



# Marcellus' Legal Boom

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While there is a “de facto” moratorium in place on hydrofracking in New York, legal battles are beginning to emerge and expected to increase, in the Marcellus Shale region. The promise of wealth associated with natural gas drilling has called into question the ownership of mineral rights and surface rights.

Energy companies in Pennsylvania have paid Pennsylvania property owners billions of dollars since 2008 for the right to extract natural gas but legal skirmishes have erupted over who owns the mineral rights to the land. Surface rights to properties in the state are sometimes sold as separate interests to the underlying minerals, coal, oil and gas rights.

In Pennsylvania, where mineral law is murky, legal questions are arising as to whether ownership of shale gas should be treated differently from conventional gas extracted through traditional vertical wells. The reason for this fundamental issue is due to the nature of shale gas, which is tightly bound to the rock and typically extracted using horizontal drilling and high-volume hydraulic fracking. This issue has been brought before the Superior Court of Pennsylvania in September which involved an 1881 land sale. The Superior Court of Pennsylvania found that a Susquehanna County couple's claim that shale gas should belong to those who own the rock that contains it rather than those who own the conventional natural gas on the property had enough merit to send it back to the lower court for expert testimony.[1] While a decision has not been rendered, energy companies have urged the Pennsylvania Supreme Court to expedite the review of the case.

Litigation is also expected to reach the insurance industry. Civil suits alleging personal injury, nuisance and toxic torts involving land, air and water have been filed in the U.S. related to natural gas exploration and harvesting. The suits are varied: landowners that have entered into leases with drilling companies are suing over the terms of the lease; landowners that do not own the oil or gas rights on their property are suing for nuisance; landowners are bringing personal injury suits alleging headaches, nosebleeds, nausea, and open skin sores; and lawsuits are being filed by landowners claiming diminution in the value of their property as a result of damaged water and air. It is incumbent upon the insurance industry to take a closer look at the indemnification language of the relevant policies while considering specific exclusionary and coverage endorsements in the future as litigation involving the drilling in the Marcellus Shale region is sure to increase.

- Daniel Gilbert, Kris Maher, *Shale Gas Fuels Legal Boom* (Oct. 31, 2011), <http://online.wsj.com/article/SB10001424052970204505304577003960524923098.html>