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Berish v. Southwestern Energy Production Co.

No. 3:10-cv-1981; 2011 WL 382420 (M.D. Pa. Feb. 3, 2011)

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Prepared by Steven P. Trialonas, Research Fellow

In early 2008, Southwestern Energy Production Company (“SEPCO”) was utilizing hydraulic fracturing and horizontal drilling techniques to extract natural gas from the Marcellus Shale rock formation in Susquehanna County,. Due to insufficient casing, the toxic and carcinogenic fracturing fluid discharged into the ground and contaminated the water supply surrounding the well. A group of landowners with properties near the well initiated a lawsuit against SEPCO alleging violations of the Hazardous Sites Cleanup Act, Negligence, Private Nuisance, Strict Liability, Trespass and seeking to set up a Medical Monitoring Trust. Additionally, Plaintiffs sought compensatory and punitive damages, as well as preliminary and permanent injunctions barring SEPCO from engaging in drilling activities. SEPCO moved to dismiss Plaintiffs’ Strict Liability claim as well as the claim for Emotional Damages.

To recover under a theory of strict liability, the plaintiff generally must prove the defendant was conducting an abnormally dangerous activity and that such activities

caused harm to the person, land, or chattels of another. The court will apply the Restatement (Second) of Torts six-factor test to determine if an activity is “abnormally dangerous.”

The court later noted the merit of SEPCO’s argument that no Pennsylvania court has held hydraulic fracturing or horizontal drilling activities as abnormally dangerous. However, the court determined this lack of precedent to not be dispositive with regard to the motion because such a determination is generally made after discovery. Due to the fact-intensive nature of determining whether an activity is abnormally dangerous, the court denied SEPCO’s motion in order to allow the record to develop more fully.



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