

Can Natural Gas Drillers Drink Your Milkshake?

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The fight over the historical concept of the “Rule of Capture” as applied to gas rights in Pennsylvania continued recently as the appellees in the matter of *Briggs v Southwestern Energy Prod. Co.* recently requested a re-argument before the Pennsylvania Superior Court.

For those who have not been following the issue, in *Briggs* the Pennsylvania Supreme Court ruled that the Rule of Capture did not apply to situations such as hydraulic fracking where the plaintiff can prove that gas has not naturally migrated from one property to another, but rather has been obtained by mechanical means. American courts have historically adopted the Rule of Capture and have applied it to oil and gas rights. The principle, simply stated, is that a person who drills a well has the right to “capture” not only the gas under the property on which the well is drilled, but also any gas that may naturally migrate to that property.

The idea has been perhaps best theatrically represented in the 2007 film *There Will Be Blood* by Daniel Day Lewis in which he explains in a scene that by drilling on a neighboring brother’s property, he was able to obtain not only the oil underneath that property, but also the oil underneath a property for which he did not have any rights. In the film, Lewis explains to the non-benefitting landowner the concept of drinking the other’s “milkshake” through a very long straw.

Historically, Pennsylvania courts have followed the decision in *Westmoreland and Cambria Natural Gas Company v. Dewitt*, acknowledging that the ownership of natural gas is, as with all minerals, *ferae naturae* and is subject to the Rule of Capture.

In *Briggs*, the Pennsylvania Superior Court determined that the Rule of Capture did not necessarily apply to hydraulic fracturing.

The stakes could not be higher for the future of Marcellus shale drilling in Pennsylvania and if the current holding were to remain in place, it may allow landowners potentially impacted by hydraulic fracturing to bring claims against oil and gas companies in situations where the landowner feels they have not been adequately compensated.

Kevin Hall, Esq. regularly represents landowners in negotiation and litigation involving gas rights. If you have a lease with a gas company that you would like us to review, please reach out to us via email or by telephone 717-221-7951.