***Kennedy v. Consol Energy Inc.*: The Reservation of Mineral Rights in Pennsylvania**

Zachary Hudak

Reporting

In *Kennedy v. Consol Energy Inc.*, the Superior Court of Pennsylvania examined whether a conveyance of coal rights, coupled with a reservation of oil and gas, also transferred the right to coalbed methane gas existing within the coal. [1] The owner of a coal seam, a mining company, was alleged to have removed and profited from the gas, which the owner of the oil and gas rights claimed to own. [2] The ruling in favor of the mining company relied upon a well-settled precedent on mineral deeds, which presented facts almost identical to those in the instant case. [3]

The conflict arose out of a conveyance by prior property owners. [4] A deed was made in 1932 in which the predecessors in title to appellant-Kennedys ("appellants" or "Kennedys") conveyed their real property interest to others while reserving the coal in the "Pittsburgh or River vein in and beneath" the tract along with all of the oil and gas. [5] In a 1961 deed, these same predecessors conveyed the aforementioned coal to appellee-Consol Energy Inc. ("Consol" or "appellee(s)"). [6] By 2005, Consol through CNX Gas Company began drilling vertical wells below the coal seam and horizontal wells entering the coalbed. This was done in order to facilitate a process called degasification, which would permit Consol to extract coal with a lesser risk of mine explosion predominantly due to the removal of the coalbed methane gas. [7] The gas

1. Kennedy v. Consol Energy Incorporated, 116 A.3d 626 (Pa. Super. Ct. 2015).
2. *Id*.
3. *Id*.
4. *Id*. at 629.
5. *Id*. at 629.
6. Consol at 629-30.
7. *Id*. at 630; Coalbed methane gas, present within coal, is highly combustible, and it is necessary to remove it before coal extraction to prevent explosions or inhalation by miners.

flowed from the intersecting horizontal and vertical wells to a production well. [8] The drilling was made possible by use of gamma radiation, which enabled drillers to guide the drill bit into the coal seam, detecting high levels of coalbed methane gas. [9]

Appellants first filed a complaint in 2007 to quiet title as to the coalbed methane gas present under the tract. [10] Relying upon *U.S. Steel Corp. v. Hoge* the trial court ruled in favor of the appellees, and determined that Consol was the rightful owner of the coalbed methane gas. [11] A non-jury trial led to a ruling against appellants on the issue of whether the Rider seam was situated beneath their property, [12] and appellees were granted summary judgment on the conversion and trespass claims. [13] Despite the existence of a remaining quiet title ownership claim, appellants relinquished it and instead preferred to prepare their appeal. [14]

Several questions were presented to the court of appeals for consideration, namely, whether the trial court erred when it relied upon *Hoge* in reviewing the deeds to determine that an owner of coal also owns the coalbed methane gas and if the conveyance of a particular vein of coal was also intended to convey a separate seam. [15] Primarily at issue here was the trial court's interpretation of *Hoge*, which appellants claimed was erroneously based on distinguishable

---

The value and commercial marketability of the gas is only a recent phenomenon, as it used to be simply atmospherically vented. *Id*. at 630.

8. *Id*. at 630.
9. *Id*. at 630
10. Consol at 630.
11. *Id*. at 630.
12. *Id*. at 630-31.
13. The court determined that the Kennedys provided insufficient evidence to indicate that Consol asserted control over their gas or intentionally or willfully trespassed into the adjacent strata. *Id*. at 631.
14. *Id*. at 631.
15. Consol at 631; The court also considered whether the trial court erred when it entered summary judgment on its determination of facts after noting that questions of material fact existed. *Id*. at 631.

facts. [16] In that case, a similar issue was presented – the owner of coal rights asserted that an oil and gas lessee had no interest in the coalbed methane gas, claiming the rights for its own. [17] The court, considering the parties' intentions when executing the 1920 deed, noted that the gas was considered a nuisance at the time and, importantly, that the ability of the grantor to drill through the coal to access the gas was reserved. [18] Natural gas, being below the coal seam, was understood by the court to have been what was meant when the oil and gas was reserved; as coalbed methane gas is within a coal seam, it is conveyed with the coal. [19] The Pennsylvania Supreme Court synthesized a general rule: the one who owns the property in which the gas subsists owns the gas itself. [20]

The holding resulted in a favorable decision for the appellees – Consol owned the coalbed methane gas and did not trespass upon the Kennedys' property or convert their gas. [21] To reach this decision, a reliance on the rationale from *Hoge* was developed for the primary issue of ownership. [22] Appellants argued that relying on the general rule from *Hoge* was incorrect and that an examination of the intent of the parties in the 1932 and 1961 deeds would indicate that the parties did not intend to convey the coalbed methane gas in the Pittsburgh or River vein. [23] Appellees relied on *Hoge* and presented *Butler v. Charles Powers Estate ex rel. Warren*, a recent Pennsylvania Supreme Court decision, as an affirmation of the general rule. [24] Furthermore, appellees argued that, if the deed were interpreted in the way that appellants contended it should

16. *Id*. at 631-32.
17. *Id*. at 631.
18. *Id*. at 631.
19. Consol at 632.
20. *Id*. at 632.
21. *Id*. at 636, 638-39.
22. *Id*. at 634.
23. *Id*. at 632.
24. Consol at 632.

have been, the result would be the same due to the language that permits them to ventilate the gas and gives them the right to use their interest advantageously and economically as well as the lack of a reservation of the coalbed methane gas to the predecessors of appellants. [25]

Appellants counter argued that an intention to convey the coalbed methane gas would not have necessitated the transfer of the right to ventilate the gas. [26] They claimed that this case could be differentiated from *Hoge* based on the fact that this was the second conveyance of interest concerning the property, rather than the first. [27] These contentions were rejected on the grounds that the right to ventilate is permission for reasonable infringement upon appellants' estate to ventilate the seam, that it is unlikely that the previous deeds would reserve the rights to drill for coalbed methane gas, and that it is immaterial whether this is a first or second conveyance. [28]

Lastly, the facts here are quite compatible with the analysis laid out in *Hoge*, and, incontrovertibly, "the express mention of one thing excludes all others" – the explicit inclusion of natural gas in the 1932 deed defeats the assertion that the methane gas was to be included. [29] Consol, the owner of the coal seams, owned the coalbed methane gas. [30]

The court saw fit to affirm the ruling of summary judgment in favor of Consol on the issues of trespass and conversion. [31] Appellants claimed that these were issues of material fact that should have been left to a jury. [32] They argued that appellees trespassed into their seams and converted their resources for personal gain. [33] To support their trespass cause of action,

25. *Id*. at 632-33.
26. *Id*. at 633.
27. *Id*. at 633.
28. *Id*. at 633-34.
29. Consol at 634.
30. *Id*. at 634.
31. *Id*. at 636, 639, 640.
32. *Id*. at 634.
33. *Id*. at 634.

appellants provided a report showing that Consol drilled into adjacent strata and averred that intent to do so can be inferred based on the fact that Consol knew where it was boring with its sophisticated gamma radiation-guided drills. [34] But, the court relied on the language of the 1961 deed, which in effect provided for an easement to conveniently ventilate the coalbed methane gas, and that the right-of-way privilege defeats a claim of trespass, to affirm the trial court's summary judgment holding. [35]

The Kennedys, for their conversion claim, sought to show that Consol asserted control over appellants' gas and unlawfully deprived them of it. [36] Here, evidence of gas above and below the seam owned by appellees was presented, and appellants charged that appellees did not seal their wells. [37] The court agreed that there was sufficient evidence to show that gas from the Kennedys' property migrated into and was produced by Consol's wells. [38] Appellants, unable to determine the amount that migrated, claimed entitlement to the entire production value of Consol's gas wells by means of the "confusion of goods doctrine." [39] This doctrine, explained in *Stone v. Marshall Oil Co.*, "is the [willful] and fraudulent intermixture" of one person's property with that of another without his or her consent in a way "that they cannot be separated and distinguished." [40] *Stone* ruled that the plaintiffs should receive the full amount of the profits gained by the wrongdoer. [41] In *Gribben v. Carpenter*, concerning gas leases and well production, the court applied the rule from *Stone* rather than the amount in damages calculated by an

34. Consol at 635.
35. *Id*. at 636.
36. *Id*. at 637.
37. *Id*. at 637.
38. *Id*. at 637.
39. Consol at 637-38.
40. *Id*. at 638.
41. *Id*. at 638.

expert. [42] Consol countered, and the court agreed, that the doctrine only applies when fraud has been proven. [43] Here, it was not even pled. [44] Moreover, the Kennedys failed to provide evidence of damages, unlike the plaintiffs in *Stone* and *Gribben*. [45] The trial court's summary judgment was proper. [46]

Finally, appellants' challenge of the trial court's interpretation of the deeds as a conveyance of the Pittsburgh Rider coal seam along with the Pittsburgh or River vein rested on testimony from one of the plaintiffs and a geologist. [47] The plaintiff was a coal miner and attested that the Rider seam was above and very close to the other vein and that it was sometimes referred to as the roof coal zone. [48] The expert geologist confirmed the existence of this seam, but characterized it as distinct from the roof coal zone of the other seam. [49] Notably, she was unable to say whether the Rider seam was located on the Kennedys' property. [50] Consol's expert testified that he believed that the roof coal zone was part of the Pittsburgh seam. [51] Ultimately, the trial court, agreeing that the Rider seam was not included in the Pittsburgh seam, held that the Rider seam was separate from the roof coal zone of the Pittsburgh seam. [52] Nonetheless, appellants failed to demonstrate that the Rider seam existed on their property, which was required to succeed on their quiet title action. [53]

---

42. *Id*. at 638.
43. *Id*. at 638.
44. Consol at 638.
45. *Id*. at 638.
46. *Id*. at 639.
47. *Id*. at 639.
48. *Id*. at 639.
49. Consol at 639.
50. *Id*. at 639.
51. *Id*. at 640.
52. *Id*. at 640.
53. *Id*. at 640.

Therefore, the trial court's order in favor of Consol was affirmed. [54]

History

Traditionally, the right to mine oil and gas resides with the owner of the land in which these substances reside, though this right may be severed and assigned to another party. [55] The Pennsylvania-specific Dunham Rule stipulates that a reservation of mineral rights on a parcel of land does not include oil or natural gas unless explicitly stated in the deed reservation. [56] This rule, reaffirmed as recently as 2013, presumes that parties to a deed do not intend oil or natural gas to fall under the definition of the word "mineral" with respect to such deeds. [57] However, an exception has been made where the mineral (in the technical sense of the word) in question is coalbed methane gas, which is unique in that the parties constructing such deeds, in many cases dating back to the late nineteenth and early twentieth centuries, do not consider the gas to be of value, unlike oil and natural gas. In fact, coalbed gas was widely held to be nothing more than a danger and a nuisance, which is no longer the case. [58]

The Dunham Rule is rooted in the Pennsylvania Supreme Court decision *Dunham and Shortt v. Kirkpatrick*, [59] which held, based upon the rationale in *Gibson v. Tyson*, [60] that the

54. Consol at 640.
55. 6 Summ. Pa. Jur. 2d *Rights to oil and gas* § 2:2 (2015).
56. *Id*.
57. *Id*.
58. U.S. Steel Corp. v. Hoge, 468 A.2d 1380 (Pa. 1983).
59. In this case, the grantors of land reserved and excepted timber and minerals, in addition to the right of way to take them. Dunham v. Kirkpatrick, 101 Pa. 36, 37 (Pa. 1882). The grantors claimed that the petroleum (mineral oil) was rightfully theirs to extract, but the court found that, while it is true that oil is a mineral, the reservation would be too extensive to consider all things – including rocks, clay, and sand – as minerals for purposes of the deed reservation. *Id*. at 43.
60. In *Gibson v. Tyson*, the court considered "whether chromate of iron is or is not included in the exception and reservation of 'all mineral or magnesia of any kind.'" Gibson v. Tyson,

inclusion of the word "mineral" in a deed reservation only included those substances that were of a metallic nature, rather than a scientific or technical definition of the word.[61] This decision was based on the idea that the common man, as understood by the court, would not associate oil or natural gas as being a mineral. [62]

This rule has been applied consistently for over 130 years. [63] In *Butler v. Charles Powers Estate ex rel. Warren*, its most recent use, the rule is used to determine whether a deed reservation included natural gas contained within the Marcellus Shale Formation. [64] Here, landowners (appellants) sought to interpret a mineral reservation made by their predecessor in title as reserving for them "one-half of all natural gas located within any Marcellus shale" beneath their property. [65] The relevant reservation states in part, "[O]ne-half the minerals and Petroleum Oils to [appellees' predecessors in title]." [66]

The court examined the history of the issue, noting *Dunham* and its progeny, [67] all of which have affirmed the general rule, stating: in Pennsylvania, "absent clear and convincing intent by the parties to the contrary," for a reservation to include oil or natural gas, it must explicitly say so within the reservation clause. [68] Furthermore, the court went on to support the *Gibson* rationale used for the *Dunham* Rule regarding the use of a layperson's understanding of

---

1836 WL 2957, at *3 (Pa. 1836). Within the analysis of the intent of the parties, the court opined that to those "entirely destitute of…scientific knowledge," only those things of a metallic nature, such as gold, silver, and iron, are minerals. *Id.* at *8.

61. Dunham, 101 Pa. at 40, 44.
62. *Id.* at 44.
63. Butler v. Charles Powers Estate ex rel. Warren, 65 A.3d 885, 889, 891, 897 (Pa. 2013).
64. *Id.* at 886.
65. *Id*. at 887.
66. *Id*.
67. The progeny of Dunham as reference by Butler include Silver v. Bush, 62 A. 832 (Pa. 1906); Preston v. S. Penn Oil Co., 86 A. 203 (Pa. 1913); Bundy v. Myers, 94 A.2d 724 (Pa. 1953); Highland v. Commonwealth, 161 A.2d 390 (Pa. 1960). Id. at 889-91.
68. Butler, 65 A.3d at 889-90.

what a mineral is in private deeds. [69] If minerals are of metallic nature according to the common person, then oil and natural gas are not minerals. [70] The reservation of all minerals would not include oil or natural gas, which would have to be explicitly named within the deed. [71] Moreover, *Butler* referenced *Highland v. Commonwealth*, which also examined the Dunham Rule, to make clear that the party desiring to include oil and natural gas in the subject deed reservation has the burden of showing by "clear and convincing evidence" that the original parties intended to include such items; as the reservation in question in *Butler* was from 1881, parol evidence indicating the intent of the parties from that reservation, which included minerals according to *Gibson*, the rule at the time, was necessary. [72]

In short, as summarized by *Butler*, the general rule of *Dunham* and its progeny is that oil and natural gas are not minerals for private deeds, and, barring a specific reservation of the two or any evidence that the parties to the original deed reservation intended to reserve the oil or natural gas under the subject property, the two are not reserved. [73] However, the appellees in *Butler* argued that another rule – one formulated in *U.S. Steel Corp. v. Hoge* – should have governed the holding of the case. [74]

In 1983, the Pennsylvania Supreme Court decided *Hoge*, which tackled an issue of first impression concerning an ownership dispute over coalbed methane gas. [75] In this case, United States Steel Corporation (appellant), the owner of a vein of coal below certain tracts of land, initiated a suit to prevent appellees from using a process known as hydrofracturing for the

69. *Id*. at 898.
70. *Id.*
71. *Id.*
72. *Id.* at 891, 898.
73. Butler, 65 A.3d at 898.
74. *Id*. at 888, 898-99.
75. Hoge, 468 A.2d at 1382.

purpose of extracting coaldbed methane gas from the coal vein as well as to determine the rightful owner of the gas. [76] In order to facilitate a discussion on the issue, the court characterized the gas as that which is: found within and around coal veins; recognized as highly flammable and dangerous; and necessary to remove, usually by ventilation into the atmosphere, to safely mine coal. [77]

Despite its similarity to natural gas in its value as a source of energy, coalbed gas had only recently been exploited as such, long being nothing more than an expensive annoyance impeding the mining of coal.[78] The court repeatedly stressed this point in order to show that, at the time of the conveyance of the 1920 deed by which the predecessors of the appellees conveyed an interest in the coal to the appellant's predecessor in title, the coalbed gas was essentially worthless. [79] This deed conveyed "*All the coal*" in the vein under the tract of land "[*t*]*ogether with all the rights and privileges necessary and useful in the mining and removing of said coal, including ... the right of ventilation*." [80] The appellees' predecessors "*reserve[d] the right to drill and operate through said coal for oil and gas*." [81]

As the appellant initiated the action in part to terminate the appellees' coal seam intrusion for the coalbed gas, the court examined the nature of its ownership. [82] Acknowledging that the fugacious, or migratory, character of gas does not prevent outright ownership prior to extraction, the court went on to explain that gas, technically a mineral, is a part of the property in which it is contained, describing it as a mineral ferae naturae, wherein the gas is owned by the one with title

76. *Id*. at 1381-82.
77. *Id*. at 1382.
78. *Id*. at 1382-83.
79. *Id*. at 1382, 1384.
80. Hoge, 468 A.2d at 1382.
81. *Id*. at 1382.
82. *Id*. at 1383.

to the property in which it resides. [83] Therefore, the titleholder owns the gas, which can only be lost in the event that the gas migrates in the ground to another location. [84] The owner of a coal vein has "exclusive dominion and control" over the coalbed gas within the vein, but he does not own the property surrounding the coal nor the coalbed gas that migrates out of the vein and into the surrounding property. [85]

The interest of the coal vein titleholder in the situs (the physical location from which the coal originated) reverts to the owner of the surface land at a point subsequent to the removal of the coal. [86] While the conveyance of the coal vein does not convey the situs, as long as the surrounding land is not encroached upon, the coal owner may maximize his or her use and enjoyment of the property. [87] This may include the mining of the coal existing in the vein and the ventilation or removal of the gas within the coal vein by drilling or hydrofracturing. [88] In considering the initial intention of the original parties in the construction of the deed first conveying the coal rights to the appellant's predecessor, the court noted that commercial exploitation of coalbed gas was limited at that time, and the presence in the deed of a "right of ventilation" spoke to its standing as generally nothing more than a "dangerous waste product." [89]

Although the original grantors reserved the right to drill for gas through the coal seam, it was inconceivable that any and all types of gas were reserved. [90] The court found it highly unlikely that the grantor intended to reserve an interest in a gas then known to be useless and

83. *Id*. (citing Westmoreland & Cambria Natural Gas Co. v. DeWitt, 18 A. 724, 725 (Pa. 1889)).
84. *Id*. at 1383.
85. Hoge, 468 A.2d at 1383.
86. *Id*. at 1384.
87. *Id*.
88. *Id*.
89. *Id*.
90. Hoge at 1384-85.

dangerous and instead emphasized that only those gases that one would be able to profit from would be reserved, such as natural gas. [91] The reservation can be construed to have simply allowed the grantor to drill through the coal vein to reach the valuable oil and other gases underneath. [92]

Since *Hoge*, *Butler* has characterized the holding as dealing with "the unique nature of coalbed gas." [93] As such, the appellees in *Butler* were not afforded an analysis of the deed reservation according to *Hoge* for a number of reasons. [94] First, the *Hoge* court reached its conclusion without examining the Dunham Rule, so there is no indication that this rule has been overruled. [95] Second, the appellees made no distinction between the Marcellus Shale natural gas at issue and the natural gas covered by the Dunham Rule. [96] There was a difference between the coalbed gas at issue in *Hoge* and the natural gas at issue in *Butler*, as a right to ventilate would only apply to coalbed gas, the gas was dangerous and commercially worthless at the time when the reservation was made, and *Hoge* made a firm distinction between coalbed gas and natural gas, as it permitted the owner of the natural gas to drill through the coalbed to access it. [97] Finally, the hydrofracturing methods used to obtain both coalbed gas and Marcellus Shale natural gas do not warrant a divergence from the Dunham Rule for natural gas. [98]

The archaic Dunham Rule of common mineral meaning still stands in Pennsylvania, but there seems to be an exception carved out in cases where the resource in question was not

91. Hoge, 468 A.2d at 1385.
92. *Id*.
93. Butler, 65 A.3d at 893.
94. *Id*. at 898.
95. *Id*.
96. *Id*. at 899.
97. *Id*.
98. Butler, 65 A.3d at 899.

considered valuable at the time of the creation of the reservation (most notably, coalbed methane gas).

Analysis

Kennedy and its predecessor cases are difficult to understand for those unfamiliar with Pennsylvania coal, methane, and natural gas drilling reservations. There appears to be a general rule that a reservation of minerals does not include oil and gas unless explicitly stated or inferred by the intent of the parties. The Superior Court's reliance on *Hoge*, while not unexpected, demonstrates a clear divide between how coalbed methane gas and other minerals are interpreted in a deed reservation. However, the decision leaves open the question of how additional types of minerals – excluding ones such as oil, coal, and natural gas – that have not yet been considered by the courts will be interpreted in deeds. Perhaps the exception applies to coalbed methane gas alone, given its unique circumstance of existing within another mineral (coal) and its history of being regarded as a nuisance to the mining of coal. The Supreme Court of Pennsylvania, should it grant the Kennedys' appeal, might clarify the situation by affirming its ruling in *Hoge* or by embarking into new territory with a contemporary analysis.

The Dunham Rule, though not utilized by the appellate-level court for purposes of the coalbed gas, has been applied for over 130 years. [99] Despite its solid grounding in the case law, the tenet should be overruled in favor of a more concise one. The current rule is archaic in its reliance on the common-man definition of mineral from *Gibson*. [100] *Gibson*'s failure to recognize natural gas and oil as minerals renders it an unworkable rule for the modern era. While the rule has deep roots in legal precedent, it is outdated, predicated on the beliefs of those in a world

99. Butler, 65 A.3d at 897.
100. Dunham, 101 Pa. at 43-44.

much more isolated from educated information than ours today. Its continued application gives rise to illogical and irrational outcomes that can detrimentally affect parties who legitimately believe that they are the rightful owners of the mineral in question.

An argument in favor of the Dunham Rule involves a look at what the people at the time of the creation of a reservation in question believed to be conveyed. For many deeds in Pennsylvania, the mineral estate subdivisions occurred sometime towards the end of the nineteenth or beginning of the twentieth century, when coal production was increasing in the area. For deeds going into effect following the decision in *Dunham* or even *Gibson*, it may be true that some parties understood oil and natural gas were not reserved without a specific reservation, even if they knew that the two were technically minerals. Absent evidence that the party reserving minerals intended to retain the rights to such minerals, it would be impossible for parties today, after a number of years, to claim that they own the rights to these based on the precedent established by *Dunham* and its progeny. Because it has been applied for so long, one may deem it to be commonplace to handle such deeds with an understanding of the rule (yet the occasional challenges to the rule may prove otherwise) and disorderly to suddenly do away with it. Nonetheless, even though the Dunham Rule has been consistently applied, it can create confusion when dealing with the process of untangling mineral deed reservations that have been shuffled around for well over a century.

Despite the shortcomings of the Dunham Rule, the court was correct in its application of *Hoge* to the question of who owned the coalbed methane gas. *Kennedy*, as noted by the court, was not sufficiently differentiated from *Hoge*. [101] An analysis of the intent of the parties, who neglected to state coalbed methane gas but included natural gas, was sufficient evidence to show

101. Kennedy, 116 A.3d at 634.

the court that the coalbed gas was not intended to be included. [102] Also, it was immaterial whether this was a first or second conveyance, defeating that facet of the appellants' argument. [103] The facts in this case fit in with the form established by *Hoge* and the "rule that, when a coal severance deed is silent to ownership of the coalbed methane, or [fails to] reserve coalbed methane from the coal conveyance…the coalbed…gas contained in the coal belongs to the owner of the coal." [104] Relying upon the reasoning of the court in *Hoge* and recognizing the gas as a mineral, *Kennedy* held that, though it is not a per se rule, when the deed is silent on the matter, the owner of the coalbed methane gas is the owner of the coal. This allows for simple application of the rule should the issue arise in conveyances. If it is clear that the property owner does not own the coal within his property, he does not own the coalbed gas.

If this is the case, why are other minerals, such as oil and natural gas, not considered a part of the property in which they reside? It could be argued that the unique nature of coalbed methane gas warrants special treatment. *Kennedy*, harkening back to *Hoge*, astutely pointed out that parties, when reserving mineral rights, would hardly contemplate retaining the rights to a gas that was inconvenient to ventilate to access the coal encompassing it. [105]

Lacking indicia that a party intended to reserve coalbed methane gas, it has been established that the owner of the coal owns it. While the actual value and usefulness of the gas had not been contemplated a century ago, what of a conveyance taking place today? The lesson to be learned from *Hoge* and *Kennedy* is that deeds, as with any other contract, should be written

102. *Id*. at 633.
103. *Id*. at 634.
104. *Id*. at 633.
105. *Id*. at 632 n. 3.

concisely so that they are construed properly. [106] If a party intends to reserve the coalbed methane gas within the coal that is owned (or any other mineral for that matter), it is best not to speak generally and loosely reserve all minerals except those that are being conveyed away. Under Pennsylvania law, it appears that this is not descriptive enough; catch-all language will not apply for purposes of generally reserving all other minerals. It must be evident that the party intends to reserve specific minerals. Without a specific reservation, the party is left to the whim of the courts to determine the ownership. Undeniably, the Dunham Rule will be applied. Hopefully, this will incentivize those involved in such transactions, particularly private landowners, to seek the requisite legal aid to navigate the – at first glance – inaccessible area of Pennsylvania mineral ownership.

On a final note, an observation of how future mineral deed reservations are interpreted and discernment of whether the Dunham Rule stands or is struck down in favor of a more modern rule, one not so drawn up in archaic language and misguided rationale, should provide clarity on this matter. What exactly constitutes a mineral should be more descriptively defined in a way that it is a clear statement of what is included (for example, while the status of oil and natural gas has been litigated extensively over the years, the status of more obscure minerals, such as limestone, should be touched upon). Despite the separate examination of coalbed methane gas in deed reservations, wherein the owner of the coal in a subject piece of property owns the gas, there remains much ambiguity in this area of Pennsylvania law, due largely to the sustainment of the Dunham Rule. A new rule should be formulated, and, even given the unique nature of coalbed methane gas and seemingly straightforward construal of deeds conveying the

106. Keith Goldberg, *Pa. High Court's Gas Rights Ruling Will Protect Land Deals*, Law360, Apr. 25, 2013, http://www.law360.com/articles/435840/pa-high-court-s-gas-rights-ruling-will-protect-land-deals.

gas, the reasoning behind each deed reservation analysis must be simplified and rationalized. In short, a change of the interpretation of the word “mineral” to that of the technical definition of the word and eliminating the reliance on a mistaken understanding that is arguably over 175 years old would be prudent.