

Pennsylvania Supreme Court to Give Trespass by Hydraulic Fracturing a Closer Look

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On November 20, 2018, the Pennsylvania Supreme Court granted Southwestern Energy Production Company's Petition for Allowance of Appeal as to the Pennsylvania Superior Court's decision in Briggs v. Southwestern Energy Production Company, 184 A.3d 153 (Pa. Super. 2018). In Briggs, two judges from the Pennsylvania Superior Court (the third judge on the panel did not participate in the decision) held that hydraulic fracturing can give rise to viable trespass claims. The Superior Court's decision reversed the trial court's finding that it cannot. The issue has attracted a lot of industry attention, given its potential impact on oil and gas operations in shale formations.

In granting the petition, the state supreme court rephrased the issue to be considered as follows:

"Does the rule of capture apply to oil and gas produced from wells that were completed using hydraulic fracturing and preclude trespass liability for allegedly draining oil or gas from under nearby property, where the well is drilled solely on and beneath the driller's own property and the hydraulic fracturing fluids are injected solely on or beneath the driller's own property?"

The supreme court's language, "and the hydraulic fracturing fluids are injected solely on or beneath the driller's own property[,]" could be read as a signal that it intends to limit its consideration to situations in which no hydraulic fracturing fluids leave the borders of the driller's own property (which, standing alone, would not constitute a trespass at all). But it is hoped that the court will read the issue more broadly and address situations in which hydraulic fracturing fluids enter an adjacent property. If the court does, regardless of the outcome, clarity on the subject will be welcome.

Additional information concerning the Superior Court's decision in Briggs can be found in our previous article about its ruling.

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