CHAPTER 22

Plugging Oil and Gas Wells:
Who's in Control -- Lessor or Lessee?
Are Some Pennsylvania Courts Changing the Rules?

Wesley A. Cramer(1)

Peacock, Keller, Yohe, Day & Ecker
Washington, Pennsylvania

Synopsis

§ 22.01. Introduction.

§ 22.02. Scope.

§ 22.03. The Parties and Their Interests.
[1]--The Lessor's Interest.
[2]--The Lessee's Interest.
[3]--The Coal Developer's Interest.
[4]--The State Government's Interest.

§ 22.04. Pennsylvania's Jurisprudential Background.
[1]--Oil and Gas Well Ownership – Property Law of Trade Fixtures.
[2]--Contract Law – Oil and Gas Well Profitability.

§ 22.05. The Recent Greene County, Pennsylvania, Trial Court Decisions.
[1]--Willison v. Consolidation Coal Co.
[2]--George v. Consolidation Coal Co.
[3]--Consolidation Coal Co. v. VanDuff.

§ 22.06. Impact of the Willison and VanDuff Decisions.
§ 22.07. Conclusion.

§ 22.01. Introduction.

Historically, in their interrelationships with their lessors, oil and gas lessees have been allowed to exercise wide latitude in plugging their own oil and gas wells. Recently, however, some lessors in Greene County, Pennsylvania, have taken legal action to block the plugging of certain natural gas production wells. The Greene County court has gone to significant lengths to uphold the wishes of the lessors in most of these disputes.

§ 22.02. Scope.

The principal focus of this Chapter is the recent Greene County, Pennsylvania, trial court decisions. Accordingly, the majority of the law discussed will be that which has originated in Pennsylvania.

In this Chapter, we define the importance of the topic, examine the historical background of well plugging rights and privileges, and examine the relative rights of the lessor and lessee under the recent Greene County, Pennsylvania, decisions. We compare these recent Greene County decisions to historical and current statutory and regulatory well-plugging requirements. Also, we take a brief look at the impact the Greene County decisions, if upheld on appeal, may have on other industries.

Finally, while this Chapter addresses the various Pennsylvania statutes and regulations pertaining to oil and gas well pluggings, the focus is not upon what enforcement action may be taken against a lessee by a government agency. Rather, the focus is on who, as between lessor and lessee, is in control of oil and gas well plugging decisions.

§ 22.03. The Parties and Their Interests.

Inevitably, the existence of every oil and gas well sooner or later spawns the plugging issue. However, the motivation for plugging or not plugging oil and gas wells takes on various shades of difference, depending on the circumstances surrounding a particular well. With the substantial number of active, inactive, and improperly abandoned wells in existence, the plugging issue has become quite pervasive and important to various parties.

[1]-The Lessor's Interest.

Historically, oil and gas wells in the Appalachian region have not produced enormous royalties for lessors. Nevertheless, lessors have jealously guarded their desire for an uninterrupted flow of what is only a small income. Some lessors have been motivated to continue their interest in a well for as long as possible because of the perceived prestige that accompanies having a legal interest in an oil or gas well.

More important to some lessors than the royalties from the well has been the lessor's appetite for free or domestic gas. More often than not, lessors have been interested in having the plugging of a gas well delayed for as long as the well can continue to serve their domestic needs.

However, the Greene County cases reveal a rather unexpected, yet important and valuable reason for lessors' desiring control over oil and gas well plugging decisions. If a lessor can successfully assert control
over the plugging of a well, then, even if the well is old and practically worthless as a source of gas, that well, and the ability to plug it, becomes a very valuable asset as an obstacle to a deep coal mine operator who needs to remove the well for coal mining reasons.

[2]--The Lessee's Interest.

Because the cost of plugging a well can be quite expensive, one would ordinarily assume that oil and gas lessees or developers would endeavor to delay the plugging of wells for as long as possible. But this has not been the case, at least not for responsible operators. Responsible lessees are interested in producing a well only as long as it remains economically viable to do so. Once the well becomes sub-economic, even though it may be able to produce quantities of domestic gas for years to come, lessees are interested in plugging the wells properly and promptly.

Even though plugging can be quite costly, responsible lessees consider the cost a more known and predictable quantity than the potential cost of the environmental cleanup necessitated by ground water pollution caused by an old well, or a jury verdict for personal injuries or property damage stemming from an old well that has exploded. As a matter of good business judgment and risk management, lessees value highly the right and the liberty to plug the well at the appropriate time and without interference.

[3]--The Coal Developer's Interest.

Geologically speaking, oil and gas bearing strata are located well below most coal seams being actively mined. In Southwestern Pennsylvania, the Pittsburgh coal seam is generally located less than 1,000 feet below the land surface; the oil and gas bearing strata are located between 1,500 and 8,000 feet below the surface.

Without doubt, the most productive and efficient deep coal mining technique in use in the modern era is longwall mining. Being both the most productive and the safest technique, it has become the most widely-used deep coal mining method in the Appalachian region. However, longwalling is not without its drawbacks. Unlike the room-and-pillar mining method, longwalling is a relatively inflexible form of mining. Longwalling reaches its maximum production potential only when there are no obstacles in the path of the longwall mining machine.

Federal mine safety law mandates that every oil and gas well be plugged or replugged to "mine-through" standards in order to eliminate the onrush of natural gas in the mine and the consequent risk of explosion. The well casing must be removed, and a special plug installed in the well bore before mining through the well is permitted.

It is not uncommon in certain longwall mining areas to have one active or formerly active oil and gas well for every 50 to 100 acres of land. Some areas have been found to contain an oil well for every 10 to 30 acres of land. With this density of wells in the face of the absolute federal mandate to remove them, the importance to the longwall operator of being able to gain control over and to plug or replug the wells properly becomes readily apparent.

[4]--The State Government's Interest.

The Commonwealth of Pennsylvania has a vested interest within its borders in preventing the waste of precious natural resources and in protecting the environment. As succinctly stated by the Pennsylvania Department of Environmental Resources (PaDER), proper and timely plugging of all oil and gas wells is vital in accomplishing both goals:
The plugging of abandoned wells is important to prevent waste of oil and gas resources and to preserve the integrity of the reservoir in realization that new technology may allow additional production at some future time. Plugging is also necessary to protect the quality of fresh ground water and prevent continued dewatering of shallow wells and springs that may have been affected. (8)

In furtherance of the first goal, the Commonwealth has enacted the Coal and Gas Resource Coordination Act, (9) which provides for coordinating the activities of operators of coal mines and gas wells where gas wells penetrate workable coal seams. The Act contains requirements for both minimum distance between wells and mandatory plugging. (10)

In furtherance of the second goal, the Commonwealth has adopted the Clean Streams Law, (11) While this act does not deal expressly with oil and gas wells, it serves as the cornerstone for the PaDER to control water pollution in Pennsylvania.

Section 210 of Pennsylvania's Oil and Gas Act (12) mandates that every abandoned well must be plugged in a proper and timely manner to stop any vertical flow of fluids or gas within the well bore. Pennsylvania recognizes that proper and timely plugging of oil and gas wells is the appropriate way permanently to prevent the environment -- especially fresh ground water supplies -- from becoming polluted.

For similar reasons, other states have adopted statutes, regulations, and policies regarding oil and gas wells that resemble Pennsylvania's. (13) For example, West Virginia recently enacted a statute known as the West Virginia Abandoned Well Act, (14) which provides in part:

Many wells may exist in West Virginia which are abandoned and either not plugged or not properly plugged in a manner to protect underground water supplies, to prevent the movement of fluids between geologic horizons, to allow coal operators to mine through such wells safely, to allow for enhanced recovery of oil, gas and other mineral resources, and generally to protect the environment and mineral resources of this state, aforesaid; . . .. (15)

**§ 22.04. Pennsylvania's Jurisprudential Background.**

The Greene County cases take on additional significance in light of the appellate case law which has developed in Pennsylvania during the last 100 years. The purpose of this Section is not to review all Pennsylvania appellate case law on oil and gas matters but, rather, to identify those fundamental common-law principles in Pennsylvania that bear most directly upon the subject of oil and gas well pluggings and the Greene County cases. The appellate law discussed below is intended to provide a relevant backdrop against which the Greene County cases may be compared or contrasted.

[1]--Oil and Gas Well Ownership – Property Law of Trade

**Fixtures.**

The point of departure for any discussion of who, as between lessor and lessee, is in control of plugging oil and gas wells is the ownership of the well itself. The component parts of an oil and gas well comprise a tangible asset that is permanently affixed to the soil to the same extent as a house or a subsurface pipeline.

Ordinarily, anything that is constructed on and permanently affixed to the soil becomes part of the freehold estate and passes with it. For example, the conveyance in fee of a tract of land also carries title to any structures permanently affixed to that land (without any specific mention being made in the deed to those structures), because permanent structures are deemed to be a part of the soil on which they rest. (16)
However, the advent of the Industrial Revolution necessitated the development of a vitally important exception to the freehold rule. In 1912, the Pennsylvania Supreme Court explained the exception and the reason for its development:

While under the common law, whatever was annexed to the freehold became in legal contemplation a part of it, the development of manufacturing required the rule to be relaxed, and it is now the well-settled law that the tenant for years who erects fixtures for the benefit of his trade or business may at any time during the term remove them from the demised premises.\(^\text{17}\)

In the landmark Pennsylvania oil and gas case of *Shellar v. Shivers*,\(^\text{18}\) the Pennsylvania Supreme Court expressly applied the law of trade fixtures to oil and gas wells:

I do not think that there can be any doubt that the casing in an oil or gas well, the derrick, and other appliances used in drilling and operating it, are trade fixtures, and can be removed by the owner or lessee during the term of the lease. On the other hand, I think there can be no doubt that they are such fixtures that they become the property of the landowner, if not removed by the lessee during the term, or at least within a reasonable time after its expiration.\(^\text{19}\)

The *Shellar* decision stands principally for the proposition that the component parts of a gas well are trade fixtures owned solely by the lessee, which the lessee must remove within a reasonable time after the lease expires. If the lessee fails to do so, the trade fixtures become a part of the freehold estate, now owned by the owner of the freehold.

While the *Shellar* court did not deal directly with plugging a well, the case now stands as important law relative to the plugging control issue because of the statutorily mandated connection between removing the well equipment and plugging the well.

Pennsylvania's Oil and Gas Act requires that the owner or operator of a well must plug the well when the equipment necessary for operating the well is removed.\(^\text{20}\) It has long been the law that all legal requirements in force during the existence of an oil and gas lease are incorporated into and become part of the terms and conditions of the lease.\(^\text{21}\) As a consequence, the point at which an oil and gas lessee proceeds to remove its trade fixtures from the well site dictates, not only when it may plug the well, but when it must plug the well.

**[2]--Contract Law - Oil and Gas Well Profitability.**

The concept of property inherently involves the right to use, change, possess, and enjoy an asset as the owner sees fit. Although an oil and gas well is a trade fixture -- property -- owned by the lessee,\(^\text{22}\) establishing that a well is the property of the lessee does not necessarily determine the lessee's right to plug it. The appellate courts have brought the oil and gas lease to bear upon the subject.

The plugging issue has inherently involved the contractual relationship between the lessor and the lessee. Plainly put, this issue involves both property law and contract law.

In the dicta in *Shellar*,\(^\text{23}\) the Pennsylvania Supreme Court brought a key contract principle to bear upon the determination of when a lessee has the right to remove its well from the lessor's land. That contract principle relates to the issue of the well's profitability. The court said that as soon as it became apparent to the lessee that he could no longer operate the well profitably, he had the right to remove all of its components, which, of course, triggers the duty to plug the well.
While *Shellar* would clearly allow the lessee to remove all equipment from and plug an unprofitable well, one question remained. If a well is, or may still be, profitable to the lessee, and the lessee endeavors to remove (destroy) the well and plug it, will the court enjoin the lessee from destroying its own property? Or will it be permitted to do so, and only be held liable for damages to its lessor for breach of the covenants to develop and operate the well, supply free gas, and other covenants, to the extent of the breach?

Three years after *Shellar*, the Pennsylvania Superior Court, in *Patterson v. Hausbeck,*\(^{(24)}\) provided further insight into how the lessee's alleged breach of contract would interface with its right to remove its trade fixtures and plug the well. In *Patterson*, the plaintiff lessee drilled one test well on the defendant lessor's land. Although the well produced some gas, the lessee deemed it insufficient to continue developing the well and shut down the operation. The lessor then assumed possession and operation of the well for domestic gas purposes. The lessee attempted to recover the equipment from the well, but was prevented from doing so by the lessor.

The lessee sued for the value of the well fixtures wrongfully converted by the lessor. Lessor's defense was that, because the lessee breached the lease by failing to carry out the covenant to fully develop the well and the producing horizon, the lessee could be prevented from removing the well fixtures and plugging the well.

The court decisively rejected the lessor's argument and held that a breach of the contract by the lessee would not operate to deprive lessee of the right to his property -- the component parts of the well. Thus, the court carefully distinguished the lessee's property rights (and the equipment removal clause pertaining to those rights) from any alleged breach of contract by the lessee. Although the *Patterson* court did not expressly find the gas well to be unprofitable, the facts of the case suggest that the well did not produce sufficient gas for the lessee to make a profit. Therefore, still unanswered in Pennsylvania after *Patterson* was whether a lessee would have a right to take its equipment from and plug a well that is, or is allegedly, still profitable to the lessee.

The Pennsylvania Supreme Court may have supplied the answer to this lingering question in another landmark decision decided some 14 years after *Patterson* and 17 years after *Shellar*. In *Robinson v. Harrison*,\(^{(25)}\) the lessee drilled and operated an oil well for a period of time and then, suddenly, because of a "misunderstanding" with his lessor, pulled all the rig and casing and plugged the well. The lessor sued for damages for destruction of the well.

Although the lower court did not make an express finding that the well was profitable, the well's profitability may reasonably be inferred from the court's finding that the lessee had plugged the well, not because of unprofitability, but because of the misunderstanding.

The lower court held that, in the absence of express contract language to the contrary, a lessee has an implied right to remove its trade fixtures and plug the well at any time during the term of the lease. The supreme court affirmed the judgment on the opinion of the lower court.

Because the court did not find it necessary to conclude that the well was unprofitable before reaching the holding that the lessee had the right to remove his property and plug the well, it would seem that a Pennsylvania lessee has the right to remove its equipment and plug the well without establishing the well's unprofitability.

At first glance, *Robinson* may appear to be inconsistent with *Shellar*. However, all three decisions can easily be harmonized in one statement: A lessee is free to remove its equipment from, and to plug, its oil or gas well at any time; but if it does so while it is or should be making a profit from the well, the lessor may hold the lessee liable for damages for breach of contract. Thus, absent an express contractual provision to the contrary, at no time may a lessor prevent a lessee from removing the lessee's equipment and plugging the
lessee's well.


Regardless of whether a lessee must establish that a well is unprofitable before it has the right to plug it, or whether a lessee need only establish unprofitability in order to escape liability for breach of the express or implied covenant to produce and develop the well, the issue of what the lessee must actually demonstrate is the same. Can a lessee casually exercise its natural instinct as to whether its well is profitable? Does the lessee need to go to the opposite extreme and produce a formal profit and loss statement? What standard is the lessee bound to exercise to establish that the well is no longer profitable to operate?

Although it does not appear as though the Pennsylvania appellate courts have grappled with this issue in light of a lessee's endeavor to plug its well, the Pennsylvania Supreme Court has dealt with the matter in the context of a breach of contract claim in two cases, *Colgan v. Forest Oil Co.* and *Young v. Forest Oil Co.*

In *Colgan*, the lessor brought an action against the lessee for forfeiture of the lease or, alternatively, for specific performance of the covenant to develop. The lessor complained that the lessee had breached the lease by failing to sink additional wells on portions of the farm to offset drainage from adjoining property and to maximize recovery of the oil reserve within the leasehold. The lessee refused to drill additional wells based on its judgment that more wells would not be profitable.

Reversing the lower court's decree ordering the lessee drill additional wells, the supreme court said that a lessee is not bound to work unprofitably for the profit of the lessor. Further, the court said that it would respect the good faith business judgment and management of the lessee. The lessee's decision in *Colgan* not to drill additional wells was not based purely upon instinct. It was based upon evidence and the production history in the area. Only if the lessee were perpetrating a fraud upon the lessor would the court intervene.

Hence, the court announced the rule that it would not impose a different judgment on the lessee, even if the court deemed the lessee's judgment to be erroneous, unless the lessee perpetrated a fraud or deliberately attempted to obtain a dishonest advantage over the lessor.

Drawing from this case, a court is going to require the lessee to produce evidence that it has exercised good faith in concluding that continued operation of an oil and gas well is no longer profitable. However, the Pennsylvania Supreme Court gave the oil and gas community the clear impression that, in determining matters of profit and loss, wide latitude would be given to the lessee.

In the companion opinion in *Young*, the supreme court followed the same rule, saying that, in determining whether a particular endeavor will be profitable or not, a lessee is entitled to follow its own good faith judgment. The fact that the court, the lessor, the experts, or anyone else may disagree is of no consequence and will not authorize the court to interfere with the lessee's good faith business judgment.

[4]--The Relative Priorities of the Lessor's Free or Reserve Gas

Rights and the Lessee's Plugging Rights.

In the Appalachian region, it is not uncommon for a well to produce enough gas to heat a dwelling house long after a lessee determines that the well, commercially speaking, is no longer economically viable. It is no surprise that, when a well reaches this state, a conflict between lessor and lessee often arises -- the lessee desiring to plug the well and the lessor desiring to continue the free gas supply to heat his or her home.
The issue then becomes: Does the lessor's desire to continue obtaining domestic gas from the well dictate how long the lessee must operate the well or leave it unplugged; or does the lessee's desire to plug and abandon the well dictate how long the lessee must supply the lessor with domestic gas? In other words, where there is free gas, whose wishes -- lessor's or lessee's -- determine when a well can be plugged?

The Pennsylvania appellate court rulings have been based almost exclusively on a meticulous analysis of the existence, nonexistence, or phraseology of the free or reserve gas language in the lease.

The Pennsylvania Supreme Court, in *Gillespie v. Iseman*,(29) faced the issue of whether the lessee was legally obligated to furnish the lessor with free gas for an outdoor light in addition to free gas for the lessor's house. In ruling against the lessor, the court said that, because there was no express contractual obligation in the lease pertaining to an outdoor light, the lessee had no obligation to supply gas to the light.

The Pennsylvania appellate courts have been consistent over the years in their application of the literal text of the oil and gas lease relative to free gas rights and privileges. The recent case of *Peters, et al. v. Consolidated Natural Gas Co., et al.*(30) involved a well that was originally producing native gas and was converted to a storage well. When the well casing began to leak, Consolidated, the lessee, proposed to plug the well instead of repairing it. The lessors sought an injunction, asserting that the lessee was obligated to continue them providing free gas. In a unanimous decision based on the express terminology of the 1917 lease, as well as the 1968 amendment, the court held that the lessee had the right to discontinue supplying gas to the lessor, to plug the well, and to abandon it.

The appellate courts in other jurisdictions have based their decisions on a careful analysis of the lease language as well. In one of the clearest statements that free gas rights and privileges are dependent upon the lease language, an Ohio court held that the landowner has only those free gas privileges or rights as are defined in the lease.(31)

An Indiana court has held that the lessee would have no right to plug a well providing free gas on the basis of the following express language in the lease: "If lessee, at its option, abandons a well on said premises furnishing gas sufficient for said residence, said well shall be left in such condition as to be used by said [lessor], at his expense."(32)

Likewise, in holding that the lessee had not violated a plugging statute, a California court relied on a lease provision to the effect that the lessee could not take a well out of operation without the "written consent of the lessor."(33) The court relied exclusively on this express language in the lease, stating that the lessee had no right to destroy a well unless the lessor consented.

In the case of *Hammons v. Pure Oil Co.*, (34) the Kentucky Supreme Court was asked to rule on whether the lessor had a right to enjoin the lessee from plugging a well and destroying the lessor's domestic gas supply. That supply came from a well that had never produced in commercial quantities. Apparently, the lessor wanted to take over the well. Relying on the language in the lease, the court concluded that the lessee had the right to plug the well and the lessor had no right to assume possession or ownership of the well, even though the lessor would lose the domestic gas supply by the destruction of the well.

Analyzing the lessor's right to free gas in light of whether or not a lessee could produce the well in paying quantities, the Supreme Court of Oklahoma, in *Wade v. Lillard*,(35) provided the following syllabus:

Where production can no longer be obtained in commercial quantities from an oil and gas lease, the fact that the lessor uses in his residence gas from one of the wells will not justify the granting of an injunction against the lessee, restraining him from pulling the casing in said well and plugging same, where there is no
evidence that such well has ever produced, or could be made to produce, oil or gas in paying quantities.

In other cases, courts have ruled that, because the express language of the lease placed an unconditional requirement on the lessee to provide the lessor with free gas, the lessee was obligated to furnish gas regardless of how much or how little the lessee was actually producing from the leased premises.\(^{(37)}\) In other words, if the lease so provides, the free gas clause may be construed and enforced as a covenant independent of any other covenants in the lease. This seems to be particularly the case where the lease does not expressly require that the free gas must emanate from the leased premises.

The oil and gas treatises generally considered authoritative agree that the respective rights and duties of the parties concerning free gas and well plugging issues is dependent on the language in the lease.\(^{(38)}\)

§ 22.05. The Recent Greene County, Pennsylvania, Trial Court Decisions.

This Section discusses three recent trial court decisions by the Court of Common Pleas of Greene County, Pennsylvania. The first Greene County case involved an old well that was producing some domestic gas for the lessor's mansion house but, because of very low production, no commercial gas.\(^{(39)}\) The court held that the lessor had a right to enjoin the lessee from removing the equipment from and plugging the well and also had the right to take over permanent ownership and operation of the well.

The second case involved a well that was producing virtually no gas whatsoever, and indeed had been previously plugged with a shallow plug.\(^{(40)}\) The surface owner sought injunctive relief against the owner of one of the underlying coal seams, who needed to replug the well for mine safety reasons before mining through the well. The court ruled against the surface owner, permitting the coal operator to enter the surface and perform the replugging operation.\(^{(41)}\)

The third Greene County court decision primarily regarded a gas well that, at the time the lessee first decided to take it out of service, was in the lessee's opinion, producing a sub-economic quantity of commercial gas.\(^{(42)}\) In a strongly-worded opinion, the court held that, regardless of the well's producing capabilities, the well owner had no right to remove the equipment from and plug the well unless the lessor's consent was first obtained.

\[1\]--Willison v. Consolidation Coal Co.\(^{(43)}\)

On April 4, 1901, L.B. Clovis and his wife as lessors entered into an oil and gas lease with Fort Pitt Gas Company as lessee for a large tract of land in Gilmore Township, Greene County, Pennsylvania. The lease provided that it would remain in force for so long as oil or gas was produced by the lessee. The lessee was obligated to pay lessor a flat rate royalty of $300.00 per year for each commercially-producing gas well drilled on the property. The lease also provided for the lessor to connect to the well and have an unspecified amount of free gas for an unspecified period of time. Finally, the lessee had the right "at any time" to remove all machinery and fixtures.\(^{(44)}\)

After the execution of the lease, Well No. 1-815 was drilled and operated for gas. Presumably because of declining production, the lessor and lessee entered into a lease amendment in 1932 providing for a reduced royalty for as long as the well would remain profitable.\(^{(45)}\)

Prior to this litigation, Willison had succeeded to Clovis' interest as lessor. Willison also owned the oil and gas beneath the farm, along with the surface land. Columbia Gas Transmission Corporation succeeded to Fort Pitt's interest as lessee and owner of the well. On August 4, 1987, Columbia transferred its interest in the lease and the well to Consolidation Coal Company. At that time, the well was producing less than 300,000 cubic feet of gas per year.\(^{(46)}\)

At the time of the transfer, Consol was operating the Blacksville 2 Mine, a deep coal mine, employing longwall mining. Consol's interest was to gain legal control over the well and plug it, so as to remove this obstacle from the path of the longwall mining machine. After assuming the leasehold and the ownership of the well, Consol notified Willison that the well would be plugged on or after August 31, 1987. Intending to keep the lease in force, Consol tendered the next quarterly flat royalty to Willison on August 21, 1987.
On August 31, 1987, Columbia proceeded to remove its meter and disconnect the line supplying free gas to the Willison home. By letter addressed to Consol that same day, Willison advised Consol that the lease was terminated (forfeited by Consol), and returned to Consol the quarterly royalty check. On September 3, 1987, Willison hired an outside contractor and reconnected the line to the well. Subsequent negotiations between the parties having failed, Consol commenced preparations to enter the Willison farm to plug the well.

On September 9, 1987, Willison went into Greene County Common Pleas Court seeking injunctive relief against Consol. The Greene County Common Pleas Court conducted a series of evidentiary hearings on Willison's request for a preliminary injunction. These hearings culminated in an opinion and order issued on October 20, 1987, formally entering a preliminary injunction against Consol.

In concluding that the lessor (Willison) and not the lessee (Consol) had the right to determine whether or not Consol could remove the equipment from and plug the well, the Greene County court justified its 1987 injunction decision with a series of reasons.

The overarching reason for the court's issuance of the injunction was the fact that Consol's sole reason for wanting to gain control over and plug the well was so that it could mine its coal. This seemed to be the court's main concern, even though Consol sought to remove the equipment from and plug the well, not primarily in its capacity as the owner of the surrounding coal, but in its capacity as successor lessee on the basis of the express equipment removal clause in the lease.

The court determined that Consol, as lessee, had no right to remove its equipment from or plug the well because it had forfeited the lease, thereby causing the well to revert to Willison. In the court's view, by taking steps to plug the well, Consol was about to breach the express free gas clause, the royalty clause, and the implied production covenant in the lease. This anticipatory action caused the well to revert to the lessor's exclusive control. Although the court only stated expressly that the actual plugging of the well would cause the forfeiture, it suggested that the imminency of the plugging had the same effect.

The court's second reason for granting the injunction was that one joint venture partner has no right to interfere with another joint venture partner's right to continue the purpose of the venture. According to the court, the oil and gas well operation constituted a joint venture. Consol and Willison, as successors to Fort Pitt and Clovis, respectively, combined their property, skill, and resources, thereby becoming joint venture partners in the oil and gas production operation. As joint venture partners, each was given an element of control over the conduct of the venture. Because Consol sought to destroy the operation and Willison did not, Willison was entitled to an injunction to further the existence of the venture.

The court's third reason for denying Consol any right to remove its equipment from, and plug, the well was the public policy in favor of preserving natural resources. The court was momentarily troubled by which natural resource, a gas well or a coal seam, public policy dictated should be preserved. However, it concluded that preserving the gas well was the right result, even though (1) the well produced less than the average annual allotment of gas for one single family dwelling and (2) the coal lost by leaving the well was 110,000 tons, valued at over $3,000,000.00. The court rested its conclusion on two bases: first, "coal produces energy one time, and a gas well continues to produce over many years" and, second, the "right to drill for oil and gas had been specifically reserved in the coal severance deed." 

Conspicuously absent from the court's otherwise extensive analysis of the case was any discussion concerning whether the well was profitable for Consol to produce or the need for testimony as to profitability. Also absent from the court's discussion was any mention of the 1932 lease amendment, which expressly injected the profitability standard into the lease.

Although the court did say that "failure to acquire a desired quantity of gas may be a valid reason for a lessee to halt gas production," implying that the profitability issue would be addressed, the court quickly indicated that a discussion of the well's profitability was unnecessary because mining for coal is not a valid reason to halt gas production. In other words, because Consol, as the coal operator, desired to take the well out of service to mine its coal, the court found it unnecessary to determine whether Consol, as the well owner and lessee, could make a profit by producing the well.

On December 22, 1988 and March 3, 1989, Consol and Willison, respectively, filed cross-motions for summary judgment with the Greene County court, each asking for a determination of their rights under the lease pursuant to the Declaratory Judgment Act. In a lengthy opinion issued on May 4, 1989, the Greene County court addressed the issues of who had the right to plug the well and who owned the well equipment and fixtures.

Although the court's 1989 opinion was largely a confirmation and amplification of the sentiments expressed in its 1987 opinion, a few portions of the 1989 opinion are noteworthy. First, the court unequivocally concluded that the lessor "Willison had the right to plug the well" because Consol's intent as a coal operator to plug the well violated the lease and produced a forfeiture. Further, the court concluded that no Pennsylvania appellate court has yet decided the issue of the lessee's right (or lack thereof) to remove all equipment from and plug a producing well. The Greene County court dismissed the Shellar and Patterson decisions as irrelevant, on the basis that each dealt with non-producing wells. The court's opinion contains no reference to the Robinson decision.
The court then construed the "at any time" equipment removal clause in the lease. In a stronger and clearer statement than in the 1987 opinion, the court said that "at any time" means at any time that the well is no longer profitable or capable of producing in paying quantities. However, the court appeared to pay only lip service to the profitability issue. Almost immediately after mentioning the profitability standard, the court, in essence, reverted to the 1987 opinion and suggested that an analysis of the well's capabilities was unnecessary because Consol intended to plug the well in any event, whether profitable or not.

The Pennsylvania Department of Environmental Resources, through its amicus curiae involvement in the case, brought to the court's attention its concern over who would bear the environmental responsibility for the well as a result of this dispute. The court recognized that to authorize Willison to appropriate the benefits of the well, while leaving Consol (the registered operator/owner) with the liabilities, would be patently unfair to Consol. In an unusual maneuver, the court, therefore, ordered Willison to apply for a transfer of the operator's permit to him and also ordered Consol to cooperate in officially relinquishing its property and the attendant liabilities for the well to Willison.

In essence, the court's holding authorized Willison to convert or appropriate Consol's well and well fixtures. Realizing, however, that Consol had purchased the well fixtures from Columbia, the court determined that it would be improper to permit Willison to keep Consol's property free of charge. Relying on what it viewed as precedent emanating from an 1899 Pennsylvania Supreme Court decision, the court concluded that Willison would have to pay Consol for the value of the equipment and fixtures, minus removal costs. In a May 16, 1989 hearing concerning damages, the court entered a judgment against Willison and in favor of Consol for the sum of $4,270.00, representing the value of the well casing and fixtures appropriated by Willison.

The Greene County jurisprudence established by the Willison decision is clear. Not only will a lessor be able to enjoin a lessee from plugging a well producing no more than some domestic gas, but the lessor has the further right to take over the well, at least from a lessee who also controls the coal around the well and wants to plug it for coal mining purposes.

As to a lessee desiring to plug a well for reasons not related to coal mining, the court left the door somewhat ajar. The lessee might be able do so if it first proves that the well is no longer profitable. This door did not remain ajar for very long.

[2]--George v. Consolidation Coal Co.

Norman T. George and his wife acquired a 30 acre tract of undeveloped farmland in Gilmore Township, Greene County, Pennsylvania, on which was situated an old gas well producing virtually no gas. The well had been plugged and abandoned some 40 years before the commencement of this case. No gas lease was in force at the time of this litigation.

Consol acquired the Pittsburgh coal under the George property, including the coal all around the gas well, along with a full complement of mining rights. The severance deed contained a reservation authorizing the surface owner to drill through the coal for oil and gas.

At the time this case began, Consol's Blacksville 2 deep coal mining operation, which uses longwall mining, was approaching the coal beneath the George surface and in the vicinity of the abandoned well.

Before the litigation, Consol approached George to negotiate a damage settlement in advance for the right to disturb George's surface property in replugging the abandoned well in accordance with federal safety standards so that it could legally mine through it. Negotiations having failed and George having been advised by Consol that it intended to enter his land and plug the well, George sought a preliminary injunction from the Court of Common Pleas of Greene County on January 3, 1989.

After an evidentiary hearing on George's preliminary injunction request, the Greene County court entered an order and opinion on January 26, 1989, refusing George's request, thereby allowing Consol to replug the well.

Rejecting George's argument that Consol could not enter George's surface to replug the well because Consol's mining rights did not include this express right, the court said that, for primarily two reasons, George could not demonstrate a clear right to enjoin Consol's replugging of the well. First, unlike Willison, George had no proprietary right in the well because he was getting no free gas or royalties from it. The second reason was what the court called the doctrine of necessity. Because the law mandates that Consol replug abandoned wells before mining through them, the court said it had no right to prevent Consol's discharge of this duty.

Apparently because of some trepidation that coal operators in Greene County might seize upon this favorable opinion to begin dealing with Greene County residents on gas well matters in a heavy-handed manner, the court, at the end of its January 26, 1989 opinion, as well as in a later opinion rejecting George's motion for reconsideration, cautioned that the court was not recognizing any right in Consol to occupy George's surface. The court reiterated that it merely had held that George had not demonstrated a clear right to injunctive relief and, therefore, had no right to stop Consol from doing the replugging.

Notwithstanding the court's cautionary language, its conclusion that a surface owner has no proprietary right in a well that produces...
no gas is significant. Since 1989, the George case has been recognized as local authority allowing a deep coal mine operator to plug or replug abandoned wells.\(^{(62)}\)

**[3]--Consolidation Coal Co. v. VanDuff.\(^{(63)}\)**

On February 25, 1919, R.F. John and his wife as lessors entered into an oil and gas lease with Monongahela Natural Gas Company as lessee for a 295 acre tract of land in Whiteley Township, Greene County, Pennsylvania. The lease contained several key provisions, including an "at any time" equipment removal clause, a $400.00 per well per year flat rate royalty clause, a 200,000 cubic feet per year free gas clause, and, perhaps most importantly, a clause providing that the lessee could remove the rig and casing of any well drilled on the leasehold that became unprofitable to the lessee.\(^{(64)}\)

On October 26, 1927, Equitable Gas Company, as successor in interest to Monongahela Natural Gas Company, completed the drilling of Well 462 into the Gantz sand at a depth of 2,700 feet.\(^{(65)}\) By February 1985, Equitable determined Well 462 to be commercially sub-economic, and on September 22, 1987, sold Well 462 and other wells to Consolidation Coal Company. Consol, who owned all of the Pittsburgh coal around the well as a part of its Blacksville 2 longwall coal mine, desired to plug the well and mine through it. Equitable remained the lessee of the lease. Although Equitable left the well connected to its gathering lines, maintenance work on Well 462 was largely terminated and, by February 1991, Well 462 had ceased producing any gas.

Co-defendants, Mr. and Mrs. Harold F. VanDuff, acquired title to the 295 acre surface tract and succeeded to the free gas rights under the lease. Equitable continued to supply the VanDruffs with free gas. This gas came, not from Well 462, but from Equitable's gathering lines. Co-defendant Mary Cunningham succeeded to the royalty interest in the lease. Together, the VanDruffs and Cunningham were the successor lessors.

In 1992, Consol obtained a plugging permit from the PaDER and gave notice to VanDuff that it was about to plug the well. After being denied entrance to the property on April 9, 1992, Consol filed an action in the Court of Common Pleas of Greene County, requesting injunctive relief to allow it to enter VanDruffs' surface, remove the equipment, and plug the well. At stake for Consol was 120,000 tons of Pittsburgh vein coal valued at $4,500,000.00 that would be lost if it could not plug the well. At stake for the VanDruffs was some temporary disturbance of their surface land during the plugging operation and, for Cunningham, the possible loss of her $300.00 per year royalty.

At the evidentiary hearing, a petroleum engineer for Equitable, the lessee since Well 462 was drilled in 1927, testified as to why Equitable had determined that Well 462 was no longer profitable to operate after 1985. The testimony lasted approximately one-half day.

At the conclusion of the evidentiary hearings on June 1, 1992, the Greene County court denied Consol's request for a preliminary injunction from the bench.\(^{(66)}\) Consol appealed to the Superior Court of Pennsylvania the next day and the Greene County court filed a memorandum opinion in support of its order.\(^{(67)}\)

Although the only issue before the Greene County court was whether Consol was entitled to enjoin the lessors from interfering with its equipment removal and well plugging operations, the court first deemed it necessary to discuss why Consol had "no right to abandon the well"\(^{(68)}\) or terminate the lease.

The court analyzed this profitability/equipment removal clause:

If at any time any well or wells drilled upon the premises become so low in pressure or production that it or they are not profitable for the lessee to operate, then the lessee may abandon such well or wells and remove the rig and casing therefrom and be released from the further payment of royalty upon the same . . . .

Equitable's testimony established that it was still the lessee, that Well 462 had been unprofitable before being sold to Consol, that it sold the well to Consol because it knew Consol would definitely plug the well, and that any proceeds from the sale of any gas that might have flowed from the well after 1987 went to Equitable as lessee, and not to Consol. Notwithstanding this testimony, the court said that Consol failed to maintain the well since 1987, thereby rendering any gas emanating from the well since 1987 profit to Consol. Therefore, because Consol failed to prove Well 462 had not been profitable for it to operate since 1987, Consol had no right to "abandon" the well.

Next, even though the termination of the lease was not at issue, the court concluded that Consol had "no right to terminate the lease," because it had breached the lease by failing to maintain the well properly since 1987. Notwithstanding the testimony demonstrating that Consol had purchased from Equitable the right to carry out the Equitable's 1985 plugging decision, the court concluded that Consol still had a duty to keep the well bore free of water and to maximize the well's production. In this portion of its opinion, the court appeared to be saying that a breach of contract will not permit a lessee to cease operating a well.
The court then reached that portion of its opinion that disposed of the issue in the case -- Consol's right to plug Well 462:

There is a third, and possibly the most important consideration. Let us assume that Consol had shown at the time of hearing that they maintained the well under the standards recognized in the industry, and that the well was unprofitable. The lease agreement only grants Consol, as successor lessee, the right to abandon and not to plug the well. In order to plug the well, they must have acquired not only the lessee's interest in the well, but also the interest of the lessor. (69)

In sharp contrast to the court's statement in Willison that a well's failure to be profitable would be a legitimate reason for plugging it, the court here concluded that, regardless of how unprofitable a well may be, the well cannot be plugged without the lessor's consent. Establishing unprofitability only entitles the well owner to abandon the well.

A more detailed analysis of the thinking underlying the court's opinion yields two possibilities. First, the court could be saying that the lessor and lessee (well owner) are actually co-owners of a gas well (as a whole -- a functioning piece of property), and one co-tenant has no right to destroy the jointly-owned property without the other's consent. This interpretation might be supported by the court's statement earlier in its opinion that Consol purchased the well, but not the lessor's "proprietary interest in the well."(70)

Alternatively, the court could be saying that, with the possible exception of the casing in the well, the well (as a whole -- a functioning piece of property) is the property of the lessor. This interpretation might be supported by the court's statement that the harm Consol will suffer by not being able to remove and take possession of the gas well it bought is "strictly economic," and what Consol sought to destroy was the "defendant's existing property rights."(71)

Regardless of which academic underpinning the Greene County court rested its opinion upon, the status of Greene County jurisprudence regarding well pluggings is clear. The lessee or well owner can not plug a well producing any quantity of gas without the lessor's consent.

§ 22.06. Impact of the Willison and VanDruff Decisions.

The Willison and VanDruff decisions provide fertile ground in which germinate some very difficult and perplexing problems, not just for the oil and gas industry, but also for the Commonwealth and, perhaps, other industries.

[1]--The Oil and Natural Gas Industry and the Commonwealth.

Since at least 1881, oil and gas well owners and operators in Pennsylvania have been statutorily obligated properly to plug the wells they drill and operate before walking away from them. (72) Many other states have similar legislation.

The current state of Greene County jurisprudence regarding well pluggings is seen by responsible operators as presenting them with a dilemma. If a well is no longer profitable and the lessor refuses to consent, the most that the Greene County decision permits the well owner or operator to do is to walk away from the well, but not to plug it. But, if the owner/operator walks away from the well and does not plug it properly, the owner/operator subjects itself to the wrath of the Commonwealth of Pennsylvania for statutory and regulatory violations.

Although the Greene County court's solution to this paradox in the Willison case was to have Willison appropriate the well and assume the plugging liability, this solution has spawned questions in the minds of well owners/operators. By what authority can a court permit or mandate a sequence of events whereby what was the lessee's property and responsibility becomes the lessor's property and responsibility?

Further, aside from the legalities, the Commonwealth or the general public may ask whether it is advisable to relinquish old gas wells and the attendant plugging liabilities to individual landowners/lessors. It is axiomatic that, at some point, every well has to be plugged. The Citizens Advisory Council to the PaDER recently reported that, since 1985, the PaDER has plugged 38 wells at a cost ranging from $4,000.00 to $273,639.00 per well. (73) Is it wise to establish a mechanism whereby wells can be taken from financially responsible owners, e.g., Consol and Equitable, and placed in the hands of far less financially capable individuals? It is not unreasonable to project that a gas well costing $273,639.00, or even a fraction of that, to plug will probably never be plugged by any individual landowner, thereby thwarting, or at least interfering with, the Commonwealth's goal of protecting ground water.

[2]--Other Industries.

Although the Willison and VanDruff decisions are of primary interest to oil, natural gas, and coal producers, the possible academic underpinnings of these decisions produce questions which are of particular interest to industries other than the oil, gas, and coal mining industries.

For example, if a subsurface pipeline company installs a transmission line deep into a landowner's surface property and simultaneously agrees to pay a periodic monetary benefit along with a supply of gas as compensation for the right to install and
operate the line, does the landowner become the owner or co-owner of the pipeline, enabling it to exercise some degree of control over that pipeline?

Similarly, if an electric power company imbeds electric poles and strings power lines across a landowner's surface property, and simultaneously agrees to pay a monetary benefit along with a supply of power as compensation for the right to install and operate the power line, does the landowner become the owner or co-owner of the power line, enabling it to exercise some degree of control over that power line?

Although these questions were not, per se, at issue in either Willison or VanDruff, at the very least, the entire public utility industry will be keenly interested in the final outcome of these cases.

§ 22.07. Conclusion.

The result reached by the Greene County court in George rests on sound principles of property law. Moreover, it is in full harmony with the current legislative thinking, not just as to mine safety, but also as to the desire of the Commonwealth to have all old wells plugged properly. (74)

However, the Greene County court's decisions in Willison and VanDruff have taken the coal mining industry and the natural gas producing industry, and perhaps even the Commonwealth, by surprise. The jurisprudence spawned in Greene County respecting the plugging of producing wells has not yet emerged from any other jurisdiction within or outside of Pennsylvania. Only time will tell if the germination of what appears to many to be a brand new set of producing gas well plugging rules will grow and become rooted in jurisprudence throughout Pennsylvania, as well as other jurisdictions.

1. * The author acknowledges with gratitude the assistance provided by Timothy P. Stranko, Esquire.

2. 1. We use the term "lessor" in this Chapter to mean the surface owner who has leased his or her land to another person or entity for oil and gas production purposes.

3. 2. We use the term "lessee" to mean the person or entity who enters the land, drills a well or wells, and proceeds with production, all pursuant to an agreement with a "lessor."


7. 3. 30 C.F.R. §§ 49.4(c)(6), 75.1700 (1992).


18. 33 A. 95 (Pa. 1895).
19. Id. at 95.
22. 7. As we shall see from the Greene County cases, the owner of the trade fixture may not necessarily be the same as the one on whose leasehold the trade fixture is being operated -- i.e., the lessee. However, for purposes of our discussion, we will refer to the lessee as the well owner because the lessee is normally the owner of the trade fixture.
23. 8. Shellar, 33 A. 95 (Pa. 1895). Although the reported opinion was actually authored by the lower court, the Pennsylvania Supreme Court affirmed the lower court and fully endorsed the lower court's opinion supporting the decision.
24. 9. 8 Pa. Super. 36 (1898).
25. 10. 85 A. 872 (Pa. 1912).
26. 11. Although Cassell v. Crothers, 44 A. 446 (Pa. 1899), has been cited as supporting the proposition that Pennsylvania law prohibits a lessee from plugging a profitable well, an intellectually honest analysis of this case does not appear to support that proposition. Also, authority in states other than Pennsylvania has been cited for the proposition that, if a well is producing in paying quantities, the lessee may not plug it. The rationale for these rulings includes enforcement of private contractual rights and duties as well as the public interest in the preservation of natural resources produced by an active gas well. See E. Kuntz, A Treatise on the Law of Oil & Gas, § 50.3, at 276 (1990) (citing Okmulgee Supply Corp. v. Anthis, 114 P.2d 451 (Okla. 1940)). See also Patton v. Rogers, 417 S.W. 2d 470 (Tex. Int. App. Ct. 1967), and Fike v. Riddle, 677 S.W. 2d 722 (Tex. Int. App. Ct. 1984).
34. 19. 218 S.W.2d 22 (Ky. 1949).
35. 20. 207 P. 2d 771 (Okla. 1949).
36. 21. Id. at 772.
The Greene County case of Consolidation Coal Co. v. Willison, et al., No. 11-1986 (C.P., Greene Co., Pa., March 23, 1987) (permanent injunction order), also involved the right of the coal operator to replug an abandoned gas well. Because the facts and the Greene County court's ruling in favor of the coal operator are substantially identical with the George case discussed in the text, infra, at § 22.05[2], a detailed analysis of Willison would be largely duplicative.

Consolidation Coal Co. v. VanDruff, No. 7 Equity 1992 (C.P. Greene Co., Pa., June 26, 1992, preliminary injunction order), discussed in text, infra, at § 22.05[3].


A more complete reading of the original lease provides:

Clovis has granted, demised, leased and let ... unto Fort Pitt for the sole and only purpose of mining and operating for oil and gas . . . .

It is agreed that this lease shall remain in force for the term of ten years from this date, and as long thereafter as oil and gas, or either of them, is produced therefrom by . . . Fort Pitt . . . .

In consideration of the Premises ... Fort Pitt covenants and agrees, . . . to pay ($300.00) three hundred dollars per year for the gas from each and every gas well drilled on said premises, the product from which is marketed and used off the premises, said payment to be made on each well within sixty (60) days after commencing to use the gas therefrom, as aforesaid, and to be paid quarterly in advance thereafter while the gas from said well is so used. Clovis is entitled to free gas for domestic use by making their own connection at well if gas is found on said farm . . . .

It is agreed that . . . Fort Pitt is to have the privilege . . . at any time to remove all machinery and fixtures placed upon said premises, and further, upon the payment of $50.00, at any time by . . . Fort Pitt . . . to Clovis, . . . Fort Pitt shall have the right to surrender this lease for cancellation, after which all payments and liabilities thereafter to accrue under and by virtue of its terms shall cease and determine, and this lease shall become absolutely null and void.

A more complete reading of this amendment provides:

The parties of the first part, in lieu of gas rental or royalty from said Well No. 1-815 as provided in the original lease [will pay a reduced yearly amount] . . . and so long as the party of the second part shall find it profitable to maintain its equipment at said well and to transport the gas therefrom for the purpose of market or sale off the premises.

Many leases of this type in Southwestern Pennsylvania provide for a free gas allotment of 300,000 cubic feet of gas per year to the lessor.

Although the October 20, 1987 opinion related only to a preliminary injunction and not to the final disposition of the case, the court's opinion provides a detailed analysis of the respective rights of lessor and lessee.

The court found that Consol had forfeited the lease because of its stated intent to mine coal instead of producing gas, even though there was no express forfeiture clause in the lease.

Consol appealed the October 20, 1987 preliminary injunction order to the Superior Court of Pennsylvania at No. 1593 PGH 1987. In an unpublished memorandum opinion issued on August 31, 1988, the Superior Court affirmed "on the basis of the trial court opinion."


Willison, et al., v. Consolidation Coal Co., No. 16 Equity 1987, slip op. at 10, 11 (C.P., Greene Co. Pa., October 20, 1987).

Willison, et al., v. Consolidation Coal Co., No. 16 Equity 1987, slip op. at 6 (C.P., Greene Co. Pa., October 20, 1987).

Consol appealed the October 20, 1987 preliminary injunction order to the Superior Court of Pennsylvania at No. 1593 PGH 1987. In an unpublished memorandum opinion issued on August 31, 1988, the Superior Court affirmed "on the basis of the trial court opinion."


Cassell v. Crothers, 44 A. 446 (Pa. 1899).

Consol and Willison both appealed the May 4, 1989 order (as well as supplemental orders of May 12, 1989 and May 16, 1989), to the Superior Court of Pennsylvania at Nos. 839 PGH 1989 and 1105 PGH 1989. By an unpublished memorandum opinion dated May 29, 1990, the majority of the panel affirmed the actions taken by the Greene County court. In her dissent, Judge Beck
argued quite persuasively, but unsuccessfully, that the case should be reversed and remanded for the purpose of determining the well's profitability based upon the Pennsylvania Supreme Court's decision in Shellar. On February 24, 1992, Consol's petition for allowance of appeal was granted by the Pennsylvania Supreme Court. Oral arguments were held on March 10, 1993. Undoubtedly, one of the reasons the Pennsylvania Supreme Court accepted the case was the apparently inconsistent memorandum opinion issued by another panel of the Superior Court of Pennsylvania in the case of Peters, et al. v. Consolidated Natural Gas Corp., et al., No. 864 PGH 1986 (Pa. Super. Ct. 1987), arising out of the Court of Common Pleas of Westmoreland County, Pennsylvania, at No. 3604 of 1984.

57. 19. See text, infra, at § 22.05[3].


59. 21. A more complete reading of Consol's mining rights provides:

Excepting and reserving all the Pittsburgh, Ninefoot, or River Vein or Seam of coal, TOGETHER with all the rights and privileges necessary and useful in the mining, removing and manufacturing said coal into coke and other products, including the right of mining and removing the same without leaving any support for the overlying strata and without being liable for any injury which may result to the surface from the breaking of the same; the right of ventilating and drainage, and of access to the mines for men and materials, and also the right of mining, ventilating, draining and transporting the coal of other lands through the mines and openings, in and upon the lands herein described, generally freed and discharged from all servitude to the overlying land and everything therein and thereon.

And any surface ground required for the operating or manufacturing of any kind, may be taken, but shall be paid for before being occupied at the rate agreed upon by the owners of the surface and the purchasers of the said coal which payment shall entitle the purchaser of the said coal to a deed in fee for the same.

The owner of the surface reserves the right to drill and operate through said vein of coal for oil and gas.

60. 22. Consol also wanted to drill two methane drainage holes on the George surface to ventilate the methane or coalbed gas from its coal seam, so as to meet mine safety ventilation standards.

61. 23. A substantial portion of the court's January 26, 1989 opinion pertains to Consol's right to enter on the George surface, drill, and operate methane drainage boreholes. We omit any analysis of this portion of the court's opinion.

62. 24. If there were any lingering doubts about the deep coal mine operator's right to replug abandoned wells after George, the Greene County court laid them to rest in that portion of its order dated June 1, 1992 (pertaining to Well 450 -- an abandoned well) in the VanDruff case, discussed in the text, infra, at § 22.05[3]. There, the court expressly granted Consol permission to enter the VanDruff surface and replug the well.


64. 26. A more complete reading of the original lease provides:

The lessor . . . hereby leases and lets unto the lessee, for the sole and only purpose of drilling and operating for natural gas and petroleum oil . . . 295 acres, more or less.

The said lessor hereby granting to the said lessee . . . the right to construct and maintain pipeline . . . together with the right of placing and maintaining upon said premises the machinery and pipes and structure necessary and useful of the objects of this lease, and of removing the same at any time.

And it is agreed that lessee shall pay to the lessor for each and every well drilled upon said land which produces natural gas in quantities sufficient for the lessee to convey to market a money royalty computed at the rate $400.00 per annum, payable quarterly in advance. . . .

If at any time any well or wells drilled upon said premises becomes so low in pressure or production that it or they are not profitable for the lessee to operate then the lessee may abandon such well or wells and remove the rig casing therefrom and be released from further payment of royalty upon the same. . . .

. . . That while gas is being produced from said land under this lease, the lessor may have by making his own connection at the well, 200,000 cubic feet of free gas per year from the well or wells for the lessor's use on the premises, as long as and while the lessee shall operate the same. . . .

65. 27. The well produced a sizeable quantity of gas in the first few years but quickly declined, leading the parties to reduce the royalty on March 29, 1939. Because of the high permeability of the Gantz sand, Equitable then converted the well to a storage well from 1945 through 1972, when it was once again returned to production well status.
66. The court granted Consol's request as to Well 450, a previously plugged and abandoned well on the VanDruff farm. We omit any further discussion of Well 450, having addressed previously plugged wells, supra, at § 22.05[2].

67. Oral arguments before the superior court action docketed at No. 907 PGH 1992 were conducted in November 1992.

68. The court appears to use the word "abandoned" to mean simply to desert or walk away from, rather than in the traditional industry sense, which inherently involves plugging the well.


72. See 1881 Pa. Laws 123.
