and is a distinct mineral estate."[29] In *Swords Creek*, the Court reaffirmed this decision, holding that the CBM belonged solely to the surface owners.[30] Whereas the CBM in question in *Harrison-Wyatt* was contained in the gob—a mined out area that could be accessed by merely drilling into the void—the gas in *Swords Creek* was accessed from unmined coal through the use of hydraulic fracturing. [31] Notably, the Court in *Swords Creek* did not answer the question of whether a CBM owner has the right to fracture a coal seam to access its gas estate as this issue was not raised at trial or on appeal.[32]

Note that in 2010, Virginia General Assembly passed legislation deeming that a "conveyance, reservation, or exception of coal" does not include CBM. [33] However, this statute does not retroactively affect prior conveyances and therefore did not control the *Swords Creek* decision.

Note also that, in 2015, the Virginia General Assembly passed legislation designed to remove from escrow accrued royalties resulting from conflicting claims of CBM ownership.[34] Operators of force-pooled gas wells were required to apply to the Virginia Gas and Oil Board for release of the escrowed funds to the gas-claimant and send notice of the application to the coal- owning-claimants.[35] Within forty-five days, the coal claimant had to provide evidence of a pending proceeding or an agreement with the gas claimant to split royalties.[36] If the coal claimant provided neither or did not respond within the allotted time, all future royalties and escrowed past royalties were distributed to the gas claimant, usually the surface owner.[37] This

28. *Id.* at 572.
29. *Id.* (quoting Harrison-Wyatt, LLC v. Ratliff, 593 S.E.2d 234, 238 (Va. 2004)).
30. *Id.* at 573.
31. *Id.* at 572.
32. *Id.* at 573.
33. VA. CODE ANN. § 45.1-361.21:1 (2019).
34. VA. CODE ANN. § 45.1-361.22:2 (2019).
35. *Id.*
36. *Id.;* Note that, in order to resolve the conflicting claims and prevent royalties from accumulating in escrow, some surface owners and coal owners, given the uncertainty in the law prior to *Swords Creek*, had entered into "Split Agreements" whereby the coal owner and surface owner voluntarily agreed to split royalties.
37. *Id.*

legislation successfully significantly reduced the amount of funds held in escrow.

The Supreme Court of Virginia again took up the task of interpreting the language of 19th century conveyances in 2016, this time evaluating the meaning of "minerals" within two separate severance deeds. In *Dye*, the Court examined two severance deeds from 1886 and 1887, respectively, both of which conveyed "all of the coal and minerals" underlying tracts in Buchanan and Russell counties.[38] In her complaint, Nella Dye, successor-in-interest to the property rights maintained by the original grantors, alleged that the 1886 and 1887 conveyances were not intended to sever or convey the underlying natural gas.[39]

Buckhorn Coal Company, successor-in-interest to the property rights conveyed to the original severance grantees, and CNX (a lessee of Buckhorn's interest), filed demurrers to Dye's complaint. Both Buckhorn and CNX alleged that under established case precedent, a broad conveyance of "minerals" included natural gas.[40] Specifically, the demurrers cited *Warren v. Clinchfield Coal Corp.*, a 1936 Virginia Supreme Court decision in which the Court defined petroleum, oil, and gas as "minerals" for the purposes of an 1887 severance deed.[41] Dye, in turn, claimed that the term "minerals" is ambiguous, a claim which, if sustained, would allow the introduction of extrinsic evidence to prove the grantor's intent.[42] In *Dye*, the circuit court sustained appellees' demurrers, citing the Court's previous holding in *Warren*.[43] In affirming the circuit court's holding, the Supreme Court of Virginia noted that the *Warren* decision follows the majority rule in most jurisdictions, i.e., a conveyance of "minerals" conveys all minerals, including CBM gas, unless a different intent is shown or other language in the deed "creates sufficient ambiguity to permit the introduction of extrinsic evidence." [44]

III. THE ATLANTIC COAST PIPELINE CASES

38. Dye v. CNX Gas Co., 784 S.E.2d 703, 704 (Va. 2016) (Note that the 1887 deed conveyed "all of the coal and *other* minerals").
39. *Id.*
40. *Id.*
41. *Warren v. Clinchfield Coal Corp.*, 186 S.E.2d 20, 21 (Va. 1936).
42. *Dye*, 784 S.E.2d at 704.
43. *Id.* at 704–705.
44. *Id.* at 706 n.2.

Between 2017 and 2018, the Supreme Court of Virginia heard three cases concerning ACP-related property surveys and environmental studies. In each case, the issues centered around the interpretation and/or constitutionality of Virginia Code Section 56-49.01, which authorizes "certain natural gas companies to enter upon property, *without permission*, for examinations, tests, hand auger borings, appraisals and surveys."[45]

In *Chaffins*, appellant-landowners received letters from ACP seeking permission to enter their properties to conduct preliminary surveys and studies.[46] ACP explained that conducting the surveys and environmental studies was "required as part of the permitting process for the pipeline."[47] When the landowners refused, ACP provided notices indicating its intent to enter the properties "on or after April 27, 2015" pursuant to Virginia Code Section 56-49.01.[48] ACP then filed petitions for declaratory judgment against the landowners, alleging its right to enter landowners' properties.[49] Landowners responded by filing demurrers, arguing in part that the notices failed to set forth "the date of the intended entry," as required by statute.[50] The circuit court overruled the demurrers, finding there was "no flaw in the notification process."[51] When ACP's petition proceeded to a hearing on the merits, the circuit court again rejected appellants' argument, holding that the notices need only provide a "hope[ful]" date of entry that "may have to change" depending on factors such as weather and workloads at other properties.[52] On appeal, the Supreme Court of Virginia emphasized that at each step of the notice process, state statute requires at least fifteen days' advance notice to landowners prior to entering private property.[53] In this context, the Court concluded, the notices' proposed dates of entry must be definite in order to be valid. ACP's use of "on or after" language did not meet this standard. Thus, the decision of the circuit court was reversed.[54]

In *Palmer*, the appellant, Hazel Palmer, owned real property in Virginia along one of the ACP's proposed routes.[55] On March 6, 2015,

45. Chaffins v. Atl. Coast Pipeline, 801 S.E.2d 189, 190 (Va. 2017).
46. *Id.*
47. *Id.*
48. *Id.*
49. *Id.*
50. *Id.* (quoting VA. CODE ANN. § 56-49.01(C) (2019)).
51. *Id.*
52. *Id.*
53. *Id.* at 191; *see* VA. CODE ANN. §§ 56-49.01(A)-(C) (2019).
54. *Id.*
55. Palmer v. Atl. Coast Pipeline, 801 S.E.2d 414, 415 (Va. 2017).

ACP sent Palmer a letter seeking permission to enter her property in order to conduct preliminary surveys.[56] After Palmer refused, ACP provided a notice of intent pursuant to Virginia Code Section 56-49.01.[57] Palmer continued to refuse access, and ACP subsequently filed a petition for declaratory judgment asserting ACP's rights to access and survey the property.[58] Palmer responded by filing a plea at bar, alleging in her complaint that Virginia Code Section 56-49.01 only applied to *domestic* public service companies because the statute is located within Title 56 of the Code of Virginia.[59] Additionally, Palmer filed a demurrer, arguing that the statute was unconstitutional in light of post-*Kelo* amendments to Article I, Section 11 of the Constitution of Virginia.[60] The circuit court rejected both of Palmer's arguments, concluding that the statute's placement within Title 56 did not amount to an "implied definition" of what constitutes a natural gas company.[61] Further, the court held that similar constitutionality arguments alleging takings without just compensation have been "consistently rejected."[62]

On appeal, the Supreme Court of Virginia held that the rights and privileges contained in Virginia Code Section 56-49.01 extend to both domestic *and* foreign corporations.[63] The Court cited Virginia Code Section 56-1, which defined corporations as "all corporations . . . doing business [in the Commonwealth]."[64] The Court then addressed a second argument by Palmer concerning Article IX, Section 5 of the Constitution of Virginia. Specifically, this Section declares that "[n]o foreign corporation shall be authorized to carry on in this Commonwealth the business of, or to exercise any of the powers or functions of, a public service enterprise."[65] While potentially persuasive, the Court was barred from considering this argument, having neither been presented at the circuit court nor raised in

56. *Id.* at 415–16.
57. *Id.* at 416.
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.* (quoting Charlottesville Div. v. Dominion Transmission, Inc., 138 F. Supp. 3d 673, 690 (W.D. Va. 2015)).
63. *Id.* at 417.
64. *Id.* (quoting VA. CODE § 56-1 (2016)); *see* 15 U.S.C. § 717(a)(6) (2012) (defining a "natural gas company" as any gas company "engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale").
65. *Id.* (quoting VA. CONST. art. IX, § 5).

appellant's opening brief on appeal.[66] Finally, the Court considered whether Virginia Code Section 56-49.01 violated post-*Kelo*[67] revisions to Article I, Section 11 of the Constitution of Virginia. In addressing this issue, the Court cited the common law privilege to enter private property for limited purposes.[68] As stated by the American Law Institute, the privilege applies "where an employee of a public utility is . . . authorized to enter upon privately owned land *for the purpose of making surveys* preliminary to instituting a proceeding for taking by eminent domain."[69] Further, the Court noted, the common law privilege to enter property for the limited purpose of surveys has been codified in Virginia law for at least 235 years.[70] Consequently, the Court concluded that Palmer's right to exclude others from her private property was not absolute.[71] Thus, the holding of the circuit court was affirmed.[72]

In *Barr*, the Supreme Court of Virginia again faced interpreting the language of Virginia Code Section 56-49.01, this time considering whether ACP was only entitled to conduct activities that were "necessary" to the selection of the most advantageous pipeline route.[73] Similar to *Chaffins* and *Palmer*, appellant-landowners received letters from ACP requesting access to their properties for the limited purpose of conducting preliminary surveys.[74] After being denied access, ACP sent letters of intent to exercise its authority pursuant to Virginia Code Section 56-49.01.[75] ACP then filed petitions for declaratory judgment against the landowners, seeking affirmation of its rights under the statute.[76] The landowners demurred, alleging *inter alia* that ACP failed to meet statutory requirements and that such entry represented an unconstitutional taking in violation of the Fifth Amendment to the United States Constitution and Article I, Section 11 of the Virginia Constitution.[77] The circuit court rejected appellants' constitutionality arguments, noting that the statute did not provide ACP with an "unlimited right of entry with regard to date, scope, or

66. *Id.*
67. *See generally* Kelo v. City of New London, 545 U.S. 469 (2005).
68. *Palmer*, 801 S.E.2d at 418.
69. *Id.* (quoting Restatement of Torts § 211 cmt. c (1934) (emphasis added).
70. *Id.* at 418–19.
71. *Id.* at 419.
72. *Id.* at 420.
73. Barr v. Atl. Coast Pipeline, 815 S.E.2d 783, 784 (Va. 2018).
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.*

duration."[78] However, the trial court did conclude that ACP's notices of intent were deficient under Virginia Code Section 56-49.01(A), as they did not indicate the specified dates that ACP would enter the properties.[79] After amending its notices, ACP filed a second petition for declaratory judgment against appellant-landowners.[80] Again, the landowners filed demurrers—which were rejected by the trial court—followed by responsive pleadings.[81] At trial, the landowners' primary, and perhaps most persuasive, argument centered around a "disjunctive," as opposed to "conjunctive" interpretation of Virginia Code Section 56-49.01. The language at issue states that corporations may conduct surveys "as are necessary (i) to satisfy any regulatory requirements and (ii) for the selection of the most advantageous location or route."[82] Under a conjunctive approach (as proposed by appellants), ACP would be required to satisfy the requirements of both (i) and (ii) to exercise a lawful right of entry. Under appellants' theory, ACP failed to demonstrate that it had pre-selected the most advantageous route and was thus unable to enter the landowners' private property. However, under a disjunctive approach ACP need only satisfy one of the requirements to exercise a right of entry. This was the interpretation adopted by the trial court.[83]

On appeal, the Supreme Court of Virginia affirmed the trial court's use of the disjunctive approach, stating that to rule otherwise would counter state legislative intent and "render certain portions of the statute meaningless."[84] For example, the Court wrote that certain activities under romanette (ii) are necessarily performed independent of the satisfaction of regulatory requirements under romanette (i).[85] Thus, the Court held, it would be illogical to interpret the statute using a conjunctive approach.[86] Determining that ACP's proposed entry onto landowners' properties was lawful under the trial court's disjunctive interpretation, the Court did not have to reach the question of whether an unlawful taking had occurred.[87] Thus, the ruling of the circuit court was affirmed.[88]

78. *Id.* at 785.
79. *Id.*; *cf. Chaffins v. Atl. Coast Pipeline*, 801 S.E.2d 189 (Va. 2017).
80. *Barr*, 815 S.E.2d at 785.
81. *Id.*
82. VA. CODE § 56-49.01(A) (2019).
83. *Barr*, 815 S.E.2d at 786.
84. *Id.* at 788–89.
85. *Id.* at 789.
86. *Id.* at 790.
87. *Id.* at 792.
88. *Id.*

In *Cowpasture River Preservation Association v. Forest Service*, the Fourth Circuit considered whether the United States Forest Service had "complied with the National Forest Management Act, the National Environmental Policy Act, and the Mineral Leasing Act in issuing a Special Use Permit and Record of Decision authorizing Atlantic Coast Pipeline, LLC, the project developer, to construct the Atlantic Coast Pipeline through parts of the George Washington and Monongahela National Forests and granting a right of way across the Appalachian National Scenic Trail."[89]

The Court considered whether the Forest Service's granting of the Special Use Permit and Record of Decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.[90] After an extensive review of the permitting process and finding failures in the process at several points, the court found:

A thorough review of the record leads to the necessary conclusion that the Forest Service abdicated its responsibility to preserve national forest resources. This conclusion is particularly informed by the Forest Service's serious environmental concerns that were suddenly, and mysteriously, assuaged in time to meet a private pipeline company's deadlines.[91]

The Forest Service's decisions regarding the Special Use Permit and Record of Decision were vacated and the issue remanded to the Forest Service for further proceedings. Following appeal, writs of certiorari have been granted for review by the Supreme Court of the United States.[92]

IV. *ADAIR* AND SUBSEQUENT DEVELOPMENTS

The federal *Adair* cases have developed a long and complex procedural history with the first complaint going back as far as June 2010.[93] The cases consist of five then-proposed classes (*Hale*, *Adair*, *Adkins*, *Addison*, and *Kiser*), each alleging its class members were unlawfully deprived of CBM royalty payments owed to them by either EQT or CNX. On September 30, 2013, each of the five classes were

89. Cowpasture River Pres. Ass'n v. Forest Serv., 911 F.3d 150, 154–55 (4th Cir. 2018).

90. *Id*. at 160.

91. *Id*. at 183.

92. Forest Service v. Cowpasture River Pres. Ass'n, No. 18-1584, 2019 WL 4889926 (U.S. Oct. 4, 2019); Atlantic Coast Pipeline, LLC v. Cowpasture River Pres. Ass'n, No. 18-1587, 2019 WL 4889930 (U.S. Oct. 4, 2019).

93. EQT Prod. Co. v. Adair, 764 F.3d 347, 355 (4th Cir. 2014).

certified in the United States District Court for the Western District of Virginia pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).[94]

On appeal, the United States Court of Appeals for the Fourth Circuit vacated and remanded the five class certifications for further analysis by the district court.[95] In its decision, the Fourth Circuit provided a five-factor test in determining whether to grant a class certification. These factors are:

(1) whether the certification ruling is likely dispositive of the litigation; (2) whether the district court's certification decision contains a substantial weakness; (3) whether the appeal will permit the resolution of an unsettled legal question of general importance; (4) the nature and status of the litigation before the district court (such as the presence of outstanding dispositive motions and the status of discovery); and (5) the likelihood that future events will make appellate review more or less appropriate.[96]

In its conclusion, the Fourth Circuit determined that the district court's analysis "lacked the requisite rigor to ensure the requirements of Rule 23 were satisfied by any of the certified classes."[97] However, the court did not preclude the possibility of the district court regranting certification to one or more classes.[98] The court simply held that the original certifications by the district court had been premature.

On remand, the district court granted certifications in part to the *Hale*, *Adair*, and *Adkins* classes and denied certification to the *Addison* and *Kiser* classes.[99] After a nearly fifty-page analysis, the district court set out the allowed issues under each certification. The *Hale* class was certified as to the following issues: (1) allegedly excessive deductions; (2) royalties based on allegedly improperly low prices; (3) deduction of severance taxes; and (4) request for an accounting.[100] The *Adair* class was certified as to all of the issues in

94. *See* Adkins v. EQT Prod. Co., 2013 U.S. Dist. LEXIS 140623 (W.D. Va., Sept. 30, 2013); Addison v. CNX Gas Co., 2013 U.S. Dist. LEXIS 140622 (W.D. Va., Sept. 30, 2013); Hale v. CNX Gas Co., 2013 U.S. Dist. LEXIS 140617 (W.D. Va., Sept. 30, 2013); Adair v. EQT Prod. Co., 2013 U.S. Dist. LEXIS 140611 (W.D. Va., Sept. 30, 2013); Legard v. EQT Prod. Co., 2013 U.S. Dist. LEXIS 140618 (W.D. Va., Sept. 30, 2013).

95. *EQT Prod. Co.*, 764 F.3d at 371.

96. *Id.* at 357 (quoting Lienhart v. Dryvit Sys., Inc., 255 F.3d 138, 145 (4th Cir. 2001)).

97. *Id.* at 371.

98. *Id.*

99. Adair v. EQT Prod. Co., 320 F.R.D. 379, 429–430 (W.D. Va. 2017).

100. *Id.* at 429.

the *Hale* class except the claim of allegedly excessive deductions.[101] Finally, the *Adkins* class was certified as to (1) allegedly improper deduction of marketability costs and (2) royalties based on improperly low prices.[102] Following resolution of the class certification issue, *Hale* and *Adair* were each dismissed in 2019 upon reaching a negotiated class settlement. *Addison*, *Adkins,* and *Kiser* were dismissed upon stipulation of the parties in 2019.

101. *Id.* at 430.
102. *Id.*