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Minerals--Natural Gas--Title Not Lost by Storage Underground

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in a strike ratified or approved by the representative of such employees whom such employer is required to recognize under this Act;"

and by the congressional policy behind it, see H. R. REP. NO. 1147, 86th Cong., 1st Sess. 11 (1959), the revision of the boycott ban provision did not purport to upset these established rules—*Moore Dry Dock*, the *Ally Doctrine*, and the *Transfer of Work Doctrine*, among others. Such rules are necessary developments in determining whether pressure activities engaged in by unions and employees are lawful and protected under Sections 7 and 13 of the Act, or are unlawful as coming within Section 8(b) (4) prohibitions as secondary activities.

As the principal case mainly dealt with "loopholes" of the technical variety, it does not foreshadow any sweeping changes in the doctrines just discussed. These latter doctrines may be considered to be loopholes by some, depending upon one's viewpoint; however, they have been found useful in determining the ticklish situs problems in the construction industry. For this reason, and until a better legislative solution is offered, it is suggested that the courts will not interpret the new boycott bans to sweep away these major evidentiary rules in order to declare all union activity involving multi-employer disputes secondary, ergo unfair labor practices.

Charles Harold Haden II

Minerals—Natural Gas—Title Not Lost by Storage Underground

P, as owner of a partial interest in the proceeds from the sale of gas produced by certain wells, sought an accounting and to restrain the artificial cutting-back and restriction of production. *Ds* alleged that the native reserve of gas in the drainage areas of the wells had previously been exhausted and that the gas now being produced is storage gas which has migrated from an adjoining underground storage pool. *Ds* contend that production of this gas for *P's* benefit would amount to a wrongful taking of property belonging to the storage companies. *Held*, judgment for *D*. Title to natural gas, once having been reduced to possession, is not lost, under Pennsylvania law, by injection of such gas into natural underground reservoir for storage purposes. *White v. New York State Natural Gas Corp.*, 190 F. Supp. 342 (W.D. Pa. 1960).

The principal case is one of first impression in Pennsylvania. The precise issue in the instant case appears to have been decided previously only by the state of Kentucky. Although the district court did not expressly state that it rejected the reasoning of the Kentucky decisions, it is significant to note that the decision does tend to have that effect.

The much-criticized case of *Hammonds v. Central Ky. Natural Gas Co.*, 255 Ky. 685, 75 S.W. 2d 204 (1934), appears to be the first case wherein the issue was raised. In that case, *P* was the owner of a tract of land in fee simple. It was located within the boundary used for gas storage which was not leased to *D*. After exhausting the natural gas from a large field, *D* pumped other gas into the vacant space and used it as a reservoir. The geological basin or dome extended under the property of *P*. In a suit for trespass, *P* claimed that the gas was placed in and under the property without her knowledge or consent. The court held that *D* ceased to be the exclusive owner of the gas after its injection into the ground. Therefore, not being the owner of the gas, *D* was not responsible for the trespass on account of its storage beneath the property of *P*.

In arriving at the decision in the *Hammonds* case, the court said that the ownership of the gas, once being captured and then released by injection into the ground, was held to be analogous to wild animals or animals "ferae naturae." Under this analogy it is apparent that there is no distinction in the title to gas once recovered and released for subterranean storage and native gas before its initial recovery. *Central Ky. Natural Gas Co. v. Smallwood*, 252 S.W.2d 866 (Ky. 1952). Thus, the holding in the *Hammonds* case resulted in the anomalous situation wherein *P* lost his suit for damages, but in doing so acquired the right to drill a well on his own tract and capture the stored gas. The "wild animal" analogy has been strongly criticized for encouraging results such as that reached in the *Hammonds* case. See 21 U. KAN. CITY L. REV. 217 (1953).

The court in the instant case, however, did make a distinction in the title to gas once recovered and released for subterranean storage and native gas before its initial recovery. Although Pennsylvania courts do apply the doctrine of mineral *ferae naturae*, this court said that the analogy has been limited to the "original" capture of native gas and oil. Thus, the district court here refused to apply the "wild animal" analogy to stored gas.

The lone West Virginia case dealing with the underground storage of fugacious minerals is *Tate v. United Fuel Gas Co.*, 137 W.Va. 272, 71 S.E.2d 65 (1952). In that case *O*, the owner of a tract of land in fee, conveyed it to *P*, excepting and reserving the oil and gas. Thereafter, *O* conveyed an undivided interest in the oil and gas to *Z*. *O* and *Z* leased the oil and gas to *D*. *O* and *Z* then entered into an agreement with *D* granting to the latter the exclusive right to use the Big Lime stratum for storage of gas. *P*, alleging that there is no recoverable gas and oil in the Big Lime stratum, sought an injunction to restrain *D*'s use thereof for such purposes, cancellation of the gas storage agreement as a cloud on his title, and a decree for the value of the use of the premises. The court held that *P* was vested with title to the Big Lime stratum (since *O*'s deed excepted and reserved the oil and gas and not the limestone) and that a court of equity had jurisdiction to remove cloud on title and to enjoin a continuing trespass.

Since in the *Tate* case, *P*, the owner of the Big Lime stratum, was able to maintain a suit against the injector of the gas for trespass, it appears that the West Virginia court is in line with the view expressed in the principal case. Thus, title to natural gas is not lost by its injection into underground storage reservoirs. If title to the gas were lost upon its injection into the ground, there could not have been liability for trespass in the *Tate* case.

Nick George Zegrea

**Municipal Corporations—Violation of Municipal Ordinance—
Liability of Abutting Owners and Occupants of Streets
and Sidewalks**

Action by a pedestrian against a municipality, an owner of a building, and an occupant of the building for injuries sustained when she fell on a sidewalk in front of a store which was owned by the occupant of the building. The sidewalk was paved by the occupants with terrazzo in a manner which constituted a violation of a city ordinance. The lower court directed a verdict for all three defendants. *Held*, the lower court's decision, in relation to the city and the owner of the building, in finding as a matter of law that the sidewalk was maintained in a "reasonably safe condition for travel in the ordinary modes with ordinary care by day or night", is affirmed. The court reversed and remanded as to the occupant of the