



THE COURT OF COMMON PLEAS OF BRADFORD COUNTY  
**OFFICE OF PROTHONOTARY**

Court House 301 Main Street  
Towanda, Pennsylvania 18848-1890  
December 15, 2017

COMMONWEALTH OF PENNSYLVANIA  
VS.  
CHESAPEAKE ENERGY CORPORATION; et al

NO. 2015IR0069

TO: Joseph Stephen Betsko, Esq.  
PA Ofc of Attorney General  
Strawberry Sq 14th Fl  
Harrisburg, PA 17120

AS PRESCRIBED BY LAW, YOU ARE HEREBY NOTIFIED THAT A(N) OPINION AND ORDER OF COURT FILED  
DATED December 14, 2017 HAS BEEN FILED IN THIS OFFICE ON December 15, 2017.

VERY TRULY YOURS,  
Dawn Close  
PROTHONOTARY & CLERK OF COURTS

BY: BV

Plaintiff's address:

COMMONWEALTH OF PENNSYLVANIA; OFFICE OF ATTORNEY GENERAL; 14TH FLOOR STRAWBERRY SQUARE;  
HARRISBURG, PA 17120;

Defendant's address:

CHESAPEAKE ENERGY CORPORATION; 6100 NORTH WESTERN AVE; OKLAHOMA CITY, OK 73118;

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COPY

IN THE COURT OF COMMON PLEAS  
BRADFORD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,  
Plaintiff

:  
: NO. 2015IR0069

VS.

:  
CHESAPEAKE ENERGY CORPORATION;  
CHESAPEAKE APPALACHIA, L.L.C.;  
CHESAPEAKE OPERATING, L.L.C.;  
CHESAPEAKE ENERGY MARKETING,  
L.L.C.;  
ANADARKO PETROLEUM CORPORATION;  
and ANADARKO E&P ONSHORE, L.L.C.  
Defendants

.....  
OPINION AND ORDERS ON PRELIMINARY OBJECTIONS OF  
CHESAPEAKE DEFENDANTS AND ANADARKO DEFENDANTS TO  
PLAINTIFF COMMONWEALTH'S SECOND AMENDED COMPLAINT

Plaintiff in the case is the Commonwealth of Pennsylvania represented by the Office of the Pennsylvania Attorney General; Plaintiff will be referred to herein as Plaintiff Commonwealth.

The Chesapeake and Anadarko entities named as Defendants are for-profit corporations engaged in natural gas exploration, extraction, transportation, and sale in the State of Pennsylvania; they will be referred to herein, collectively, as Chesapeake Defendants and Anadarko Defendants.



2015IR0069-0101 12/15/2017 8:40 AM # 1373253  
OPINION AND ORDER OF COURT FILED

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The pleading to which Chesapeake Defendants and Anadarko Defendants have filed Preliminary Objections is, and will be referred to herein as, the Second Amended Complaint.

### **Background of the Case**

The case arises from a Complaint initially filed by Plaintiff Commonwealth on 9 December 2015. The Complaint was later amended and filed as the First Amended Complaint on 8 February 2016. Plaintiff Commonwealth once again amended its Complaint and filed same on 3 May 2016 as the Second Amended Complaint.

Chesapeake Defendants filed Preliminary Objections to the Second Amended Complaint on 2 September 2016.

Preliminary Objections to the second Amended Complaint were also filed by Anadarko Defendants on 2 September 2016, to which filing Plaintiff Commonwealth responded by filing its own Preliminary Objections on 23 September 2016.

Subsequent to the filing of Plaintiff Commonwealth's Preliminary Objections on 23 September 2016, Anadarko Defendants, on 5 October 2016, filed their First Amended Consolidated Preliminary Objections (FACPO) to Plaintiff Commonwealth's Second Amended Complaint. Plaintiff Commonwealth then filed Preliminary Objections to Defendant Anadarko's FACPO on 25 October 2016.

This Court ruled upon Plaintiff Commonwealth's Preliminary Objections to Defendant Anadarko's FACPO on 7 July 2017 concluding that all but four of Defendant Anadarko's FACPO were in the nature of mere argument and limiting Defendant Anadarko to arguing those four objections in connection with Plaintiff Commonwealth's Second Amended Complaint.

Argument on the four Preliminary Objections raised by Anadarko Defendants as identified by this Court on 7 July 2017, together with the Preliminary Objections filed by Defendant Chesapeake on 2 September 2016, was heard by this Court on 20 July 2017.

This Opinion and the attached Order arise from the hearing of 20 July 2017.

### **THE SECOND AMENDED COMPLAINT**

Plaintiff Commonwealth avers in the Second Amended Complaint, which comprises six counts, that Chesapeake Defendants and Anadarko Defendants, in the furtherance of advancing their respective natural gas extraction interests, have violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL)<sup>1</sup>, and have acted in restraint of trade in violation of Pennsylvania antitrust common law.<sup>2</sup>

According to the Commonwealth, these violations have occurred in connection with the solicitation and execution of lease agreements involving private landowners. The leases are sought by Chesapeake Defendants and Anadarko Defendants in order that they may access gas-rich Marcellus Shale formations underlying the properties of the prospective lessors. As a condition of these lease agreements, Chesapeake Defendants and Anadarko Defendants agree, *inter alia*, to pay royalties to the landowners based upon the volume of natural gas subsequently extracted from beneath the respective leaseholds.

In support of its assertions of wrongdoing on the parts of Chesapeake Defendants and Anadarko Defendants, Plaintiff Commonwealth contends that they have induced landowners to enter into lease agreements by means of a “bait and switch” scheme, in

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<sup>1</sup> 73 P.S. §201-1, et seq..

<sup>2</sup> Second Amended Complaint at page 2.

which the landowners are led to believe that their royalty payments will not be reduced by deductions for post-production costs. Plaintiff Commonwealth also urges upon the Court its beliefs that Chesapeake Defendants and Anadarko Defendants have failed to disclose to landowners certain revenues received by Defendants, thereby decreasing the amount of royalties paid to the landowners, and that Chesapeake Defendants and Anadarko Defendants have agreed to allocate to each other certain territories in Pennsylvania counties for the acquisition of leases, thereby decreasing the amounts of bonus payments and royalties made to the landowners.<sup>3</sup>

Specifically, Plaintiff Commonwealth alleges in its Second Amended Complaint that:

**Count I (Violation of the UTPCPL):** Chesapeake Defendants have violated the UTPCPL by improperly and unfairly assessing inflated deductions for post-production costs against royalty checks payable to Pennsylvania landowners, and by engaging in deceptive and misleading practices in connection with Chesapeake Defendant's lease obligations with those landowners.<sup>4</sup>

**Count II (Violation of the UTPCPL):** Chesapeake Defendants have violated the UTPCPL by misrepresenting the applicability of deductions and the meaning of the Market Enhancement Clause set out in the respective leases negotiated with Pennsylvania landowners.<sup>5</sup>

**Count III (Violation of the UTPCPL):** Chesapeake Defendants and Anadarko Defendants, referred to for purposes of Counts III, IV, and V as Joint Venture Defendants, as participants in a joint commercial venture aimed at allocating exclusive

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<sup>3</sup> Second Amended Complaint at pages 3-4.

<sup>4</sup> Second Amended Complaint at Count I, paragraphs 125.-194..

<sup>5</sup> Second Amended Complaint at Count II, paragraphs 195.-219..

areas of operation within geographic areas of mutual interest to one or the other of them, have violated the UTPCPL. According to Plaintiff Commonwealth, this practice has 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. Furthermore, avers Plaintiff Commonwealth, Chesapeake Defendants and Anadarko Defendants, in engaging in the alleged joint marketing venture, have 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.<sup>6</sup>

**Count IV (Violation of the UTPCPL):** Chesapeake Defendants and Anadarko Defendants, as Joint Venture Defendants, have 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 Pennsylvania landowners that acreage signing bonuses and royalties offered by Chesapeake Defendants and Anadarko Defendants are competitive and fair.<sup>7</sup>

**Count V (Violation of Antitrust Common Law):** Chesapeake Defendants and Anadarko Defendants, as Joint Venture Defendants, have 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

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<sup>6</sup> Second Amended Complaint at Count III, paragraphs 220.-234..

<sup>7</sup> Second Amended Complaint at Count IV, paragraphs 235.-247..

interests in oil and gas leases already secured by one or the other of them within a particular allocated territory.<sup>8</sup>

**Count VI (Violation of the UTPCPL):** Anadarko Defendants have violated the UTPCPL by misrepresenting to Pennsylvania landowners the applicability of deductions and the meaning of the Market Enhancement Clause contained in their respective leases, thereby causing the landowners to believe that they were signing leases free of deductions and that they were otherwise insulated from deductions.<sup>9</sup>

**Relief Sought by Plaintiff Commonwealth in the Second Amended Complaint**

Based upon the foregoing Counts set out in the Second Amended Complaint, Plaintiff Commonwealth requests: (1) that the Court find Chesapeake Defendants and Anadarko Defendants to be in violation of the UTPCPL; (2) that Chesapeake Defendants and Anadarko Defendants, and any agents, successors, assigns, and employees acting directly or through any related corporate or business device, be enjoined from engaging in the acts and practices specifically alleged by Plaintiff Commonwealth in the Second Amended Complaint, and any other acts and/or practices violative of the UTPCPL; (3) that Chesapeake Defendants and Anadarko Defendants be ordered to pay to affected Pennsylvania landowners money wrongfully deducted from royalty checks or otherwise acquired through any violation of the UTPCPL; (4) that Chesapeake Defendants and Anadarko Defendants be ordered to pay to victims civil penalties in the amount of \$1,000.00 (victim <60 years of age) or \$3000.00 (victim >60 years of age) for each and every violation of the UTPCPL determined by the Court to

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<sup>8</sup> Second Amended Complaint at Count V, paragraphs 248.-301..

<sup>9</sup> Second Amended Complaint at Count VI, paragraphs 302.-311..

have been committed by Chesapeake Defendants and Anadarko Defendants; (5) that Chesapeake Defendants and Anadarko Defendants be ordered to disgorge and forfeit all profits they have derived as a result of the unfair and deceptive acts identified in the Second Amended Complaint; (6) that Chesapeake Defendants and Anadarko Defendants be ordered to reimburse the Commonwealth of Pennsylvania in the amount of all costs incurred in the investigation and prosecution of the instant case; (7) that any right or franchise to engage in any natural gas-related activity or business in the Commonwealth of Pennsylvania by Chesapeake Defendants and Anadarko Defendants be declared forfeit until such time as all monies have been paid for restitution, costs, and civil penalties; and (8) that the Court order any other relief deemed by the Court to be necessary and appropriate.<sup>10</sup>

## **THE PRELIMINARY OBJECTIONS**

### **Chesapeake Defendants**

Chesapeake Defendants argue that "the claims alleged [in the Second Amended Complaint] by the Attorney General [Plaintiff Commonwealth] exceed the statutory authority conferred on that office, are defective as a matter of law, are violative of applicable pleading rules and are otherwise insufficient to state a claim upon which relief may be granted."<sup>11</sup> Also, Chesapeake Defendants aver that the UTPCPL has no application or relevance to the claims advanced by the Commonwealth in the Second Amended Complaint and that Plaintiff Commonwealth's antitrust claims must fail for lack of either a statutory or common law cause of action, in Pennsylvania, based upon the

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<sup>10</sup> Second Amended Complaint at pages 35-36).

<sup>11</sup> Preliminary Objections of [Chesapeake Defendants] page 1, paragraph 2.



conduct of Chesapeake Defendants as alleged by Plaintiff Commonwealth in the Second Amended Complaint.

In support of their argument, Chesapeake Defendants have raised eleven Preliminary Objections all of which address one, or more, of the Counts advanced in the Second Amended Complaint.

### **Anadarko Defendants**

The Preliminary Objections filed by Anadarko Defendants set out arguments relating to the applicability of the UTPCPL to the claims set out in the Second Amended Complaint; the existence of a common law cause of action for the antitrust violations alleged in the Second Amended Complaint by Plaintiff Commonwealth in connection with the alleged Joint Venture Agreement involving Anadarko Defendants and Chesapeake Defendants; the absence of a stated factual basis to establish that Anadarko Defendants are vicariously liable for the conduct of Chesapeake Defendants; and the validity of Plaintiff Commonwealth's request for fees and costs.<sup>12</sup>

### **STANDARDS OF REVIEW FOR PRELIMINARY OBJECTIONS (DEMURRER)**

Chesapeake Defendants and Anadarko Defendants, in arguing that the UTPCPL applies to neither of them, demur to five of the counts in the Second Amended Complaint.

When reviewing preliminary objections, the court considers as true all well-pleaded facts that are material and relevant." *Pennsylvania Turnpike Commission v. Hafer*, 142 Pa. Commw. 506, 597 A.2d 756 (Pa. Commw. 1991).

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<sup>12</sup> Consolidated Preliminary Objections of [Anadarko Defendants] to the Second Amended Complaint of Plaintiff Commonwealth of Pennsylvania, pages 27-30 (summary of preliminary objections).

"Preliminary objections shall be sustained only when they are clear and free from doubt." *Zinc Corp. of America v. Dept. of Environmental Resources*, 145 Pa. Commw, 363, 603 A.2d 288 (Pa. Commw. 1992), *aff'd* 533 Pa. 319, 623 A.2d 321 (1993).

"The question presented in a demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible". *MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 674 A.2d 1050 (Pa. 1996).

"If doubt exists concerning whether [a] demurrer should be sustained, then the doubt should be resolved in favor of overruling it." *Bilt-Rite Contractors, Inc. v. Architectural Studio*, 581 Pa. 454, 866 A.2d 270 (Pa. 2005).

Likewise, in *Commonwealth v. Golden Gate National Senior Care LLC.*, 158 A.3d 203 (Pa. Commw. 2017), a case involving preliminary objections to a complaint containing a UTPCPL claim, the court observed as follows:

"This court's review of preliminary objections is limited to the pleadings." *Id.*(citing *Pa. State Lodge, Fraternal Order of Police v. Department of Conservation & Natural Resources.*, 909 A.2d 413 (Pa. Commw. 2006), *aff'd* 592 Pa. 304, 924 A.2d 1203 (2007).

"[The Court] is required to accept as true the well-pled averments set forth in the ... complaint, and all inferences reasonably deducible therefrom. Moreover, the [C]ourt need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion." *Id.*(citations omitted).

"In order to sustain preliminary objections, it must appear with certainty that the law will not permit recovery, and where any doubt exists as to whether the preliminary

objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections." *Id.*(citations omitted).

With these standards in mind, we will consider the issues arising from the Demurrers entered by Chesapeake Defendants and Anadarko Defendants.

We note at the outset that five of the six counts in the Second Amended Complaint rely upon the application of the UTPCPL to both Chesapeake Defendants and Anadarko Defendants. In fact, the only non-UTPCPL count in the Second Amended Complaint is Count V which alleges a violation of antitrust common law by Chesapeake Defendants and Anadarko Defendants.

#### **THE PENNSYLVANIA UNFAIR TRADE PRACTICE AND CONSUMER PROTECTION LAW**

The Pennsylvania Unfair Trade Practice and Consumer Protection Law (UTPCPL), sometimes referred to as the Pennsylvania Unfair or Deceptive Acts or Practices (UDAP) statute, was enacted in 1968 as "An Act prohibiting unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce"<sup>13</sup>, reenacted with amendments in 1976<sup>14</sup>, and amended in 1996<sup>15</sup> and 2006<sup>16</sup>. The version of the UTPCPL currently in effect is codified at 73 P.S. §§ 201-1. through 201-9.3.

Trade and commerce are defined in the UTPCPL as "the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real,

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<sup>13</sup> 1968, December 17, P.L. 1224, No. 387, § 2.

<sup>14</sup> 1976, November 24, P.L. 1166, No. 260, § 1.

<sup>15</sup> 1996, December 4, P.L. 906, No. 146, § 1.

<sup>16</sup> 2006, November 29, P.L. 1624, No. 185, § 1.

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 (§201-2(3)).

The UTPCPL lists twenty specific practices which constitute, for purposes of the statute, actionable “unfair methods of competition” and “unfair or deceptive acts or practices” in the furtherance of trade or commerce in Pennsylvania (§201-2(4)(i-xx)) and one “catchall” provision prohibiting “other fraudulent or deceptive conduct [in the furtherance of trade or commerce] which creates a likelihood of confusion or misunderstanding.” (§201-2(4)(xxi)).

The UTPCPL provides two avenues for the initiation of an action under the statute: 1) Section 201-9.2. permits a “any person who purchases or leases goods or services primarily for personal, family or household purposes” to seek redress in a case involving conduct alleged to be in violation of the statute, and 2) Section 201.4 permits the Attorney General, in the public interest, to bring an action if he has reason to believe the existence or contemplation of conduct violative of the statute.

Additionally, the UTPCPL, *inter alia*, confers upon the Attorney General the authority to adopt rules and regulations necessary for the enforcement of the UTPCPL (§201-3.1.), to accept assurances of voluntary compliance with the UTPCPL from alleged violators of the statute (§201-5.), to petition for forfeiture of a recalcitrant business entity's franchise or right to do business in Pennsylvania. (§201-9.), and, by implication, to seek recovery of costs and payment of restitution to a landowner from a business entity upon which a permanent injunction to restrain violation of the statute has been issued (§201-4.1.).

### **Plaintiff Commonwealth's Contention that the UTPCPL is Applicable to this Case**

Plaintiff Commonwealth argues that it has appropriately applied the UTPCPL to Chesapeake Defendants and Anadarko Defendants in this case. This argument is based on Plaintiff Commonwealth's belief that the authority to bring a UTPCPL action in the public interest conferred upon the Attorney General by Section 201-4 of the UTPCPL (Restraining Prohibited Acts) against any person who "is using or is about to use any method, act or practice which is declared by Section 3 [i.e., Section 201-3(Unlawful acts or practices)] to be an unfair or deceptive act or practice, is very broad in its scope.

Plaintiff Commonwealth begins its argument by acknowledging that, as a threshold matter, a person against whom action is taken pursuant to the applicable provisions of Section 201-4 for acts declared to be unlawful in Section 201-3<sup>17</sup> must be involved in "trade or commerce" as defined in the UTPCPL at Section 201-2(3).

Section 201-2(3) defines "Trade" and "Commerce" as "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."

In the view of Plaintiff Commonwealth, the purchase of oil and gas leases from landowners falls into the category of "any trade or commerce directly or indirectly

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<sup>17</sup> Section 201-3, *inter alia*, declares certain acts described in UTPCPL Section 201-2(4) to be unlawful when committed in the conduct of any trade or commerce.

affecting the people of this Commonwealth" identified in the second clause of Section 201-2(3), and that the term "any trade or commerce" in the second clause must be read independently of the more specific definition of trade and commerce set out in the Section's first clause.<sup>18</sup> In other words, Plaintiff Commonwealth believes that "any trade or commerce" refers to commercial activity other than that specifically defined; that the term encompasses "trade" and "commerce" in the general sense as opposed to being limited to traditional commercial transactions involving a buyer and a seller<sup>19</sup>; and that the alleged unlawful business activities underlying this case fall into the general category, viz. those not involving a buyer and seller.

Specifically, Plaintiff Commonwealth opines that, when read in accordance with Plaintiff Commonwealth's interpretation, the plain wording of Section 201-2(3) leads to the conclusion that in acquiring oil and gas leases from Pennsylvania property owners, Chesapeake Defendants and Anadarko Defendants have engaged in "trade and commerce" and are, therefore, subject to the provisions of the UTPCPL.

Furthermore, Plaintiff Commonwealth relies upon its interpretation of the definition of "trade and commerce" in asserting that its authority to bring an action under Section 201-4 is broader than that afforded private consumers of household goods and services under Section 201-9.2 of the UTPCPL in that an action brought under Section 201-4 need not be based upon a commercial interaction involving a buyer and a seller.

Plaintiff Commonwealth contends that whereas a private action pursuant to Section 201-9.2 limits claimants to "any person who "purchases or leases goods or services

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<sup>18</sup> The first clause of Section 201-2(3) defines "trade and commerce" as "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 ... ."

<sup>19</sup> See, e.g., Black's Law Dictionary 244, 1338 (5<sup>th</sup> ed. 1979).

primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person [seller] of a method, act or practice declared unlawful by [section 201-3] of [the UTPCPL]" Section 201-4 provides that the Attorney General May bring an action against any person engaged in conduct defined by the UTPCPL as unlawful.

Plaintiff Commonwealth argues that the much broader scope, as Plaintiff Commonwealth perceives it, of Section 201-4 reflects the intent of the Legislature to enable the Attorney General to serve the public interest by enforcing the provisions of the UTPCPL against any commercial entity who is "using or about to use" an unfair or deceptive act or practice to the financial detriment of the people of the Commonwealth.

**Chesapeake Defendants' and Anadarko Defendants' Contention that the UTPCPL is not Applicable to this Case**

Chesapeake Defendants and Anadarko Defendants contend that the UTPCPL is not applicable to the case and that, therefore, all counts in Plaintiff Commonwealth's Second Amended Complaint which invoke the UTPCPL should be dismissed.

In the view of Chesapeake Defendants and Anadarko Defendants, the UTPCPL applies only to the conduct of sellers of goods or services, and the UTPCPL's purpose is to protect consumers of goods and services from unscrupulous sellers. Furthermore, argue Chesapeake Defendants and Anadarko Defendants, Plaintiff Commonwealth's argument, if accepted, will effectively turn the UTPCPL on its head by penalizing them, as buyers of prospective oil and gas extraction rights, on the basis of grievances expressed by the sellers, viz., landowners, of those extraction rights.

In support of their joint contention, Chesapeake Defendants and Anadarko Defendants point to *Commonwealth by Creamer v. Monumental Properties, Inc.*, the apparent seminal UTPCPL case in which the Supreme Court of Pennsylvania found that the Pennsylvania Consumer Protection Law (UTPCPL) applied to unfair or deceptive practices in connection with the leasing of housing.

The court in *Monumental Properties* opined that the mischief sought to be remedied by the Legislature in enacting the Consumer Protection Law (UTPCPL) was the use of unfair or deceptive acts and practices by sellers and that part of the Law's object was to ban fraudulent conduct that would mislead or confuse a consumer. See *Commonwealth by Creamer v. Monumental Properties, Inc.*, 459 Pa. 450, 467, 329 A.2d 812, 820 (1974).

Chesapeake Defendants and Anadarko Defendants also find support for their mutual argument in the observation of the Supreme Court of Pennsylvania in *Meyer v. Community College of Beaver County*, a case also decided by the Supreme Court of Pennsylvania, that in enacting the UTPCPL the Legislature intended "to account for the fundamental inequity between buyer and seller." *Meyer v. Community College of Beaver County*, 625 Pa. 563, 576, 93 A.3d 806, 814 (2014).

According to Chesapeake Defendants and Anadarko Defendants, these cases stand for their proposition that the UTPCPL operates to protect only consumers, i.e., buyers, of goods and services, and that they, as purchasers of oil and gas leases, do not fall within the regulatory ambit of the UTPCPL.

Furthermore, aver Chesapeake Defendants and Anadarko Defendants, notwithstanding the provision of Section 201-4 of the UTPCPL that the Attorney General



may bring a consumer protection action in the public interest, in initiating such an action the Attorney General must allege acts perpetrated in the conduct of "trade and commerce" as those terms are defined at Section 201-2(3) of the UTPCPL.

In this vein, Chesapeake Defendants and Anadarko Defendants theorize that Section 201-2(3) should be narrowly construed and that, contrary to the assertion of Plaintiff Commonwealth, the Legislature intended the words "trade and commerce" as they appear in the second clause of Section 201-2(3), i.e., "any trade or commerce directly or indirectly affecting the people of this Commonwealth", to take the meaning assigned them in the Section's first clause, i.e., "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." Thus, urge Chesapeake Defendants and Anadarko Defendants, their activities as purchasers rather than consumers are not within the UTPCPL definition of "trade and commerce" and, therefore, are not actionable here.

#### **ARE THE PROVISIONS OF THE UTPCPL APPLICABLE TO CHESAPEAKE DEFENDANTS AND ANADARKO DEFENDANTS?**

The first and most important question that We are asked to determine is whether the Attorney General (Plaintiff Commonwealth) can invoke the provisions of the UTPCPL in bringing an action against Chesapeake Defendants and Anadarko Defendants for allegedly engaging in unfair acts or practices in connection with the purchase of oil and gas leases from private landowners. It is Our belief that this issue is one of first impression in the State of Pennsylvania.

The issue of whether the provisions of the UTPCPL are applicable to this case presents a difficult question of statutory interpretation requiring Us to examine the UTPCPL with a view to determining if Chesapeake Defendants and Anadarko Defendants are entities, or persons, subject to the UTPCPL and whether the business of oil and gas leasing, as practiced by Chesapeake Defendants and Anadarko Defendants is included in the UTPCPL definition of trade and commerce.

Plaintiff Commonwealth in support of its assertion that Chesapeake Defendants and Anadarko Defendants have resorted to the employment of unfair methods of competition and unfair or deceptive acts in the furtherance of trade and commerce, urges upon Us its theory that the UTPCPL definition of trade and commerce encompasses virtually any commercial transaction involving the people of the Commonwealth, including the purchase of oil and gas leases from landowners by Chesapeake Defendants and Anadarko Defendants. Additionally, in Plaintiff Commonwealth's estimation, the instant action is in the public interest because it addresses alleged unfair and deceptive conduct perpetrated by Chesapeake Defendants and Anadarko Defendants against Pennsylvania landowners.

Chesapeake Defendants and Anadarko Defendants, while not disputing their status as "any person" under the UTPCPL<sup>20</sup>, deny that that their practice of purchasing oil and gas leases from Pennsylvania landowners is trade and commerce as contemplated by the UTPCPL. Moreover, aver Chesapeake Defendants and Anadarko Defendants, in

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<sup>20</sup> The UTPCPL, at Section 201-2(2), defines a person as "natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entities." Here, the pleadings and other evidence included in the case record identify Chesapeake Defendants and Anadarko Defendants as corporations and limited liability corporations.

obtaining the oil and gas leases in question, they have not engaged in any unfair, deceptive, or fraudulent acts.

Plaintiff Commonwealth, by and through the Pennsylvania Attorney General, has filed the instant action under the provisions of Section 201-4(Restraining prohibited acts) of the UTPCPL, which section authorizes the Attorney General to enforce the provisions of the UTPCPL, in the public interest, against "any person" believed to have engaged in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade of commerce.

Since the legal status of Chesapeake Defendants and Anadarko Defendants as corporations or limited liability corporations is not in dispute, and in light of the apparent applicability of the UTPCPL definition of "Person" set out at Section 201-2(2) to Chesapeake Defendants and Anadarko Defendants, We find that Chesapeake Defendants and Anadarko Defendants are appropriate target entities here, viz., any person.

We also find that, if the alleged unfair and deceptive acts on the parts Of Chesapeake Defendants and Anadarko Defendants as claimed by Plaintiff Commonwealth in the Second Amended Complaint are true, as they must be considered at this stage of the instant litigation, the acts would impinge upon the economic well-being, or otherwise affect, the people of the Commonwealth of Pennsylvania and that, therefore, the instant action appears to have been brought in the public interest.

Having determined that the requirements of Section 201-4 that Chesapeake Defendants and Anadarko Defendants be persons subject to the provisions of the

UTCPL, and that the instant action appears to have been brought in the public interest, it remains, then, for Us to resolve the matter of whether the purchase of oil and gas leases from landowners by Chesapeake Defendants and Anadarko Defendants is trade and commerce as defined by the UTCPL.

We answer this question in the affirmative.

Trade and commerce is defined in the UTCPL, at Section 201-2(3), as “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.”

Chesapeake Defendants and Anadarko Defendants assert that that this definition of trade and commerce comprises two definitive, and inclusive, clauses with the first clause being “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, and the second clause establishing that the UTCPL definition “includes any trade or commerce directly or indirectly affecting the people of this Commonwealth.” Thus, in Defendant’s view, the definition set out in the second clause is limited in the scope of the conduct it includes to those activities specifically described in the first clause; this position, as noted above, implicates the doctrine of *ejusdem generis*<sup>21</sup>. Furthermore, Defendants argue, the purchase of oil and gas leases from

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<sup>21</sup> Where general rules follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons and things of the same general kind or class as those specifically mentioned. *Black’s Law Dictionary*, 464 (5<sup>th</sup> ed. 1979).

landowners is not included in any of the activities specifically recognized in either of the two clauses comprising UTPCPL Section 201-2(3) and that, therefore, those activities do not rise to trade or commerce per the UTPCPL definition and, consequently, neither Chesapeake Defendants nor Anadarko Defendants is subject to the provisions of the UTPCPL.

In short, Chesapeake Defendants and Anadarko Defendants assert that a commercial transaction without a buyer-seller relationship in which the seller has acted to the detriment of the buyer, i.e., consumer, is not trade or commerce under the UTPCPL.

Therefore, contend Chesapeake Defendants and Anadarko Defendants, the UTPCPL does not apply to them because in purchasing leases from landowners they are buyers, i.e., consumers, and the landowners are sellers and not consumers; thus, argue Chesapeake Defendants and Anadarko Defendants, even if their conduct in purchasing oil and gas leases is somehow deemed to be trade and commerce as contemplated by the UTPCPL, the landowners are not members of the class of persons intended to be protected by the UTPCPL and, consequently, the UTPCPL has no application in the instant case.

Plaintiff Commonwealth, on the other hand, while not claiming that the purchase of oil and gas leases from landowners by Chesapeake Defendants and Anadarko Defendants is specifically defined as trade and commerce in UTPCPL Section 201-2(3), impresses upon Us its belief that the clauses must be read independently of each other and that the second clause of the definition, i.e., "any trade or commerce directly or indirectly affecting the people of this Commonwealth" must be construed literally and

broadly, and that it controls here; this belief, according to Plaintiff Commonwealth accords with the intent of the Legislature in enacting the UTPCPL to prevent all forms of unfair and deceptive commercial activity.

We agree with Plaintiff Commonwealth and find that the two descriptive clauses in UTPCPL Section 201-2(3) are independent, one from the other, and that "any trade or commerce" as those words appear in Section 201-2(3) must be interpreted literally and broadly.

Here, however, We believe that both definitions apply. Specifically, We find that the purchase of oil and gas leases from landowners by Chesapeake Defendants and Anadarko Defendants is a form of trade and commerce, i.e., "distribution of services", specifically identified in the first clause of UTPCPL Section 201-2(3), and that such activity is also "any trade or commerce" as described in the second clause of that section.

Prior to discussing the rationale underlying this finding, We note Our perception that the plain wording of the short title of the UTPCPL, viz., Unfair Trade Practices and Consumer Protection Law, shows that the Legislature, in enacting the statute, had in mind, and intended the statute to serve, a dual purpose, i.e., the protection of consumers/purchasers of goods and services and the prevention of unfair trade practices, generally. This perception is based upon the use by the Legislature of the conjunction "and," which We read as an inclusive word, in the short title for the purpose of joining the descriptors Unfair Trade Practices and Consumer Protection Law, as well as the admonition of the Pennsylvania Commonwealth Court that in ascertaining legislative intent, "courts are often compelled to construe "and" as meaning "or" ... ." *In*

*re Appeal of Martin*, 33 Pa. Commw. 306, 381 A.2d 1321, 1322 (1978). In Our view, the purpose of the UTPCPL, as We perceive it, as well as the facts comprising the instant matter, combine to compel such a reading.

Applying either of these grammatical constructions to the UTPCPL leads to the conclusion that, as We have already noted, the Legislature, in enacting the UTPCPL, intended that it serve two purposes, i.e., to prevent unfair trade practices, as a separate offense category, and to provide protection from unfair trade practices for consumers/purchasers.

The legislative intent that the UTPCPL is to serve a dual purpose can also be inferred from the complementary provisions for the filing of UTPCPL actions identified at Sections 201-4 and 201-9.2 of the UTPCPL. In fact, the UTPCPL provides for the bringing of actions by the Attorney General in the public interest for any act declared unlawful by the UTPCPL (Section 201-4(Restraining prohibited acts), and the filing of private actions by individual consumers, i.e., purchasers, of goods and services for household purposes (Section 201-9.2(Private actions)).

Thus, We are satisfied that the UTPCPL can be invoked in cases, such as that instantly before Us, that do not involve a traditional consumer as an aggrieved party.

In reaching Our conclusion, We have relied heavily upon the instruction and guidance contained in *Commonwealth by Creamer v. Monumental Properties, Inc.*, *supra*.

The Supreme Court of Pennsylvania in *Creamer* found that the UTPCPL applied to the leasing of residential apartments despite the fact that that the word "lease" does not

appear in the UTPCPL definition of trade and commerce. *Creamer v. Monumental Properties, Inc.*, 450 Pa. at 450,467, 479-80, 329 A.2d 812, 820.

Defendant landlords in *Creamer* argued, as do Chesapeake and Anadarko Defendants here, that the UTPCPL definition of trade and commerce is subject to interpretation in accordance with the doctrine of *ejusdem generis*<sup>22</sup>, which doctrine, in the words of the *Creamer* court, “simply means general expressions used in a statute are restricted to things and persons similar to those specifically enumerated in the language preceding the general expressions”. *Id.* at 459 Pa. at 479-80, 329 A.2d 812, 827.

The landlord’s argument did not, however, carry the day with the *Creamer* court which noted that the *ejusdem generis* doctrine was “but one of construction and does not warrant a court in confining the operation of a statute within narrower limits than intended by the legislature. *Id.* at 480, 827(citing *Commonwealth v. Klucher*, 326 Pa. 587, 590, 193 A.28, 29 (1937).

The *Creamer* court went on to conclude that “to hold that the general UTPCPL general anti-fraud, i.e., “catchall”, provision of section 2(4)(XIII)<sup>23</sup> was bound by the specifically-enumerated examples of unfair conduct (§2(4)(I)-(XII))<sup>24</sup> would plainly thwart the legislative intent. Such a holding would negative the Legislature’s understanding that ‘Fraud ifs infinite’ and would allow the broad prohibition of section 3<sup>25</sup> to be “eluded

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<sup>22</sup> See FN 20.

<sup>23</sup> 73 Pa. C.S. §201-2(4)(XIII)(UTPCPL-Unfair methods of competition/unfair or deceptive acts or practices). Subsection (XIII) was the general provision in effect at the time of the *Creamer* decision.

<sup>24</sup> 73 Pa. C.S. §201-2(4)(I-XIII)(UTPCPL-Unfair methods of competition/unfair or deceptive acts or practices). Again, the subsections referred to were those in effect at the time of *Creamer*.

<sup>25</sup> 73 Pa. C.S. §201-3(UTPCPL-Unfair acts or practices).



by new schemes which the 'fertility of men's invention would contrive'. This we will not do." *Id.* at 480, 827(quoting from *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 193 n.41 (1963).

The *Creamer* court observed, as well, that "[t]he Legislature sought by the [UTPCPL] to benefit the public at large by eradicating, among other things, "unfair or deceptive' business practices," "[the UTPCPL] attempts to place on more equal terms seller and consumer," "[the provisions of the UTPCPL] are all predicated on a legislative recognition of the unequal bargaining power of opposing forces in the marketplace," [the UTPCPL's] underlying foundation is fraud prevention," and [the UTPCPL] as a statute for the prevention of fraud ... must be liberally construed." *Id.* at 459, 816.

The Pennsylvania Commonwealth Court has regularly interpreted the UTPCPL as being based upon the Federal Trade Commission Act (FTCA)<sup>26</sup> and the Lanham Trademark Act<sup>27</sup>, also a federal law. See *Id.* at 461-62, 817-18(citing *Commonwealth v. Monumental Properties, Inc.*, 10 Pa. Cmwlt, 596, 608, 314 A.2d 333, 338 (1974); *Commonwealth v. Hush-Tone Industries, Inc.*, 4 Pa. Cmwlt. 1, 20-21 (1971).

In fact, as noted by the *Creamer* court, "in all relevant aspects, the language of section 3 of the [UTPCPL]<sup>28</sup> and section 5 of the [Federal Trade Commission] Act<sup>29</sup> is identical. *Id.* at 462, 818.

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<sup>26</sup> 15 U.S.C.A. §§ 41-58 (1973).

<sup>27</sup> 15 U.S.C.A. §§ 1051-1127 (1963).

<sup>28</sup> 73 Pa. C.S. §201-3(Unlawful acts or practices).

<sup>29</sup> 15 U.S.C.A. §45(a)(1)(1973)(unfair methods of competition in commerce/unfair or deceptive acts in commerce are declared unlawful).

Moreover, “[t]he United States Supreme Court has consistently followed the congressional mandate that section 5 [of the FTCA] be applied broadly to whatever business conduct injured either competitor or consumer.” *Creamer* at 463, 818.

In terms of the instant issue, the *Creamer* court's determinations that “[i]t is plain, too, that section 5 of the FTC Act ... has been applied without regard to the form in which a transaction was couched” and “[a] sale, in the traditional sense, is unnecessary to trigger the applicability of the FTC Act,” are significant. *Id.* at 473, 823(underscore not in original).

So, too, is the observation of the *Creamer* court that although in enacting the [UTCPL] the Legislature found it convenient to adopt a particular definition of sale in order to achieve its goal of preventing unfair or deceptive trade practices, that definition is not to be “woodenly” applied to the UTCPL in all cases as such application “would not only defeat the law’s remedial objects, but would be contrary to the spirit of the [UTCPL], *See. Id.* at 474, 824 (concluding that “[the UTCPL] was meant to apply to any trade or commerce directly or indirectly affecting the people of this Commonwealth.”

Again, in the case presently before us, for the reasons previously stated, We believe that the conduct of Chesapeake Defendants and Anadarko Defendants falls into both the specific, i.e., seller or distributor of any services, and the broad definition of trade and commerce, i.e., “any trade or commerce directly or indirectly affecting the people of this Commonwealth”, set out at Section 201-2(3) of the UTCPL. We note that the *Creamer* court quoted Section 201-2(3)’s general definition of “any trade or commerce directly or indirectly affecting the people of this Commonwealth” in clarifying the nature of the mischief sought to be prevented by the UTCPL. *See Creamer* at 474, 824.

Furthermore, We believe that if the Legislature had intended to limit the definition of trade and commerce to pure sales activity they would have so indicated by inserting in the definition words or terms specifically excluding commercial interactions not involving traditional sales.

Our position on the issue is supported, We think, by the rejection by the *Creamer* court of the *ejusdem generis* argument of the defendant landlords, and the *Creamer* court's agreement with the FTCA, the federal law upon which the UTPCPL is modeled, that "[a] sale, in the traditional sense, is unnecessary to trigger the applicability of the FTC Act". *Id.* at 473, 823(underscore not in original). We also believe that the *Creamer* court's rejection of the invocation of the doctrine of *ejusdem generis* reflects the guidance provided in the Pennsylvania Rules of Statutory Construction, that, *inter alia*, "[w]hen the words of a statute are not explicit, the intention of the General Assembly may be ascertained by considering ... the occasion and necessity for the statute, the mischief to be remedied ... and the consequences of a particular interpretation." See 1 Pa. C.S.A. §1921(Rules of statutory construction) at (c)(1), (c)(3), and (c)(6).

We find additional support for Our belief that the purchase of oil and gas leases by Chesapeake Defendants and Anadarko Defendants rises to trade and commerce under the UTPCPL in the opinions expressed by the court in *In re Fricker*, a bankruptcy case in which the court in interpreting the UTPCPL<sup>30</sup> found that the law applied to loans and business loans as well as consumer transactions. See *In re Fricker*, 115 B.R. 809 (Bankr. E.D. Pa. 1990).

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<sup>30</sup> The *Fricker* court refers to the UTPCPL by its alternative designation of the Unfair or Deceptive Acts or Practices law or UDAP.

In determining that the UTPCPL applied to business transactions other than those involving traditional consumers, the *Fricker* court cited *Commonwealth v. Tolleson*, 14 Pa. Commw. 72, 122-24, 321 A.2d 664, 693-93 (1974)(finding that referral sales schemes, i.e., pyramid schemes, fall within the purview of the UTPCPL) and *Commonwealth v. Koscot Interplanetary, Inc.*, 54 ERIC CO. L.J. 79, 93 (Erie Co. C.P. 1971)(finding that the title of the UTPCPL and UTPCPL Section 201-3's declaration that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful, signifies that the UTPCPL is not solely a Consumer Law but applies to business transactions as well).

In reaching Our conclusion in connection with the issue of whether the business conduct of Chesapeake Defendants and Anadarko Defendants rises to trade and commerce as contemplated under the UTPCPL, We have also been mindful of the results reached in similar cases in foreign jurisdictions. See, e.g., *Mbank Fort Worth N.A. v. Trans Meridian, Inc.*, 820 F.2d 716, 718-19 (5<sup>th</sup> Cir 1987)(Texas Deceptive Trade Practices Act covers a transaction involving loans secured by, and obtained for purpose of purchasing an interest in oil and gas lease); *Balley Employment System, Inc. v. Hahn*, 545 F.Supp. 62, 66 (D. Conn. 1982)(the sale of a franchise induced by unfair trade practices is covered by Connecticut's Unfair Trade Practices Act); *LeSage v. Norwest Bank Calhoun-Isles, N.A.*, 409 N.W. 2d 536, 539 (Minn. Ct. App. 1987)(investment contracts resulting from misrepresentations of fact are covered by the Minnesota Consumer Fraud Act); and *Morgan v. Air Brook Limousine*, 211 N.J. Super. 84, 85, 510 A.2d 1197, 1198 (1982)(a franchise is within the intendment of the New Jersey Consumer Fraud Act).

The body of existing law having to do with the regulation of unfair and/or deceptive business practices, as We have found it to be, and as discussed above, leads Us to conclude that the purchase of oil and gas leases from Pennsylvania landowners by Chesapeake Defendants and Anadarko Defendants fits within the UTPCPL definition of trade and commerce. We therefore find that they have properly been named as Defendants in the instant action brought by the Attorney General.

We must now determine whether the Attorney General's injunctive enforcement power under UTPCPL Section 201-4 extends to the facts in this case.

Section 201-4 provides, in pertinent part, as follows:

"Whenever the Attorney General ... has reason to believe that any person is using or is about to use any method, act or practice declared by Section 3 [73 P.S. § 201-3(Unlawful acts or practices)] of [the UTPCPL] to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice."

73 P.S. §201-4(Restraining prohibited acts).

The nature of the authority conferred upon the Attorney General by Section 201-4 is not disputed by the Parties, and the validity of the Section has been recognized by Pennsylvania courts.

Cases in which the Attorney General's authority to bring a UTPCPL action based upon a particular fact pattern include *Meyer v. Community College of Beaver County*, supra, *Commonwealth v. TAP Pharmaceutical Products*, 36 A.3d 1197 (Pa. Commw.. 2011); and *Commonwealth v. Percudani*, 851 A.2d 35 (Pa. Commw. 2004).

The *Meyer* court, in addressing a fact pattern involving a private action brought under UTPCPL Section 201-9.2, acknowledged the Attorney General's power to seek injunctive relief under Section 201-4. See *Meyer*, 625 Pa. at 572, 577, 93 A.3d at 811-12.

In *TAP Pharmaceutical Products*, the court found no problem with the Attorney General bringing an action under Section 201-4 seeking injunctive relief against defendant drug company for an alleged violation of the UTPCPL, i.e., price fixing. The court, in analyzing the facts before it did not question the Attorney General's statutory authority to act in the matter and noted that such an action will lie in matters in which: 1) a person is believed to be using or is about to use a practice declared unlawful under the UTPCPL, and 2) proceedings in the matter aimed at injunctive relief are believed by the Attorney General to be in the public interest. See *Commonwealth v. TAP Pharmaceutical Products*, 36 A.3d at 1236<sup>31</sup>.

In an earlier proceeding, *Commonwealth v. Percudani*, the Pennsylvania Commonwealth Court affirmed the Attorney General's authority to bring an action under Section 201-4 in cases involving defendants accused of using or contemplating the use of practices declared unlawful by the UTPCPL. See *Commonwealth v. Percudani*, 844 A.2d 35 (Pa. Commw. 2004), amended by *Commonwealth v. Percudani*, 851 A.2d 987 (Pa. Commw. 2004).

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<sup>31</sup> *TAP Pharmaceutical Products* was vacated and remanded by the Pennsylvania Supreme Court at 626 Pa. 25, 94 A.3d 364 (2014) because of the Commonwealth's failure to account for rebate money paid by defendant drug company during the relevant time frame. The reasons for the remand did not pertain to the observations attributed to the court herein.

The *Percudani* case concerned a Section 201-4 action filed by the Attorney General against various defendants alleging their involvement in business practices claimed by the Attorney General to be violative of the UTPCPL.

The Complaint filed by the Attorney General alleged that two of the defendants in the case, one Percudani and one Powell, the chief executive officers of certain corporate entities, had entered into land purchase and construction agreements with more than 100 private individuals in Pennsylvania. The Attorney General's Complaint also alleged that one Stanieri, a real estate appraiser, had participated with defendants Percudani and Powell in the furtherance of the allegedly illegal activity.

The *gravamen* of the Attorney General's Complaint was that the defendants, and in particular defendant Stanieri, had collectively engaged in unfair and deceptive business involving inaccurate and falsified appraisals which, according to the Attorney General, misled property owners into believing that the value of their property exceeded the market value for similar property in the Pocono region of Pennsylvania, the area in which the alleged unfair and deceptive appraisals allegedly occurred.

Significantly, in terms of the instant matter, defendant Stanieri, in his preliminary objections to the Attorney General's Complaint, claimed that the provisions of the UTPCPL, including those set out at Section 201-4, did not apply to him because, as he claimed, the UTPCPL does not cover transactions involving homes or real estate. See *Percudani*, 844 A.2d at 48.

Following analysis of the factual averments in defendant Stanieri's preliminary objections, the Pennsylvania Commonwealth court concluded that had the action against Stanieri been brought under UTPCPL Section 201-9.2(Private actions), it would

have agreed with his assertions. However, continued the court, "it is the Commonwealth that is pursuing this matter under Section 4 [UTPCPL Section 201-4] of the law which allows it to proceed when it has reason to believe that the [UTPCPL] is being or was violated." *Id.*, at 48(underscore not in original).

In light of the foregoing, We reiterate Our previous finding that the conduct of Chesapeake Defendants and Anadarko Defendants in purchasing oil and gas leases from Pennsylvania landowners rises to trade and commerce as contemplated by the UTPCPL, and We advance Our additional finding that the Attorney General's power to bring a UTPCPL action under Section 201-4 extends to the instant matter.

The question of whether the regulatory provisions of the UTPCPL may be applied to Chesapeake Defendants and Anadarko Defendants through the prosecutorial agency of the Attorney General has posed a close and extremely difficult issue. In confronting, and ultimately resolving the issue, We have been mindful that in reviewing preliminary objections We are limited to the pleadings and that We are required to accept as true the well-pleaded averments set forth in Plaintiff Commonwealth's Second Amended Complaint.

The Commonwealth, who is, as We see it, invested with broad responsibility for policing the marketplace and protecting the people of Pennsylvania from unfair and deceptive business practices, has made serious allegations against Chesapeake Defendants and Anadarko Defendants of business conduct that is violative of the UTPCPL.

We acknowledge that Our task here is to rule upon the preliminary objections filed by Chesapeake Defendants and Anadarko Defendants and not to assess the credibility of



the factual averments identified in Plaintiff Commonwealth's Second Amended Complaint.

Again, We state Our belief that whereas the UTPCPL clearly applies to interactions between buyers and sellers of goods and services primarily intended for household use, it also extends to business transactions, generally.<sup>32</sup>

When the UTPCPL was passed in 1968, and even at the times when the law was amended, the concept of large companies buying mineral rights to sub-surface pockets of oil and gas was not a significant occurrence in Pennsylvania as it is today. In all probability, the framers of the UTPCPL did not contemplate such transactions.

However, Pennsylvania courts in their wisdom recognized the need to allow the UTPCPL to, as it were, grow with the times, noting that the UTPCPL must be liberally construed to effectuate its perceived purpose, viz., the prevention of unfair and deceptive business practices and commercial fraud. See *Creamer*, 459 Pa. at 458, 329 A.2d at 816.

We have taken the admonition of the *Creamer* court that "the Legislature intended the [UTPCPL] to be given a pragmatic reading – a reading consistent with modern day economic reality" to heart in analyzing the issues discussed above. *Id.* at 470, 822.

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<sup>32</sup> In the interest of candor, We will note that there is language in the Pennsylvania Supreme Court's decision in the *Meyer* case, *supra*, stating that the General Assembly in enacting the UTPCPL was not concerned with the elimination of unfair trade practices in the "public sphere." See *Meyer v. Community College of Beaver County*, 625 Pa. at 576-77, 93 A.3d 814-15; this language was by the Pennsylvania Commonwealth Court in *Commonwealth v. Golden Gate National Senior Care LLC*, *supra*, 158 A.2d at 227. We note, however, that the *Meyer* case involved a private action brought under UTPCPL Section 201-9.2 and that the scope of the Attorney General's injunctive power under Section 201-4 was not addressed by the *Meyer* court.

In reaching Our conclusions as to the disposition of the preliminary objections filed by Chesapeake Defendants and Anadarko Defendants, We have recognized that a demurrer may be granted by a court only if, upon the facts averred, the court can say with certainty that no recovery is permitted.

"[I]f there is *any* doubt as to whether [a] demurrer should be sustained it should be resolved against the objecting party." *King v. U.S. Steel*, 432 Pa. 140, 143-44, 247 A.2d 563, 565 (1958)(italics in original).

In light of the preceding discussion and Our findings as expressed above, We find that the provisions of the UTPCPL do apply to Chesapeake Defendants and Anadarko Defendants in the instant case and We, therefore, deny Chesapeake Defendants' Preliminary Objection I, and Anadarko Defendants' Preliminary Objection 1, both of which outrightly challenge the applicability of the UTPCPL to the instant matter.

**IS THERE AN ANTITRUST COMMON LAW REMEDY AVAILABLE IN PENNSYLVANIA AND, IF SO, IS THE LAW APPLICABLE TO CHESAPEAKE DEFENDANTS AND ANADARKO DEFENDANTS IN THIS CASE?**

In Count V of the Second Amended Complaint, Plaintiff Commonwealth advances the claim that Chesapeake Defendants and Anadarko Defendants, as parties to a joint venture involving the purchase of oil and gas leases have participated in an anticompetitive scheme aimed at restraining trade in relevant oil and gas markets.<sup>33</sup>

Plaintiff Commonwealth asserts that the practice of allocation of areas of mutual interest rises to a *per se* unreasonable restraint of trade violation under Pennsylvania Common law.<sup>34</sup>

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<sup>33</sup> Second Amended Complaint at pages 78, 79, paragraphs 248-58.

<sup>34</sup> *Id.*

Specifically, Plaintiff Commonwealth avers that the alleged unlawful conduct of Chesapeake Defendants and Anadarko Defendants has injured, is injuring, and will continue to injure competition and landowners in the relevant oil and gas markets<sup>35</sup>, and seeks declaratory and injunctive relief against Chesapeake Defendants and Anadarko Defendants as well as payment by those Defendants of restitution and monetary damages to landowners affected by Defendants' alleged unlawful conduct.<sup>36</sup>

In advancing its common law antitrust claim of restraint of trade on the part of Chesapeake Defendants and Anadarko Defendants, Plaintiff Commonwealth, *inter alia*, points to the Commonwealth Attorneys Act (CAA) which provides, in relevant part, that the "Attorney General shall represent the Commonwealth and its citizens in any action brought for the violation of the antitrust laws of the United States and the Commonwealth."<sup>37</sup>

Plaintiff finds support for its belief that the CAA empowers the Attorney General to bring a common law antitrust action in the respective observations of the Pennsylvania Supreme Court and the Pennsylvania Superior Court, as cited by Plaintiff Commonwealth in its brief in opposition to the preliminary objections raised by

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<sup>35</sup> See *Id.* at page 79.

<sup>36</sup> See *Id.* at page 81, subparagraph A.(seeking declaratory judgment of conduct violative of Pennsylvania antitrust common law); subparagraph B.(seeking order enjoining Defendants from engaging in acts violative of Pennsylvania antitrust common law); subparagraph C.(seeking payment of damages to landowners); subparagraph D.(seeking restoration of moneys to landowners acquired through conduct violative of Pennsylvania antitrust common law); subparagraph E.(seeking forfeiture of profits derived from acts and practices violative of Pennsylvania antitrust common law; subparagraph F.(seeking payment to landowners of damages); subparagraph G.(seeking payment to the Commonwealth cost of investigation and prosecution); subparagraph H.(seeking forfeiture of the rights of the Defendants to engage in oil and gas-related business in Pennsylvania); and subparagraph I.(seeking any other relief deemed appropriate by the Court).

<sup>37</sup> Commonwealth's Brief in Opposition to [Chesapeake Defendants] Preliminary Objections to the Commonwealth's Second Amended Complaint at page 42 (citing Commonwealth Attorneys Act, 71 P.S. §732-204(c)).

Chesapeake Defendants, that the Supreme Court expects the General Assembly to clearly identify statutory departures from existing law<sup>38</sup>, i.e., common law then in effect, and that "Pennsylvania courts must assume that the General Assembly was aware of the common law doctrine when it enacted the CAA"<sup>39</sup>. In other words, Plaintiff Commonwealth urges that a common law antitrust action may be brought by the Attorney General in the instant matter because the CAA does not specifically exclude such a course of action.

Chesapeake Defendants rejoin, in their preliminary objections to Count V of the Second Amended Complaint, with the assertion that "there is no authority in the [CAA], or in Pennsylvania law, generally, for the Attorney General's pursuit of relief, i.e., damages, on behalf of Pennsylvania residents under a common law antitrust theory"<sup>40</sup>, and that, specifically, there is no common law cause of action for damages to remedy alleged antitrust violations in Pennsylvania"<sup>41</sup>. Therefore, argue Chesapeake Defendants, Plaintiff Commonwealth's instant common law antitrust claim must be dismissed.<sup>42</sup>

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<sup>38</sup> See *Id.* at page 42 (citing *In re Rodriguez*, 587 Pa. 408, 415, 900 A.2d 341, 345 (2003)).

<sup>39</sup> *Id.* (citing *Excavation Techs., Inc. v. Columbia Gas Co. of Pennsylvania*, 2007 Pa. Super. 327, ¶ 20, 936 A.2d 111, 119 (2007), *aff'd*, 604 Pa. 50, 985 A.2d 840 (2009)).

<sup>40</sup> Preliminary Objections of [Chesapeake Defendants] to Plaintiff's Second Amended Complaint at page 7, paragraph 20.

<sup>41</sup> Preliminary Objections of [Chesapeake Defendants] to Plaintiff's Second Amended Complaint at page 6, paragraph 18.

<sup>42</sup> See *Id.* at page 7, paragraph 19.

Anadarko Defendants do not dispute the existence of an antitrust cause of action under Pennsylvania common law arguing only that “although some Pennsylvania courts have recognized a common law antitrust doctrine, the doctrine is not well defined”.<sup>43</sup>

The Parties do not dispute that there is no statutory authority in Pennsylvania for an antitrust action.<sup>44</sup>

We begin Our inquiry into the common law antitrust issue presented here by focusing on Plaintiff Commonwealth's claim that the CAA empowers the Pennsylvania Attorney General to initiate an antitrust action at common law.

As Plaintiff Commonwealth has correctly noted, the CAA authorizes the Attorney General to, *inter alia*, “represent the Commonwealth and its citizens in any action brought for violation of the antitrust laws of the United States and the Commonwealth”. (71 P.S. §732-204(c)).

Plaintiff Commonwealth urges upon Us, then, its belief that this provision of the CAA operates to bestow upon the Attorney General the authority to enforce any, and all, existing Pennsylvania antitrust laws including those that, in the Commonwealth's view, are available at common law.

The Supreme Court of Pennsylvania determinations that the powers of the Pennsylvania Attorney General are strictly a matter of “legislative designation and enumeration”, that the General Assembly in enacting the CAA expressly stated that the

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<sup>43</sup> Consolidated Preliminary Objections of [Anadarko Defendants] to the second Amended Complaint of Plaintiff Commonwealth of Pennsylvania at page 23, paragraph 66.

<sup>44</sup> See N.T., Hearing on Preliminary Objections of 20 July 2017 at p. 59, lines 7-8, 10-11, 18-19; Preliminary Objections of [Chesapeake Defendants] to Plaintiff's Second Amended Complaint at page 8, paragraph 22; and Consolidated Preliminary Objections of [Anadarko Defendants] to the Second Amended Complaint of Plaintiff Commonwealth of Pennsylvania at page 23, paragraph 65.

powers of the Attorney General are those which are set forth in the CAA itself, and that moreover, the CAA is the sole source of the Attorney General's powers, are instructive. See *Commonwealth v. Carsia*, 513 Pa. 509, 513, 517 A.2d 956, 958 (1986)(citing and quoting 71 P.S. §732-201(a)).

We have found no Pennsylvania court decision running contrary to the findings of the *Carsia* court, and neither Chesapeake Defendants nor Anadarko Defendants have adduced any persuasive argument or evidence by way of countering Plaintiff Commonwealth's claim of authority to bring a common law antitrust action, if one exists.

Therefore, applying the *Carsia* court's findings to the instant issue, We conclude that, in light of the plain non-exclusive wording of the CAA and the absence of legislative "designation and enumeration" to the contrary in any of the sections comprising that statute, or any other statute of which We are aware, the power of the Attorney General to enforce the antitrust laws of the United States and the Commonwealth, under Section 732-204(c) of the CAA, extends to actions brought either under federal law, Pennsylvania statutory law, or any extant and applicable Pennsylvania common law.

In light of the apparent agreement of the Parties that Pennsylvania has no antitrust statute<sup>45</sup>, it becomes clear that the options available to Plaintiff Commonwealth for the enforcement of alleged antitrust violations per the CAA are federal law or Pennsylvania antitrust common law, if, again, such law exists.

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<sup>45</sup> See FNs 39, 41, and 42.

Thus, as Plaintiff Commonwealth has made clear that the instant action is brought under Pennsylvania law only<sup>46</sup>, We are faced with having to determine whether a common law antitrust remedy exists in Pennsylvania and, if so, whether it provides for the award of damages as sought by Plaintiff Commonwealth in the instant matter.

Neither Chesapeake Defendants nor Anadarko Defendants have outrightly denied the existence in Pennsylvania of a common law cause of action. However, as noted above, Chesapeake Defendants have declared that "there is no common law cause of action for damages to remedy purported antitrust violations in Pennsylvania"<sup>47</sup>, and Anadarko Defendants assert only that "although some Pennsylvania courts have recognized a common law antitrust doctrine, the doctrine is not well defined"<sup>48</sup>.

In its effort to convince Us that a common law antitrust cause of action exists in Pennsylvania, Plaintiff Commonwealth points to two cases in which it was involved as Plaintiff and that, according to Plaintiff Commonwealth, involved antitrust claims.

In the first case, *Commonwealth v. Susquehanna Area Regional Airport Authority*, 2006-CV-3664-EQ (Dauphin Cnty. Com. Pl.), Plaintiff Commonwealth claims to have "successfully restored competition in the airport parking market in the Harrisburg area."<sup>49</sup> However, the cases advanced by plaintiff Commonwealth by way of showing that the case is somehow relevant instantly, have disclosed to Us only that a common

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<sup>46</sup> See Second Amended Complaint at page 6, paragraph 14 (stating that the Commonwealth is bringing its action exclusively under the statutory and common law of the Commonwealth of Pennsylvania and that no Federal claims are being asserted).

<sup>47</sup> Preliminary Objections of [Chesapeake Defendants] to Plaintiff's second Amended Complaint at page 6, paragraph 18.

<sup>48</sup> Consolidated Preliminary Objections of [Anadarko Defendants] to the Second Amended Complaint of Plaintiff Commonwealth of Pennsylvania at page 23, paragraph 66.

<sup>49</sup> Commonwealth's Brief in Opposition to [Chesapeake Defendants'] Preliminary Objections to the Commonwealth's Second Amended Complaint at page 43.

law antitrust cause of action in the case was recognized by the court; that preliminary objections filed in the case were denied; and that it was determined that the court did not err in declining to certify the interlocutory order denying the preliminary objections. Plaintiff Commonwealth has not shown that the *Susquehanna Area Regional Airport* case is relevant here.

Similarly, as it appears that Plaintiff Commonwealth's second case, *Commonwealth v. Twin Ponds, Inc.*, 2010-CV-11677-EQ, an antitrust action brought by the Pennsylvania Attorney under Pennsylvania common law and pursuant to the Commonwealth Attorney's Act (CAA)<sup>50</sup> in which the Commonwealth sought both the equitable remedy of injunctive relief and monetary damages, was resolved by means of a stipulated judgment prior to trial; therefore, as the merits of the case were never reached, the case has little relevance to this matter.

Nonetheless, We have found a number of Pennsylvania cases in which the court has entertained the question of the existence of a common law antitrust cause of action. These include: *Shuman v. Bernie's Drug Concessions*, 409 Pa. 539, 187 A.2d 660 (1963)(finding that price-fixing agreements have been declared invalid at common law); *Collins v. Main Line Board of Realtors*, 452 Pa. 342, 304 A.2d 493 (1973)(finding that Pennsylvania courts have long recognized that agreements in restraint of trade are invalid under common law); *Schwartz v. Laundry & Linen Supply Driver's Union*, 339 Pa. 353, 14 A.2d 438 (1940)(finding that actions in restraint of trade are violative of common law); *Stutzle v. Rhone-Poulenc S.A.*, 2003 Phila. Ct. Com. Pl. LEXIS 74, 2003 WL 22250424(recognizing the existence of antitrust common law in Pennsylvania); XF

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<sup>50</sup> See *Id.* at Exhibit N.



*Enterprises v. BASF Corp.*, 2000 Pa. Dist. & Cnty. Dec. LEXIS 159, 47 Pa. D. & C. 4<sup>th</sup> 147(recognizing the existence of antitrust common law in Pennsylvania); *Lakeview Ambulance & Medical Services v. Gold Cross Ambulance & Medical Services*, 1995 Pa. Dist. & Cnty. Dec. LEXIS 279(recognizing the existence of antitrust common law in Pennsylvania); *Huberman v. Warminster Township*, 1981 Pa. Dist. & Cnty. Dec. LEXIS 511, 18 Pa. D. & C. 3d 312 (recognizing the existence of antitrust common law in Pennsylvania).

We are not aware of any judicial or legislative abrogation of the recognition of Pennsylvania antitrust common law as evidenced by the foregoing cases. Therefore, We find that a common law antitrust cause of action exists in Pennsylvania and We have no reason to believe that such a cause of action, as a matter of law, will not lie in the instant case.

This brings Us to the question of whether Pennsylvania antitrust common law provides for the award of damages as sought by Plaintiff Commonwealth.

Anadarko Defendants do not address the question, but Chesapeake Defendants, citing a number of Pennsylvania cases including *Stutzle v. Rhone-Poulenc S.A.*, 2003 Phila. Ct. Com. Pl. LEXIS 74, 2003 WL 22250424 and *XF Enterprises v. BASF, Inc.*, 2000 Pa. Dist. & Cnty. Dec. LEXIS 159, 47 Pa. D. & C. 4<sup>th</sup> 147, assure Us that, even if a common law antitrust cause of action exists in Pennsylvania, no provision exists in that law for the award of damages.

Plaintiff Commonwealth disagrees, arguing that, in fact, a precedent for the award of damages in common law antitrust cases has been established in *Commonwealth v. Carlisle*, Brightly's Rep. 36, 40, 42 (Pa. 1821), *Morris Run Coal Co. v. Barclay Coal Co.*,

68 Pa. 173, 186-87 (1871), and *Consolidated Ice Manufacturing Co. v. Medford*, 18 Pa. D. 293 (1908); these cases will be discussed below.

We begin Our analysis of the issue of damages by noting that the United States Supreme Court informed in *Apex Hosiery Co. v. Leader*, that prior to the enactment of the federal Sherman antitrust law, illegal restraints of trade and commerce, although actionable at common law, were not penalized and gave rise to no award of damages. See *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 497 (1940).

Our research into the question presented here has shown that present-day Pennsylvania antitrust common law jurisprudence reflects the observation of the *Apex Hosiery* court.

In fact, both Pennsylvania and Federal courts have found that, as was the case in the pre-Sherman Act era, current Pennsylvania antitrust common law, while providing an equitable enforcement option in actions alleging conduct in restraint of trade, does not provide for the award of damages. See *Stutzle v. Rhone-Poulenc S.A.*, 2003 Phila. Ct. Com. Pl. LEXIS 74, 2003 WL 22250424(citing *XF Enterprises v. BASF, Inc.*, 2000 Pa. Dist. & Cnty. Dec. LEXIS 159, 47 Pa. D. & C. 4<sup>th</sup> 147)(finding that no Pennsylvania court has held that damages are available under Pennsylvania's common law on antitrust violations); *XF Enterprises v. BASF Corp.*, 2000 Pa. Dist. & Cnty. Dec. LEXIS 159, 47 Pa. D. & C. 4<sup>th</sup> 147(finding that Pennsylvania common law lacks a damage provision); *Lakeview Ambulance & Medical Services v. Gold Cross Ambulance & Medical Services*, 1995 Pa. Dist. & Cnty. Dec. LEXIS 279(acknowledging that the Pennsylvania Supreme Court has found that common law liability for unfair

trade/competition does exist and that equitable relief is available in such cases)(citing *Goebel Brewing Company v. Esslingers, Inc.*, 373 Pa. 334, 95 A.2d 523 (1953))

The findings of the two most recent Pennsylvania court decisions relating to the instant issue, *Stutzle v. Rhone-Poulenc S.A.*, supra, and *XF Enterprises v. BASF, Inc.*, supra, that Pennsylvania common law lacks a damage provision has been favorably noted by Federal District Courts in the western and eastern districts of Pennsylvania, respectively. See *AlarMax Distributors v. Tyco Safety Products Canada*, 2008 U.S. Dist. LEXIS 49623(citing *Stutzle v. Rhone-Poulenc SA*)(acknowledging and accepting *AlarMax* Plaintiff's concession that no Pennsylvania court has recognized a damage remedy under Pennsylvania common law of antitrust), and *Fresh Made, Inc. v. Lifeway Foods, Inc.*, 2002 U.S. Dist. LEXIS 15098(citing *XF Enterprises v. BASF, Inc.*)(noting with approval the *XF* court's finding that Pennsylvania common law does not provide for the award of damages).

No statutory or decisional law that would serve to invalidate the findings or acknowledgements of the courts identified above has been found.

Plaintiff Commonwealth, urges, however, that the findings of the courts in *XF Enterprises*, supra, and later in *Stutzle v. Rhone-Poulenc S.A.*, supra, that damages may not be had in a Pennsylvania common law antitrust case are misstatements of the law and should, therefore, be disregarded.<sup>51</sup>

According to Plaintiff Commonwealth, the *XF Enterprises* court in crafting its opinion, mistakenly relied upon earlier cases including a post-Revolution English case, *Mogul Steamship Co. v. McGregor, Gow & Co.*, (1892) App. Cas. 25, a case deemed by

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<sup>51</sup> Commonwealth's Brief in Opposition to [Chesapeake Defendants'] Preliminary Objections to the Commonwealth's Second Amended Complaint at page 44.

Plaintiff Commonwealth to be invalid because it relates to English common law as of 1892 and reflects the provisions of an English statute, 7 & 8 Victoria c. 24, dating to 1844; therefore avers Plaintiff Commonwealth it can form no part of Pennsylvania common law.<sup>52</sup> Plaintiff Commonwealth has adduced no persuasive evidence in support of the relevance of this assertion.

Furthermore, We find that the cases that have been put forward by Plaintiff Commonwealth in support of its prayer for damages in connection with its common law antitrust claim are inapposite to the instant matter.

In fact, Our reading of these cases, viz., *Commonwealth v. Carlisle*, Brightly's Rep. 36, 40, 42 (Pa. 1821)<sup>53</sup>, *Morris Run Coal Co. v. Barclay Coal Co.*, 68 Pa. 173, 186-87 (1871), and *Consolidated Ice Manufacturing Co. v. Medford*, 18 Pa. D. 293 (1908); has revealed that the *gravamen* of the *Carlisle* case was whether a conspiracy among master ladies shoemakers rose to an indictable criminal offense under Pennsylvania common law; that *Morris Run Coal Co.* a case in which the court cited the *Carlisle* case, involved a criminal law-related issue identical to that raised in *Carlisle* and relating to the alleged price-fixing of coal by a combination of coal producers; and that *Consolidated Ice* dealt with the question of the admissibility of evidence of a plea of *nolo contendere* at the criminal trial of an ice manufacturer accused of being a member of an unlawful combination aimed at controlling the price of ice.

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<sup>52</sup> See Commonwealth's Brief in Opposition to [Chesapeake Defendant's] Preliminary Objections to the Commonwealth's Second Amended Complaint at pages 44-45(citing 1 Pa. C.S. §1503; *Wheatly v. Baugh*, 25 Pa. 528, 532-33 (1855); and *Foster v. Smith*, 10 Kulp 380 (1901))(attached to the Commonwealth's Brief in Opposition to [Chesapeake Defendants'] Preliminary Objections to the Commonwealth's Second Amended Complaint at Exhibits 18, 19, and 20, respectively).

<sup>53</sup> Attached to Commonwealth's Brief in Opposition to [Chesapeake Defendants] Preliminary Objections to the Commonwealth's Second Amended Complaint at Exhibit S.

In the absence of an adequate and clear explanation by Plaintiff Commonwealth of the manner in which these cases bear upon the existence of a damage remedy under Pennsylvania antitrust common law, We discern in them no recognizable connection to that question. We are constrained to find that the cases have no relevance to Our analysis.

Likewise, Plaintiff Commonwealth's assertion that that the recent memorandum opinion of the United States District Court for the Eastern District of Pennsylvania in *In Re Suboxone (Buprenorphine Hydrochloride and Naloxone) Antitrust Litigation*, MDL No. 2445, 13-MD-2445 (8 September 2017)<sup>54</sup>, supports its instant prayer for monetary common law antitrust relief is also, in Our view, without merit.

In the iteration of the *Suboxone* case provided Us by Plaintiff Commonwealth, the Commonwealth of Pennsylvania, in combination with numerous other States, filed an amended complaint seeking, *inter alia*, relief under both Federal statutory antitrust law and Pennsylvania antitrust common law.<sup>55</sup>

Defendants in *Suboxone* responded with a motion to dismiss the amended complaint arguing that the causes of action set out in the amended complaint should be dismissed

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<sup>54</sup> Plaintiff Commonwealth provided this court with a copy of the *Suboxone* memorandum on 18 September 2017 as an Exhibit to the Commonwealth's notice of Supplemental Authority in Opposition to the Pending Preliminary Objections of All Defendants. An additional case, *Commonwealth of Pennsylvania, Office of the Attorney general v. Kenneth M. Bachman d/b/a Bachman's Used Cars*, NO. 2017-00692 (Lebanon County), was supplied to this court in a Second Notice of Supplemental Authority filed by Plaintiff Commonwealth; the *Bachman* case is not discussed herein as it involved a consent order relating to the sale of a motor vehicle and We have found it to have no relevance to the instant issue.

<sup>55</sup> See First Amended Complaint in *State of West Virginia v. Invidior Inc. f/k/a Reckitt Benckiser Pharmaceuticals, Inc., et al*, CIV. A. NO. 16-5073, MDL NO. 2445, 13-MD-2445, at page 54, paragraphs 267-68.

for failure to properly state a cause of action as required by Federal Rule of Civil Procedure 12(b)(6).

The *Suboxone* court, while not reaching the merits of Pennsylvania's common law claim, subsequently<sup>56</sup> denied the defendant's motion ruling that the claims of the Plaintiffs, including the state common law antitrust claim filed in the case by instant Plaintiff Commonwealth were not afoul of Federal Rule of Civil Procedure invoked by plaintiffs.

Plaintiff Commonwealth believes that the action of the court in dismissing the *Suboxone* defendants' motion has some relevance here; We disagree.

We base Our contrary opinion upon the *Suboxone* court's rationale for rejecting the motion which, in the words of the court, was that "[a]s I do not find that the [federal law] claims fail, I likewise do not find that the state law claims fail."<sup>57</sup> We note that the merits of Pennsylvania's common law claim were not reached by the *Suboxone* court.

Consequently, We believe that the *Suboxone* case has no relevance instantly.

In light of the foregoing, although We believe that a common law antitrust action will lie in Pennsylvania, We are unconvinced that an award of damages is available in such cases.

Accordingly, We will deny Chesapeake Defendants' Preliminary Objection IV., which states Chesapeake Defendants' claimed that no antitrust cause of action is available under Pennsylvania common law.

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<sup>56</sup> Defendant's motion was denied in a Memorandum Opinion dated September 8, 2017.

<sup>57</sup> Memorandum Opinion, In re Suboxone Antitrust Litigation, MDL NO. 2445, 13-MD-2445 (E.D. Pa.), at page 51, FN21.

## **DISCUSSION OF THE REMAINING PRELIMINARY OBJECTIONS FILED BY CHESAPEAKE DEFENDANTS.**

We now turn Our attention to Chesapeake Defendants' remaining preliminary objections. The individual objections will be identified and discussed in the order in which they were raised by Chesapeake Defendants in the Preliminary Objections to Plaintiff's Second Amended Complaint filed on 2 September 2016; the pleading will be identified below as "the referenced pleading". In the interest of convenience, the number of the page of the pleading upon which the respective preliminary objections appear will be included in the discussion.

### **Preliminary Objection II**

In Preliminary Objection II, which appears on page 4 of the referenced pleading, Chesapeake Defendants invoke Pa. R.C.P. No. 1028(a)(4) in arguing that Plaintiff Commonwealth's Count III (Commonwealth v. Joint Venture Defendants; Violation of UTPCPL, 73 P.S. §201-2(4)) is legally insufficient.

Chesapeake Defendants assert that Plaintiff Commonwealth has failed to state a legally sufficient claim under the UTPCPL because it has failed to identify which of the twenty-one subsections included in Section 201-2(4) has been allegedly violated.

Our reading of Count III has revealed that, although Plaintiff Commonwealth goes into extensive detail in Count III in its description of the alleged practices deemed to be in violation of the UTPCPL, the specific subsection(s) included under Section 201-2(4), viz., (i) through (xxi), believed to have been transgressed have not, as claimed by Chesapeake Defendants, been identified.

While We understand the nature of Chesapeake Defendant's criticism, We do not discern much value in requiring Plaintiff Commonwealth to amend the Second Amended Complaint to simply name which of Section 201-2(4)'s subsections it believes Chesapeake Defendants have violated. In fact, such information is a proper target for discovery; thus, there exists very little potential for surprise or prejudice or other detriment to the preparation of a defense if Count III is allowed to stand in its present form.

We believe that the untrammelled progress of this case is of paramount importance and We are, therefore, hesitant to impose pleading requirements having little or no deleterious effect upon the ability of any Party to prepare and present its case.

We will, therefore, deny Chesapeake Defendant's Preliminary Objection II.

### **Preliminary Objection III**

In Preliminary Objection III, which appears on page 5 of the referenced pleading, Chesapeake Defendants invoke Pa. R.C.P. No. 1028(a)(4) in arguing that Plaintiff Commonwealth's Count III (Commonwealth v. Joint Venture Defendants; Violation of UTPCPL, 73 P.S. §201-2(3)) and Count IV(Commonwealth v. Joint Venture Defendants; Violation of UTPCPL, 73 P.S. §201-2(4)(v), (vii) and (xxi)) is legally insufficient.

Chesapeake Defendants seek dismissal of Counts III and IV on the claimed basis that the UTPCPL is not an antitrust statute and does not create a cause of action for purported antitrust violations. Therefore, according to Chesapeake Defendants, Plaintiff Commonwealth has failed to state a claim upon which relief may be granted.



We have reviewed Counts III and IV and have determined that they raise antitrust claims as well as other allegations of UTPCPL violations, e.g., Count IV at 245 (a), (b), and (c) which implicate, *inter alia*, Section 201-2(4)(ii)(causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services).

We do not disagree with Chesapeake Defendants' arguments that Plaintiff Commonwealth's argument-in-chief under Counts III and IV concerns alleged antitrust violations under the UTPCPL.

However, in the brief filed in opposition to Chesapeake Defendant's preliminary objections, Plaintiff Commonwealth asserts that antitrust claims are properly raised under the UTPCPL.<sup>58</sup>

Plaintiff Commonwealth clarifies in the Brief that Count III alleges that the anti-competitive conduct alleged rises to an unfair act or practice, whereas in Count IV the conduct described is properly denominated as a deceptive act or practice.<sup>59 60</sup>

Chesapeake Defendants counter with the assertion that "no Pennsylvania court has ever interpreted the UTPCPL as providing a remedy for alleged antitrust violations."<sup>61</sup>

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<sup>58</sup> See Commonwealth Plaintiff's Brief in Opposition to [Chesapeake Defendants'] Preliminary Objections to the Commonwealth's Second Amended Complaint at pages 29, 34 (arguing that anti-competitive conduct is redressable under the UTPCPL as it is deceptive business conduct of the sort proscribed by the "catchall" provision of the UTPCPL found at Section 201-2(4)(xxi)).

<sup>59</sup> *Id.* page 28.

<sup>60</sup> In terms of the UTPCPL and Plaintiff Commonwealth's Counts III and IV, this is probably a distinction without a difference as Section 201-2(4)(xxi) declares that engaging in any fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding can be either an unfair method of competition or an unfair or deceptive act or practice.

<sup>61</sup> Memorandum of Law in Support of Preliminary Objections of [Chesapeake Defendants] to Plaintiff's Second Amended Complaint at page 12.

Notwithstanding Our belief that Preliminary Objection III raises a significant interpretative issue pertaining to the scope of the UTPCPL, We are not prepared at this early stage of the procedural progress of the instant case to hold that Plaintiff Commonwealth improperly advanced allegations of unfair or deceptive conduct under the UTPCPL, and particularly under Section 201-2(4)(xxi), the "catchall" provision of statute.

In a case high-lighted and quoted earlier in this Opinion, *Commonwealth by Creamer v. Monumental Properties, Inc.*, the court established that Section 201-4(xiii), which was at that time of *Creamer* the UTPCPL's "catchall" provision<sup>62</sup>, is "designed to cover generally all unfair and deceptive acts or practices in the conduct of trade or commerce." *Commonwealth by Creamer v. Monumental Properties, Inc.*, 459 Pa. at 478, 329 A.2d at 826 (agreeing with Appellant Attorney General's interpretation of the purpose of Section 201-4(xiii)).

The *Creamer* court also instructed that "as a statute for the prevention of fraud, [the UTPCPL] must be liberally construed to effect [its] purpose." *Id.* at 459, 816.

In light of Our analysis of Plaintiff Commonwealth's claims, as discussed above, the guidance supplied by the Pennsylvania Supreme Court in *Creamer*, *supra*, the plain wording of the UTPCPL, and Our desire to move this case forward as speedily as possible, We are disinclined, at this preliminary stage, to prevent Plaintiff

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<sup>62</sup> Section 201-2(4)(xiii) provided, as does current subsection xxi, that "any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding" was an unfair method of competition and an unfair or deceptive act or practice. When the UTPCPL was amended in 1976, subsection (xvii), which was identical to earlier subsection xiii, became the "catchall" provision; the current "catchall" provision is found at subsection xxi.

Commonwealth from proceeding with the claims set out in Counts III and IV in their present form.

We will, therefore, deny Chesapeake Defendants' Preliminary Objection III.

#### **Preliminary Objection IV**

We note that Our ruling on Preliminary Objection IV is fully discussed starting at page 32, above; therefore it will not be further addressed here.

#### **Preliminary Objection V**

In Preliminary Objection V, which appears on page 9 of the referenced pleading, Chesapeake Defendants invoke Pa. R.C.P. No. 1028(a)(2) and Pa. R.C.P. 1019(i) in arguing that Plaintiff Commonwealth's Complaint is defective for not including copies of the written lease agreements entered into by the landowners identified as victims of Chesapeake Defendants' alleged unfair or deceptive business conduct.

The Pennsylvania Rules of Civil Procedure require that:

"When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing or the material part thereof ... ." Pa. R.C.P. No. 1019(i).

We note that the instant matter arises from an action brought by the Attorney General under UTPCPL Section 201-4 rather than from an action sounding in contract law.

Section 201-4(Restraining prohibited acts) confers upon the Attorney general the power to seek a temporary or permanent injunction in the public interest to restrain persons engaged in, or believed to be contemplating, any act declared to be unfair or deceptive by the UTPCPL.

The allegations lodged by Plaintiff Commonwealth in the Second Amended Complaint go well beyond the mere writing of leases in that it is claimed by the Attorney General that Chesapeake Defendants engaged in presumably widespread unfair or deceptive conduct at all stages of the marketing process associated with the procurement of oil and gas leases from landowners. The apparent extent of the misconduct alleged by Plaintiff Commonwealth suggests that the number of the purported victims in the case may be large; however, Plaintiff Commonwealth has not provided information showing the number of aggrieved parties involved.

Nonetheless, We do not feel that Plaintiff Commonwealth is in violation of Rule 1019(i) for not including copies of relevant written lease agreements, which, admittedly, might provide insight into the extent of Chesapeake Defendants' alleged unlawful commercial activities. However, We do believe that these documents must be made available to Chesapeake Defendants through the discovery process in order that it can adequately prepare its trial defense.

Furthermore, We think it imperative that Plaintiff Commonwealth provide to Chesapeake Defendants additional and sufficient information relating to the identities and whereabouts of the signatories to the oil and gas leases underlying the instant case who may be called as witnesses at trial.

We will deny Chesapeake Defendants' Preliminary Objection V.

#### **Preliminary Objection VI**

In Preliminary Objection VI, which appears on page 12 of the referenced pleading, Chesapeake Defendants invoke Pa. R.C.P. No. 1028(a)(3) in arguing that

Plaintiff Commonwealth's Second Amended Complaint is defective insofar as Counts I through IV of the Complaint lack sufficient specificity.

Specifically, Chesapeake Defendants contend that Counts I through IV do not provide sufficient information to make possible a determination of which of the Chesapeake entities named as defendants in the case is/are alleged to have engaged in the unfair and deceptive practices claimed by Plaintiff Commonwealth.

In factual averment 38 a. through e. of the preliminary objections, Chesapeake Defendants fault the specific claims set out in the Second Amended Complaint on the basis of the factual specificity required by Pennsylvania Rule of Criminal Procedure No. 1019(a), (b)).<sup>63</sup>

Additionally, Chesapeake Defendants, in averment 39, claim that certain of Plaintiff Commonwealth's allegations appearing in the Second Amended Complaint directly contradict other averments identified in the same pleading. Chesapeake Defendants also argue in averment 39. that under the decision of the court in *Kilmer v. Elexeco Land Services, Inc.*<sup>64</sup>, deductions of post-production costs are permitted, therefore, such deductions cannot be the basis for a claim of deceptive conduct as asserted by Plaintiff Commonwealth.<sup>65</sup>

Furthermore, complain Chesapeake Defendants in averment 39, the Second Amended Complaint faults unnamed landmen for not making disclosures to landowners

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<sup>63</sup> See Preliminary Objections of [Chesapeake Defendants] to Plaintiff's Second Amended Complaint at pages 13-14.

<sup>64</sup> Citing *Kilmer v. Elexeco Land Services, Inc.*, 605 Pa. 413, 429-30, 990 A.2d 1147, 1158 (2010).

<sup>65</sup> See Preliminary Objections of [Chesapeake Defendants] to Plaintiff's Second Amended Complaint at page 14.

about post-production deductions even though, according to Chesapeake Defendants, the lease agreements signed by the landowners provided such information.<sup>66</sup>

Chesapeake Defendants' averment 40 states Chesapeake Defendants' claim that the Second Amended Complaint fails to allege willful conduct as required for the imposition of fines under UTPCPL Section 201-8.<sup>67</sup>

We note that the Second Amended Complaint contains 105 pages upon which are set out over 300 factual averments of alleged misconduct on the part of Chesapeake Defendants predicated upon alleged parent-subsidary relationships existing among the individual parties referred to, collectively, as Chesapeake Defendants throughout this Opinion.<sup>68</sup>

In fact, the Second Amended Complaint alleges that all of the entities included in the group denominated "Chesapeake Defendants" herein are wholly owned subsidiaries of the Chesapeake Energy Corporation over which Chesapeake Energy Corporation exercises ultimate control.<sup>69</sup>

In light of Our reading of the factual representations underlying the Counts contained in the Second Amended Complaint, as identified and discussed above, and the conclusions We have drawn therefrom, We find that Chesapeake Defendants' Preliminary Objection VI is without merit. *See Commonwealth ex rel Pappert v. TAP Pharmaceutical Products, Inc.*, 885 A.2d 1127 (Pa. Cmwlth. 2005)(T.A.P II)(finding that if Complaint, when taken as a whole, provides information deemed adequate by a court

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<sup>66</sup> See *Id.*

<sup>67</sup> See *Id.* at page 15.

<sup>68</sup> See Second Amended Complaint, factual averments 19 through 27.

<sup>69</sup> See *Id.*

to show underlying facts of the case and pertinent inter-relationships between multiple defendants, the pleading at least minimally satisfies the rules of procedure mandating sufficiency).

Plaintiff Commonwealth is not required to plead evidence in its Complaint. We believe that the factual averments included in support of Counts I through IV of the Second Amended Complaint are sufficient to put Chesapeake Defendants on notice of what it needs to do in order to defend against Plaintiff Commonwealth's allegations of misconduct.

As a final matter, We find that the Second Amended Complaint adequately alleges and describes willful conduct by Chesapeake Defendants that, if true, could rise to unfair or deceptive business practices as alleged by Plaintiff Commonwealth.

Therefore, in Our view, conduct of the sort that, if proven, would trigger the imposition of fines under UTPCPL Section 201-8 has been identified by Plaintiff Commonwealth in the Second Amended Complaint. Whether Plaintiff Commonwealth can prevail in its quest for the levying of fines relating to commercial misconduct on the part of Chesapeake Defendants is for another day..

We will deny Chesapeake Defendants' Preliminary Objection VI.

#### **Preliminary Objection VII**

Preliminary Objection VII., which is found at page 16 of the referenced pleading, contains Chesapeake Defendants' argument that averment 18 of the Second Amended Complaint is too broad and open-ended; in prosecuting its argument for the striking of averment 18, Chesapeake Defendants rely upon Pa. R.C.P. No. 1028(a)(2).

Averment 18 of the Second Amended Complaint, which appears at page 7 of the pleading, states as follows:

“The defendants named in this Complaint include all of their predecessor entities and all their past and present component, subsidiary and affiliate entities.”

We agree with Chesapeake Defendants that averment 18 is over-broad and We will, therefore, strike that averment.

However, We note that averments 19 through 27 as set out in the Second Amended Complaint will remain undisturbed.

### **Preliminary Objection VIII**

In Preliminary Objection VIII., on page 17 of the referenced pleading, Chesapeake Defendants counter Plaintiff Commonwealth’s claim as identified in Counts I, II, and IV of the Second Amended Complaint that the business misconduct alleged against them falls within the ambits of subsections (ii), (v), and (vii) of UTPCPL Section 201-2(4).<sup>70 71</sup>

In the view of Chesapeake Defendants, subsections (ii), (v), and (vii) of Section 201-2(4) are inapplicable to the instant case and should be dismissed and stricken from the Second Amended Complaint for failure to state a cause of action against Chesapeake Defendants.

In the interest of establishing perspective in this matter, We will restate the UTPCPL Section and subsections being attacked by Chesapeake Defendants:

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<sup>70</sup> See Second Amended Complaint at Count I, averment 132(a), (b), and (c); Count II, averment 201(a), (b), and (c); and Count IV, averment 245(a), (b), and (c).

<sup>71</sup> As We read this Preliminary Objection, it appears to Us that it does not apply to subsection (xxi) of UTPCPL 2-1-2(4), the “catchall provision of the UTPCPL, so We will not here discuss subsection (xxi) as it was raised in Counts I, II, and IV of the Second Amended Complaint.



Section 201-2(4): "**Unfair methods of competition**' and '**unfair or deceptive acts or practices**' mean any one or more of the following ... :

(ii) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another."<sup>72</sup>

We agree with Chesapeake Defendants that the provisions of subsections (v) and (vii) of UTPCPL Section 201-2(4) have no relevance to the averments advanced in Counts I, II, and IV of the Second Amended Complaint implicating these subsections; We will therefore strike the averments from Counts I, II, and IV of the Second Amended Complaint that are predicated upon those subsections.

However, We are not convinced, at least not at the present time, that subsection (ii) of Section 201-2(4) is similarly without relevance or applicability to Counts I, II, and IV of Plaintiff Commonwealth's Second Amended Complaint, and so We will deny Chesapeake Defendants' Preliminary Objection as those averments implicating to subsection (ii).

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<sup>72</sup> 73 P.S. Section 201-2(4)(bold print in original).

We believe that the allegations in Counts I, II, and IV of the Second Amended Complaint are sufficient to make out a cause of action under subsection (ii) of UTPCPL Section 2-01-2(4) on the theory that certain aspects of Chesapeake Defendants' alleged conduct has caused the likelihood of confusion or misunderstanding as to, *inter alia*, the actual provider of the oil/gas extraction and related services provided in connection with the leases obtained from Pennsylvania landowners.

On the other hand, We discern in subsection (v) the requirement that an action based upon that subsection must be based upon a claim of false or deceptive advertising, and We observe that none of the allegations of misconduct raised by Plaintiff Commonwealth arise from such a claim.<sup>73</sup>

Similarly, We find that subsection (vii) is inapposite here due to its apparent emphasis upon the need for an action brought under the subsection to be founded upon an allegation of misrepresentation as to the quality of a particular item of service, an allegation absent from the Second Amended Complaint.

In conclusion, We will grant Chesapeake Defendants' Preliminary Objections to the invocation of subsections (v) and (vii) of UTPCPL Section 201-2(4) in Counts I, II, and

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<sup>73</sup> Pennsylvania case law appears to support the proposition that the application of subsection (v) of UTPCPL Section 201-2(4) is limited to false advertising claims. In fact the Pennsylvania Commonwealth Court recently affirmed that very proposition. See *Commonwealth v. Golden Gate National Senior Care, LLC*, 158 A.2d 203, 215, 220, 222 (Pa. Cmwlth. 2017)(finding that subsection (v) is limited to false advertising claims and that isolated statements to potential customers generally do not constitute sufficient dissemination to be defined as advertising); See also *Commonwealth v. Percudani*, 844 A.2d 35, 47 (Pa. Cmwlth. 2004)(subsection (v) action requires showing of false advertising) and *Commonwealth v. Paris*, 873 A.2d 3, 11 (Pa. Cmwlth. 2005)(finding that plaintiff must establish a false advertisement made to a substantial audience and that the false advertisement is likely to affect a purchasing decision).

IV of the Second Amended Complaint at Count I, averments 132(b) and (c); Count II, at averments 202(b) and (c); and Count IV, at averments 245(b) and (c).

As We have already determined, Chesapeake Defendants' Preliminary Objections to the averments in Counts I, II, and IV of the Second Amended Complaint in which subsection (ii) of UTPCPL Section 201-2(4) are implicated, viz., averments 132(a), 202(a), and 245(a) are denied.

We note that nothing in the foregoing discussion is intended to affect any claims in Counts I, II, or IV of the Second Amended Complaint based upon conduct allegedly arising from violation of subsection (xxi) ("catchall" provision) of UTPCPL Section 201-2(4); therefore, the residency of any claim relating to subsection (xxi) in Counts I, II, and IV shall remain undisturbed.

#### **Preliminary Objection IX**

Preliminary Objection IX., located on page 19 of the referenced pleading, cites Rule 1028 (a)(2)(4) of the Pennsylvania Rules of Civil Procedure in raising the objection that Plaintiff Commonwealth, in an enforcement action under UTPCPL Section 201-4(Restraining prohibited acts), cannot recover reimbursement of the costs incurred by the Commonwealth in investigating and prosecuting the instant action. Chesapeake Defendants argument is rooted in the observation that, under UTPCPL Section 201-8(a), even if Plaintiff Commonwealth is empowered to bring the action under Section 201-4 of the UTPCPL, the only relief available is in the nature of an injunction with forfeiture of the right to do business, and such other relief as may be deemed necessary by the court, including declaratory relief, which relief may only be dispensed if an injunction granted by the court is subsequently violated.

In fact, UTPCPL Section 201-4.1 (Payment of costs and restitution) allows a court, in its discretion, and pursuant to the issuance of a permanent injunction, to direct a defendant to restore to any person in interest any money or property which may have been acquired by means of any violation of the UTPCPL.

Additionally, UTPCPL Section 201-8(Civil penalties), allows a court to levy a civil penalty of up to \$5000.00 for each violation of the terms of an injunction issued in accordance with Section 201-4.1, and, in the event that the entity against whom injunctive relief has been granted under Section 201-4 by the Attorney General acting in the name of the Commonwealth of Pennsylvania, to award, on behalf of the Commonwealth of Pennsylvania, a civil penalty of not exceeding one thousand dollars (\$1000.00), or \$3000.00 if the victim is sixty years of age or older, per violation, which civil penalty shall be in addition to other relief which may be granted under sections 4 and 4.1 [of the UTPCPL]."<sup>74</sup>

Moreover, UTPCPL Section 201-9 (Forfeiture of franchise or right to do business; appointment of receiver) allows the Attorney General to seek "dissolution, suspension or forfeiture of the franchise or right to do business of any person, firm or corporation which violates the terms of an injunction issued under Section 4 [of the UTPCPL]." Also, the court may appoint a receiver of the assets of the offending entity under Section 201-9.

We note, as well, that Plaintiff Commonwealth, in its Second Amended Complaint requests, in addition to the relief discussed above, any other relief that We deem to be necessary or appropriate, a request permitted by Section 201-8.

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<sup>74</sup> See 73 P.S. §201-8 (a), (b).

Chesapeake Defendants ask in Preliminary Objection IX. that all claims for monetary relief for costs of investigation/prosecution identified in the Second Amended Complaint be struck because no injunctive relief has been granted in this case.

We believe that Preliminary Objection IX. is premature, however.

Obviously, at the present time, We have not imposed an injunction upon any of the Defendants in the case, and, equally obvious is the fact that if Plaintiff Commonwealth's prayer for injunctive relief under Section 201-4 is denied, the claims comprising Preliminary Objection IX. will be rendered moot. Thus, any issue relating to monetary relief in this case is for another time.

However, notwithstanding that We have here affirmed that Plaintiff Commonwealth may seek restoration of certain amounts of money to "any persons in interest" as permitted by Section 201-4.1 of the UTPCPL, We advise Plaintiff Commonwealth that, regardless of the civil penalty provisions of UTPCPL Section 201-8 that allow payment of restitution to the Commonwealth if an injunction is violated, under current Pennsylvania decisional law the Commonwealth may not pursue monetary relief on its own behalf under Section 201-4.1 at the time injunctive relief is granted. See *Commonwealth v. Golden Gate Senior Care, LLC*, 158 A.3d 203, 230 (Pa. Cmmwlth. 2015).

Thus, We will grant Chesapeake Defendants' Preliminary Objection IX insofar as striking the following paragraphs from the Prayers for Relief contained in the Second Amended Complaint at Counts I, II, III, and IV:

1. Paragraph F. of Count I (requesting payment to Plaintiff Commonwealth of costs of investigation and prosecution);

2. Paragraph F. of Count II (requesting payment to Plaintiff Commonwealth of costs of investigation and prosecution);

3. Paragraph F. of Count III (requesting payment to Plaintiff Commonwealth of costs of investigation and prosecution); and

4. Paragraph F. of Count IV (requesting payment to Plaintiff Commonwealth of costs of investigation and prosecution).

All other aspects of Preliminary Objection IX are denied for the reasons stated above.

We note, as before, that the questions relating to appropriate remedies may be addressed at a later time if Plaintiff Commonwealth succeeds in its pursuit of injunctive relief.

#### **Preliminary Objection X**

Preliminary Objection X., which is on page 21 of the referenced pleading, urges Us to find that Counts I through IV of the Second Amended Complaint are factually insufficient for failure of Plaintiff Commonwealth to join the landowners who are parties to the lease agreements underlying the Second Amended Complaint. Chesapeake Defendants rely upon Rule 1028(a)(5) in moving the argument forward.

We see the rationale behind this argument as being little different from that propounded in Preliminary Objection V in which Chesapeake Defendants urged Us to find that the Second Amended Complaint is deficient for lack of inclusion of copies of individual lease agreements.

We find that Preliminary Objection X is devoid of merit and We will deny it.

Significantly, in terms of Preliminary Objection X, the instant action has been brought under UTPCPL Section 201-4 and Plaintiff Commonwealth seeks to restrain Chesapeake Defendants from engaging in unfair or deceptive business practices by means of an injunction. The case does not sound in the law of private contracts where factual averments relating to the grievances of affected parties are required, and We believe that it would be difficult, unwieldy, and generally violative of the principle of judicial economy.

If Plaintiff Commonwealth prevails in its goal of obtaining injunctive relief in this case, the matters of the amount of damages, if any, due parties in interest to the action, and the question of whether joinder of those parties is required, may be revisited.

Preliminary Objection X is denied.

#### **Preliminary Objection XI**

In Preliminary Objection XI, which is on page 23 of the referenced pleading, Chesapeake Defendants, and in particular, Chesapeake Energy Corporation, one of the Chesapeake Defendants, make the argument that Plaintiff Commonwealth's allegations of misconduct are insufficient as a matter of law to establish the existence of either

general or specific personal jurisdiction because, as it claims, Chesapeake Energy Corporation is a foreign corporation operating principally outside of Pennsylvania.<sup>75</sup>

In inviting Us to agree with that assertion, Chesapeake Defendants, and in particular, Chesapeake Energy Corporation, point to the case of *Daimler AG v. Bauman* in which the United States Supreme Court established that in order to establish general personal jurisdiction, a state seeking to establish such jurisdiction must show that a prospective defendant's contacts within its boundaries are "so continuous and systematic as to render it essentially at home in the [prospective] forum state."<sup>76</sup>

Moreover, argue Chesapeake Defendants, there has been no showing of specific personal jurisdiction as to Chesapeake Energy Corporation because Plaintiff Commonwealth has not established that the claims asserted arise from forum-related activities engaged in by Chesapeake Energy itself, as opposed to any of the other Defendants collectively referred to as Chesapeake Defendants, such that Chesapeake Energy Corporation could reasonably expect to be brought into a Pennsylvania court.<sup>77</sup>

According to Chesapeake Defendants, neither of these requirements is met here. Specifically, Chesapeake Defendants argue that Chesapeake Energy Corporation cannot be said to be at home in the State of Pennsylvania and the claims levied by Plaintiff Commonwealth do not differentiate between the alleged activities Of Chesapeake Energy Corporation and any of the other Chesapeake Defendants.

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<sup>75</sup> Preliminary Objections of [Chesapeake Defendants] to Plaintiff's Second Amended Complaint at page 23, paragraph 72.

<sup>76</sup> *Id.* at page 23, paragraph 73 (citing *Daimler v. Bauman*, 134 S.Ct 746, 754 (2014)).

<sup>77</sup> *Id.* at page 24, paragraph 74.(citing *Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001)(citations omitted).



Therefore, in the view of Chesapeake Defendants, including Chesapeake Energy Corporation, this Court has no jurisdiction in the instant case and all claims against Chesapeake Energy Corporation should be dismissed as being violative of Rule 1028(a)(1) of the Pennsylvania Rules of Civil procedure.

Plaintiff Commonwealth contends that each of the Chesapeake Defendants, including Chesapeake Energy Corporation, resides in Pennsylvania, does business in Pennsylvania; has registered as a foreign entity for the purpose of doing business in Pennsylvania; has the requisite minimum contacts with Pennsylvania necessary to establish jurisdiction; and has an in-state registered agent.<sup>78</sup>

We note Pennsylvania statutory law confers the same rights and privileges on registered foreign associations as are afforded domestic entities, and that it subjects foreign agencies to the same liabilities, restrictions, duties, and penalties imposed upon domestic entities.<sup>79</sup>

In *Bane v. Netlink*, a case in which the authority of a Pennsylvania court to exercise personal and specific jurisdiction over a party named as defendant in the case, and decided by the United States Court of Appeals for the Third Circuit in 1991, the court observed that Pennsylvania law provides that qualification of a foreign corporation to do business in the State is "sufficient contact to serve as a basis for the assertion of personal jurisdiction." *Bane v. Netlink*, 925 F.2d 637, 640 (3d Cir. 1991)(citing 42 Pa. C.S.A. §5301(a)(2)(i), (ii), and (iii)).

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<sup>78</sup> See Second Amended Complaint at page 5, averments 11. and 12.

<sup>79</sup> See 73 P.S. §201-8 (a), (b).

The matter of personal jurisdiction over multiple persons outside of the Commonwealth, is addressed in Pennsylvania law at 42 Pa. C.S. Section 5322(Bases of personal jurisdiction over persons outside this Commonwealth), which statute is known as the Pennsylvania "long arm" statute.

Section 5322 provides, *inter alia*, that "[a] tribunal of this Commonwealth may exercise personal jurisdiction over a person ... who acts directly or through an agent ... [in] transacting any business in this Commonwealth [including] [t]he doing ... of a series of similar acts for the purpose of thereby realizing pecuniary benefit ... ." 42 Pa. C.S. §5322(a)(1)(i)(underscore not in original).

Instantly, Plaintiff Commonwealth alleges a principal-agent relationship between Chesapeake Energy Corporation and all other Chesapeake Defendants and that Chesapeake Energy Corporation exercises ultimate control over all Chesapeake entities.<sup>80</sup>

We note that, in Pennsylvania, even if Chesapeake Energy Corporation did not engage in business in Pennsylvania directly or through the medium of a registered agent, personal jurisdiction over it may still be asserted by a Pennsylvania court.

The Superior Court of Pennsylvania, in *Harris v. NGK North America, Inc.*, a case involving as defendant a Japanese corporation that had sold electrical insulators to a Pennsylvania firm, found that, notwithstanding that its principal place of business was located in Japan; that it had no officers or registered agents in Pennsylvania; that it had never contracted to supply goods or services in Pennsylvania; and that it had never purposefully availed itself of the privileges and immunities associated with conducting

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<sup>80</sup> See Second Amended Complaint at averment 27.

business in Pennsylvania, defendant Japanese corporation was subject to the personal jurisdiction of a Pennsylvania court on the basis of its control of certain of the capital expenditures of the Pennsylvania firm and the sale of its product to the firm. See *Harris v. NGK North America, Inc.*, 19 A.3d 1053, 1062 (citing *General Motors Acceptance Corp. v. Keller*, 737 A.2d 279, 282 (Pa. Super. 1999)(finding jurisdiction where appellee, though he had no physical contact with or presence in Pennsylvania, knew or should have known he was dealing with a Pennsylvania corporation) and *Taylor v. Fedra International, Ltd.*, 828 A.2d 378, 382 (Pa. Super. 2003)(finding several bases for jurisdiction, including shipping merchandise into Pennsylvania).

We find the rationale underlying these decisions to be applicable, and dispositive, instantly.

Additionally, We are guided in Our analysis of the instant jurisdiction issue by the finding of the *Bane* court, *supra*, that in the case before them, “[they did not need to] decide whether authorization to do business in Pennsylvania is a ‘continuous and systematic’ contact with the Commonwealth for purposes of the dichotomy between ‘general’ and ‘specific’ jurisdiction because such registration by a foreign corporation carries with it consent to be sued in Pennsylvania courts” and “[a]lternatively, ... application for a certificate of authority [to conduct business in Pennsylvania] can be viewed as consent to be sued in Pennsylvania under Section 5301(a)(2)(ii) which explicitly lists ‘consent as a basis for assertion of jurisdiction of corporations. Consent is a traditional basis for assertion of jurisdiction long upheld as constitutional.” *Id.* at 641.

In conclusion, We believe that Plaintiff Commonwealth's Second Amended Complaint sets out sufficient factual averments that, if true, permit a finding that this court has personal and specific jurisdiction over Chesapeake Energy Corporation.

Chesapeake Defendants' Preliminary Objection XI. is denied.

**DISCUSSION OF THE REMAINING PRELIMINARY OBJECTIONS FILED BY ANADARKO DEFENDANTS.**

In the Order entered in the above-captioned case on 7 June 2017, We held that Anadarko Defendants may argue only those preliminary objections raised and summarized in their First Amended Consolidated Preliminary Objections to the Second Amended Complaint of Plaintiff Commonwealth of Pennsylvania at pages 8 and 9, averments 21(Preliminary Objection 1), 22(Preliminary Objection 2), 23(Preliminary Objection 3), and 24(Preliminary Objection 4); We note that Preliminary Objection 1(averring that the UTPCPL is not applicable to the instant case) has already been denied as discussed earlier in this Opinion.

We will now address the remaining preliminary objections filed by Anadarko Defendants.

**Preliminary Objection 2**

In Preliminary Objection 2, Anadarko Defendants argue that Plaintiff Commonwealth has failed to allege a cognizable antitrust claim or UTPCPL claim for the existence of a Joint Venture Agreement.

The issue of whether Plaintiff Commonwealth may assert a common law antitrust claim against Chesapeake Defendants and Anadarko Defendants has been discussed above at pages 32 through 47; We incorporate that discussion and the resultant finding that Pennsylvania common law does provide for such a cause of action, albeit one that is limited in nature, into this discussion of Preliminary Objection 2.

In its argument that Plaintiff Commonwealth has failed to allege a cognizable antitrust claim for the existence of an anti-competitive joint venture agreement under the

UTPCPL, Anadarko Defendants contend that averments 222 through 225 and 225 through 227 found in Count III of the Second Amended Complaint are legally insufficient and factually deficient absent any allegations that the Parties agreement was a sham to hide an anticompetitive market allocation scheme.

We have reviewed Count III which, in fact, at averment 222, denominates Chesapeake Defendants and Anadarko Defendants as joint venture defendants and avers that, in that capacity they violated the UTPCPL thereby causing Pennsylvania landowners to suffer financial harm. Specifically, as asserted in averments 222 and 223 of Count III, the alleged harm to the landowners resulted from an agreement between Chesapeake Defendants and Anadarko Defendants to allocate territories within areas of mutual interest, thereby restricting what would otherwise have been a freely competitive market place.

The Second Amended Complaint, at averment 224 also alleges that Anadarko Defendants, in their capacities as participants in the alleged joint venture, restrained trade and commerce in the respect of the acquisition of oil and gas leases from landowners by "affecting, fixing, controlling and/or marketing at artificial and non-competitive levels, the acreage signing bonus and royalty for oil and gas leases within the area of mutual interest."

The Second Amended Complaint, at averment 225, further alleges that Anadarko Defendants, as joint venture participants, "impaired the competitive process which deprived Pennsylvania landowners from receiving an acreage signing bonus and royalty which would have [otherwise] been competitive and fair."

We believe that Plaintiff Commonwealth's Second Amended Complaint is sufficient to survive a demurrer at this stage of the procedural progress of the instant case. We also take the view that, although no direct allegation that what has been referred to herein as the joint venture agreement involving Chesapeake Defendants and Anadarko Defendants was a sham to hide an actual anti-competitive market allocation scheme has been advanced by Plaintiff Commonwealth, such could be inferred from the averments included in Count III of the Second Amended Complaint.

Thus, the portion of Anadarko Defendants' Preliminary Objection 2. challenging the existence of a cognizable UTPCPL claim for the existence of a joint venture agreement is denied

### **Preliminary Objection 3**

Preliminary Objection 3 sets out the argument of Anadarko Defendants that the Second Amended Complaint fails to state a legally sufficient claim that Anadarko Defendants are vicariously liable for any of the alleged illegal activities of Chesapeake Defendants.

Anadarko Defendants, at paragraph 23 of its First Amended Preliminary Objections to the Second Amended Complaint of Plaintiff Commonwealth of Pennsylvania, state as follows:

"Because the OAG (Office of the Attorney General) does not allege that [Chesapeake Defendants and Anadarko Defendants] committed allegedly unlawful activities jointly in furtherance of any joint acquisition of leases, the OAG fails to state a claim that [Anadarko Defendants] [are] vicariously liable for [Chesapeake Defendants'] conduct."

Since the only counts of the Second Amended Complaint which allege joint activity involving both Chesapeake Defendants and Anadarko Defendants are Counts III, IV, and V, We will limit Our inquiry in the regard of Preliminary Objection 3 to those counts.

In fact, We believe that the allegations set out at Counts III, IV, and V are sufficient to survive a demurrer.

Averment 224 of Count III, for example, alleges that the Chesapeake Defendants and Anadarko Defendants, as joint venture Defendants, agreed to act, and did act, in restraint of commerce by allocating territories within areas of mutual interest thereby affecting, controlling and maintaining signing bonuses and royalties paid to landowners at non-competitive levels.

Similarly, Averments 238 and 239 of Count IV, claim that Anadarko Defendants, as joint venture participants, deceptively misrepresented material facts to prospective lessors.

The allegations in Count V of the Second Amended Complaint reflect those set out at Counts III and IV and, consequently, Count V shares factual sufficiency with those Counts.

Thus, We deny Anadarko Defendants' Preliminary Objection 3, finding that, at this time, the factual averments contained in Counts III, IV, and V of Plaintiff Commonwealth's Second Amended Complaint are sufficient to make out a claim for vicarious liability on the part of Anadarko Defendants.



#### Preliminary Objection 4

In their final Preliminary Objection, Anadarko Defendants take issue with Plaintiff Commonwealth's request for fees, and costs of prosecution and its request that Anadarko Defendants be barred from doing business in Pennsylvania.

This preliminary objection is identical to that raised by Chesapeake Defendants in their Preliminary Objection IX. We therefore incorporate Our discussion and subsequent finding in connection with Chesapeake Defendants' Preliminary Objection IX into this discussion.

Thus, and for the reasons stated in the earlier analysis of Chesapeake Defendants' Preliminary Objection IX, We believe that the decision in *Commonwealth v. Golden Gate Senior Care, LLC*, supra, controls here, and We will sustain that part of Anadarko Defendants' Preliminary Objection 4 as to any prayer for relief in the form of restoration of monies asserted by Plaintiff Commonwealth on its own behalf under UTPCPL Section 201-4.1.

Consequently, We will strike from the Second Amended Complaint subsection F. of Count I's prayer for relief; subsection F. of Count II's prayer for relief; subsection F. of Count III's prayer for relief; subsection F. of Count IV's prayer for relief; and subsection F. of Count VI's prayer for relief..

We will overrule the remainder of Anadarko Defendants' Preliminary Objection 4 as being premature, noting that Anadarko Defendants may raise the issue of appropriate remedies, as appropriate, at a later stage of the instant litigation.

**THE COURT'S CERTIFICATION OF CERTAIN ISSUES PURSUANT TO RULES 312 AND 1311 OF THE PENNSYLVANIA RULES OF APPELLATE PROCEDURE, AND 42 PTHE CA. C.S. SECTION 702(B)**

We believe that there are two issues discussed in this Opinion which would materially advance this complex litigation if considered on immediate appeal by the Pennsylvania Commonwealth Court.

While We acknowledge that the Order arising from the Opinion will be interlocutory in nature, We take the view that an immediate appeal will ultimately be of great benefit to the instant litigation and We will, in accordance with the provisions of 42 Pa. C.S. Section 702(b)(Interlocutory orders by permission) certify both of the issues for immediate appeal.

The first issue that We will so certify is that raised by Chesapeake Defendants in their Preliminary Objection I and Anadarko Defendants in their Preliminary Objection 1, and is whether the Attorney General may utilize the UTPCPL in pursuing relief in this case.

All but one of the Counts contained in Plaintiff Commonwealth's lengthy Second Amended Complaint rely upon the applicability of the provisions of the UTPCPL to Chesapeake Defendants and Anadarko Defendants, a question of first impression presenting, in Our estimation, substantial ground for difference of opinion as to the proper resolution of the issue.

The issue of the UTPCPL's applicability raises an important and controlling question of law as whether the UTPCPL is broad enough in its scope to permit the Attorney General to invoke its provisions to protect the people of Pennsylvania in cases that go beyond, or do not involve, commercial transactions where there is a buyer and a seller.

We feel that litigation of this case will most likely be lengthy, complex, require the expenditure of significant amounts of money, judicial resources, and time on the part of Court and the Parties, and result in a decision that will be appealed on the basis of the very same issue addressed here, and below. Furthermore, We believe that such a scenario and final result would be fundamentally violative of the principal of judicial economy and that, regardless of the finding of the appellate court(s), all of the expenditures of time, money, and energy expected to accrue to litigation of the case would, in the final analysis, be found to have gone for nought.

Moreover, it is Our considered opinion that the expeditious resolution of the question of whether the UTPCPL applies to this case will not only set useful and time saving precedent, but that it will materially advance the ultimate termination of the instant case as well.

The second issue that We will certify for immediate review concerns the antitrust question raised in Chesapeake Defendants' Preliminary Objection III and is whether, assuming that the provisions of the UTPCPL may be applied to the instant fact pattern, the antitrust allegations made by Plaintiff Commonwealth arises from fall within the definition of unfair methods of competition and unfair or deceptive acts or practices as declared unlawful by the UTPCPL, and defined at UTPCPL Section 201-2(4)(xxi), viz., "any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding."

Notwithstanding that neither Section 201-2(4)(xxi) nor the UTPCPL, generally, address the relevancy of the UTPCPL to antitrust cases, the Attorney General contends in this case that antitrust activity includes the broad range of unlawful business conduct

identified and defined in the UTPCPL, and that, consequently, the provisions of the UTPCPL, including the definition of unlawful conduct provided at Section 201-2(4)(xxi) are properly invoked here.

This second issue is also one of first impression which raises an important and controlling question of law attended by substantial ground for difference of opinion as to the issue's proper resolution.

As with the issue of the applicability of the UTPCPL discussed above, We believe that the expeditious resolution of the issue involving Section 201-2(4)(xxi) will not only set useful and time saving precedent, but that it will materially advance the ultimate termination of the instant case as well.

We note that, despite having denied the demurrers of Chesapeake Defendants and Anadarko Defendants as to the legal propriety, at this point in the procedural progress of the case, of this Court entertaining the UTPCPL issues raised by Plaintiff Commonwealth in the Second Amended Complaint, We believe that the case, being that it involves a specialized and very complicated area of the law, might better be litigated as a non-UTPCPL under antitrust common law. Alternatively, We offer Our observation that the case might be better litigated in a Federal court under applicable antitrust law.

Accordingly, We hereby certify the issues identified above for immediate appeal in accordance with the provisions of 42 Pa. C.S. Section 702(b), and enter the following Orders:

IN THE COURT OF COMMON PLEAS  
BRADFORD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
Plaintiff : NO. 2015IR0069

VS. :

CHESAPEAKE ENERGY CORPORATION; :  
CHESAPEAKE APPALACHIA, L.L.C.; :  
CHESAPEAKE OPERATING, L.L.C.; :  
CHESAPEAKE ENERGY MARKETING, :  
L.L.C.; :  
ANADARKO PETROLEUM CORPORATION; :  
and ANADARKO E&P ONSHORE, L.L.C. :  
Defendants

.....

ORDER – RE: PRELIMINARY OBJECTIONS OF CHESAPEAKE  
DEFENDANTS

AND NOW, this 14<sup>th</sup> day of December, 2017, in

accordance with the attached Opinion, it is **Ordered** and directed as follows:

- **Preliminary Objection I** to Counts I, II, III, and IV as to the applicability of the UTPCPL is **denied**. See Opinion at page 33.
- **Preliminary Objection II** to Count III is **denied**. See Opinion at page 46.
- **Preliminary Objection III** to Counts III and IV is **denied**. See Opinion at page 47.
- **Preliminary Objection IV** to Count V is **denied** in regard to equitable relief. See Opinion at page 50.

- **Preliminary Objection V** complaining that the Second Amended Complaint is defective for not including copies of written lease agreements is **denied**. See Opinion at page 50.
- **Preliminary Objection VI** to Counts I through IV of the Second Amended Complaint on the basis of lack of specificity is **denied**. See Opinion at page 51.
- **Preliminary Objection VII** is **granted in part**, and averment 18 of the Second Amended Complaint is hereby stricken; averments 19 through 27 will, however, remain undisturbed. See Opinion at page 54.
- **Preliminary Objection VIII** to Counts I, II, and IV is **granted in part** as follows:

Averments 132 (b) and (c) of Count I of the Second Amended Complaint are stricken. See Opinion at page 57.

Averments 202 (b) and (c) of Count II of the Second Amended Complaint are stricken. See Opinion at page 57.

Averments 245 (b) and (c) of Count IV of the Second Amended Complaint are stricken. See Opinion at page 58.

The remainder of this Preliminary Objection is denied. See Opinion at pages 56-59.

- **Preliminary Objection IX** is **granted** as to those portions of Plaintiff Commonwealth's prayers for relief requesting reimbursement for costs incurred in investigating and prosecuting this action. Accordingly, the following

paragraphs in the prayers for relief identified at Counts I, II, III, and IV in the Second Amended Complaint are stricken:

Count I, paragraph F. See Opinion at page 61.

Count II, paragraph F. See Opinion at page 61.

Count III, paragraph F. See Opinion at page 61.

Count IV, paragraph F. See Opinion at page 61.

All other aspects of this Preliminary Objection are denied. See Opinion at pages 58-61.

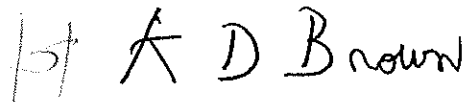
- **Preliminary Objection X**, asserting that The Second Amended Complaint is defective for failing to join landowners as parties to this action, is **denied**. See Opinion at page 61.
- **Preliminary Objection XI**, asserting that the Bradford County Court of Common Pleas is not the proper venue for the instant action against Chesapeake Energy Corporation, is **denied**. See Opinion at page 62.

**Furthermore**, the Court grants Chesapeake Defendants thirty (30) days from the date of receipt of this Order to file its Answer to Plaintiff Commonwealth's Second Amended Complaint; the date of receipt will be the date upon which e-mail notification of entry of the Order is sent. However, the Parties may, by agreement, extend the thirty (30) day filing period subject to the condition that the Court be advised of such an agreement prior to the expiration of the thirty (30) day window for filing ordered herein.

**CERTIFICATION PURSUANT TO 42 Pa. C.S.A. SECTION 702(b)**

For the reasons stated in the foregoing Opinion, the Court certifies Chesapeake Defendants' Preliminary Objections I and III for immediate appeal as issues involving controlling questions of law as to which there is substantial ground for difference of opinion. Furthermore, the Court finds that an immediate appeal from the instant Order, as it applies to the question of the applicability of the UTPCPL may materially advance the ultimate termination of the above-captioned case

**BY THE COURT:**

A handwritten signature in black ink, appearing to read "K D Brown". The signature is written in a cursive, somewhat stylized font. To the left of the main signature, there is a small, vertical mark that looks like a checkmark or a stylized "H".

**Kenneth D. Brown, Senior Judge  
Specially Presiding**



IN THE COURT OF COMMON PLEAS  
BRADFORD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :  
Plaintiff : NO. 2015IR0069

VS. :

CHESAPEAKE ENERGY CORPORATION; :  
CHESAPEAKE APPALACHIA, L.L.C.; :  
CHESAPEAKE OPERATING, L.L.C.; :  
CHESAPEAKE ENERGY MARKETING, :  
L.L.C.; :  
ANADARKO PETROLEUM CORPORATION; :  
and ANADARKO E&P ONSHORE, L.L.C. :  
Defendants

.....  
ORDER – RE: PRELIMINARY OBJECTIONS OF ANADARKO  
DEFENDANTS

AND NOW, this 14<sup>th</sup> day of December, 2017, in

accordance with the attached Opinion, it is **Ordered** and directed as follows:

- **Preliminary Objection 1** to Counts I, II, III, IV, and VI of the Second Amended Complaint as to the applicability of the UTPCPL is **denied**. See Opinion at p. 33.
- **Preliminary Objection 2**. Is **denied**. See Opinion at pages 68-70.
- **Preliminary Objection 3**. Is **denied**. See Opinion at pages 70-71.
- **Preliminary Objection 4** which is identical to that raised in Chesapeake Defendant's Preliminary Objection IX, is, for the reasons stated in the discussion of Preliminary Objection IX (See Opinion at pages 58-61,72), granted as to

Plaintiff Commonwealth's request for costs relating to the investigation and prosecution of the case. Accordingly, the following paragraphs in the prayers for relief identified at Counts I, II, III, IV, and VI in the Second Amended Complaint are stricken:

Count I, Paragraph F. See Opinion at page 72.

Count II, paragraph F. See Opinion at page 72.

Count III, paragraph F. See Opinion at page 72.

Count IV, paragraph F. See Opinion at page 72.

Count VI, paragraph F. See opinion at page 72.

All other aspects of Preliminary Objection 4. are **denied**.

**Furthermore**, the Court grants Anadarko Defendants thirty (30) days from the date of receipt of this Order to file its Answer to Plaintiff Commonwealth's Second Amended Complaint; the date of receipt will be the date upon which e-mail notification of entry of the Order is sent. However, the Parties may, by agreement, extend the thirty (30) filing period subject to the condition that the Court be advised of such an agreement prior to the expiration of the thirty (30) day window for filing ordered herein.

**CERTIFICATION PURSUANT TO 42 Pa. C.S.A. SECTION 702(b)**

For the reasons stated in the foregoing Opinion, the Court certifies Anadarko Defendants' Preliminary Objection 1 for immediate appeal as an issue involving a controlling question of law as to which there is substantial ground for difference of opinion. Furthermore, the Court finds that an immediate appeal from the

instant Order, as it applies to the applicability of the UTPCPL may materially advance the ultimate termination of the above-captioned case.

**BY THE COURT:**

1st K D. B. Brown

**Kenneth D. Brown, Senior Judge  
Specially Presiding**