

## Gas Driller Liable For Pa. Coal Deposit Damages, Judge Says

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Law360, Philadelphia (March 06, 2014, 5:23 PM ET) -- A Pennsylvania federal judge on Wednesday ordered a J-W Energy Co. unit to pay for damages it allegedly caused in 2010 when it drilled through the site of a proposed Allegheny Enterprises Inc. coal mine in an attempt to access a deep deposit of natural gas it had purchased the rights to.

Treading into an area of state law over which he said there was little constructive guidance, U.S. District Judge Matthew Brann concluded that sound public policy was served by forcing J-W to pay for damage to a coal deposit Allegheny maintained possession of after it sold J-W the rights to natural gas below a 9,000-acre parcel in Cameron and Elk counties.

“If there is a tradeoff between using a given plot of land for producing coal on the one hand, and oil and gas on the other, the court should encourage efficient use of land,” the opinion said.

“The court can increase efficiency by placing liability on the party who can change its behavior at the least cost, which in most cases like this one is probably the party seeking to drill for oil and gas,” it added. “Accordingly, this court predicts that the Pennsylvania Supreme Court would hold that an oil and gas lessee must compensate the owner of an above-located coal estate for otherwise useful coal rendered inaccessible by oil and gas drilling.”

According to the opinion, Allegheny purchased the 9,000-acre parcel of land between 2002 and 2004, and acquired oil and gas rights associated with the property in 2005.

In 2008, Allegheny and J-W entered a series of agreements aimed at giving J-W the right to drill for any gas located more than 4,000 feet underground. The agreements left Allegheny with the rights to coal deposits closer to the surface.

Allegheny claimed that the exploration agreement made it clear that its own coal rights were superior to those it sold to J-W, and that J-W was required to wait until the completion of a planned coal mining operation before it could begin drilling for any natural gas.

Allegheny filed suit in 2010 after J-W moved ahead with plans to drill for natural gas in the same area where Allegheny was seeking approval from the Pennsylvania Department of Environmental Protection for its own coal mine. The company claimed that J-W's drilling operation rendered 13,300 acres of coal — valued at just over \$750,000 — inaccessible.

According to court records, the parties sparred over the interpretation of an 1893 ruling by the Pennsylvania Supreme Court in *Chartiers Block Coal Co. v. Mellon* which affirmed a decision requiring a driller to post a \$10,000 bond to compensate the owner of a coal deposit for damage during extraction.

The decision, however, also found that the oil's owner had rights at all times to reach the deposit. According to Judge Brann's decision, the Supreme Court ultimately said the dispute over how the

rights of each owner could be exercised was up to the state legislature to decide.

If presented with the issue today, however, Judge Brann concluded that the Supreme Court would find drillers liable for damage to coal deposits.

“This court predicts that the Pennsylvania Supreme Court would hold that an oil and gas lessee must compensate the owner of an above-located coal estate for otherwise useful coal rendered inaccessible by oil and gas drilling,” he said. “This prediction is supported, if not compelled, by Chartiers Block Coal.”

Jesse Daniel, an attorney with the Serene Law Firm representing Allegheny, said he was happy with the court's decision.

"Allegheny is pleased with the court's decision," he said in a statement. "Not only is the court's decision positive for Allegheny, but the decision has value to other producers of gas and oil and coal by making clear the legal duties they owe each other. As activity continues to increase in the Marcellus formation, and with Pennsylvania continuing to produce notable tons of coal, the legal clarity brought by this decision is very valuable to these industries."

Allegheny is represented by Jesse Daniel of the Serene Law Firm.

J-W is represented by David Miller and Julie Walker of Miller & Mentzer PC, the Wolford Law Firm and Andrew Jenkins of Burteson LLP.

The case is Allegheny Enterprises Inc. v. J-W Operating Co., case number 4:10-cv-02539, in the U.S. District Court for the Middle District of Pennsylvania.

--Editing by Andrew Park.