



# Drake Plus 150: Pennsylvania Oil and Gas Case Law in 2009

Pennsylvania Natural Gas Summit

November 16, 2009





## Minimum Royalty Act litigation

- Hundreds, possibly thousands, of landowners seek to terminate their lease agreements in suits before state and federal courts.
- **General Issue: Does reduction of royalty to pay for post-production costs violate Pennsylvania minimum royalty statute?**



## 58 P.S. § 33 – Guarantee of Minimum Royalties

- A lease or other such agreement conveying the right to remove or recover oil, natural gas or gas of any other designation from lessor to lessee shall not be valid if such lease does not guarantee the lessor at least one-eighth **royalty** of all oil, natural gas or gas of other designations removed or recovered from the subject real property.



## **Kilmer v. Elexco Land Services**

- **Susquehanna Co. Court of Common Pleas**
  - March 3, 2009 – Order ruled in favor of gas company.
  - March 16, 2009 – Opinion issued.
  
- **Notice of Appeal filed with Superior Court on March 13, 2009.**
  
- **On June 16, 2009, Supreme Court granted Petition for Extraordinary Relief.**



## ***Kilmer v. Elexco Land Services***

- **Argument was heard before Supreme Court on September 16, 2009.**
  - **Issue: “Whether 58 P.S. § 33 precludes parties from contracting that post-production costs be factored into the determination of the amount of royalty payable under an oil or natural gas lease.”**



## Untimely Tender of Payment

- ***Sylvester v. Southwestern Energy Production Co., 2009 WL 3633835 (M.D. Pa. Nov. 2, 2009).***
  - **Facts:**
    - On Dec. 8, 2007, Lackawanna County landowners executed a ten year lease for \$162.50 per acre.
    - Bonus payment was due on February 6, 2008.
    - Full payment was tendered on February 29, 2008.



## **Sylvester v. Southwestern Energy**

- **Untimely payment did not constitute a material breach of lease agreement.**
  - **Plaintiff can receive benefit of the bargain.**
  - **Forfeiture is disfavored.**
  - **Tender was within cure period.**
  - **Time was not of the essence.**



## Breach of Contract – Failure to Accept Lease

- ***Hollingsworth v. Range Resources*, 2009 WL 3601586 (M.D. Pa. Oct. 28, 2009).**
  - **Facts:**
    - **June – Hollingsworth received Dear Property Owner letter “offering” lease bonus of \$2,500 per acre.**
    - **August – Hollingsworth signs lease and returns to Range.**
    - **December – Range returns lease to Hollingsworth stamped ‘void.’**





## **Hollingsworth v. Range Resources**

- **Contract did not exist.**
  - Dear Property Owner letter did not constitute an offer.
  - Range did not sign lease agreement.
  - By voiding and returning lease, Range was rejecting Hollingsworth offer.
- **Delivery was irrelevant.**
  - Contract law v. real property law



***Lycobetter Homes*  
*v. Range Resources***

- **Unreported opinion – Docket No. 4:09-cv-249 (M.D. Pa. May 21, 2009).**
- **On appeal before Court of Appeals for Third Circuit at Docket No. 09-2645.**



## Use of Surface Estate

- ***Belden & Blake v. DCNR*, 969 A.2d 528 (Pa. Apr. 29, 2009).**
  - **Facts:**
    - **Belden & Blake owned leases in state park.**
    - **DCNR required “coordination agreement” in order to use surface estate.**
      - **Performance bond**
      - **Double stumpage**
  - **Belden & Blake filed suit.**



## **Belden & Blake v. DCNR**

- **Surface Owner v. Subsurface Owner**
  - ***Chartiers Block Coal Co. v. Mellon* (Pa. 1893) remains Pennsylvania law.**
  - **Subsurface owner has right to use of surface estate “as might be necessary to operate his estate.”**
  - **Use of surface estate must be reasonable.**
  - **Burden to challenge reasonableness is on surface owner.**



## **Belden & Blake v. DCNR**

- **DCNR mandate to protect resources**
  - **Government held to same standard as private landowner.**
  - **Just compensation required for diminution of property rights.**



## “Produced in Paying Quantities”

- ***T.W. Phillips v. Jedlicka*, 964 A.2d 13 (Pa. Super. Ct. Dec. 29, 2008).**
  - **Facts:**
    - Lease was executed in 1928.
    - Lease extended so long as “oil or gas is produced in paying quantities.”
    - Wells were drilled in 1929, 1986, 2004, and 2005.
    - Jedlicka argued that lease terminated in 1959 because lease was not profitable in that year.



## *T.W. Phillips v. Jedlicka*

- **Superior Court opinion**
  - Court relied upon *Young v. Forest Oil Co.* (Pa. 1899) to apply subjective test.
  - Court ruled that Jedlicka had failed to carry burden of establishing lack of good faith.



## *T.W. Phillips v. Jedlicka*

- **Issue before Supreme Court:**
  - **Did the Superior Court misapply [*Young v. Forest Oil*] by holding that Pennsylvania employs a purely subjective test to determine whether an oil or gas lease has produced “in paying quantities.”**





## Extent of Partnership Operations

- ***Szymanowski v. Brace*, 2009 WL 3790561 (Pa. Super. Ct. Nov. 13, 2009).**
  - **Facts:**
    - Partnership was to drill two wells.
    - Individual partner drilled additional wells on same tract as one of the partnership wells.
  - Court denied claim that additional wells should be assets of the partnership.



## Intervention in US Forest Service Litigation

- ***Forest Service Employees for Env'tl. Ethics v. United States Forest Service, 2009 WL 960244 (W.D. Pa. Apr. 7, 2009)***
  - **POGAM and Allegheny Forest Alliance were permitted to intervene in lawsuit.**



## **FSEEE v. US Forest Service**

- **Case settled without participation of POGAM and AFA.**
- **Court denied motion to stay settlement.**
  - **On appeal to 3<sup>rd</sup> Circuit**
- **Terms of settlement are subject of litigation in *Minard Run Oil Co. v. US Forest Service*.**



## Oil and Gas Act Preemption of Municipal Regulation

- ***Huntley & Huntley v. Borough of Oakmont***
  - Zoning restriction was permitted in R-1 district.
  - Example of permissible municipal regulation.
- ***Range Resources v. Salem Township***
  - Comprehensive regulatory scheme was not permitted.
  - Example of impermissible municipal regulation.



## The Agricultural Law Resource and Reference Center

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