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Pa. justices side with gas industry over landowner

By MARC LEVY (AP) – 15 hours ago

HARRISBURG, Pa. — Pennsylvania's high court sided Wednesday with the natural gas industry in a dispute with landowners who had sought to invalidate the leases they signed before the Marcellus Shale rush intensified and drove up land values.

In a 6-0 decision, the Supreme Court upheld a Susquehanna County judge's ruling that validated lease agreements that subtract drilling costs from the calculation of landowners' natural gas royalties.

"Certainly we're very pleased," said Pittsburgh lawyer Kevin C. Abbott, who had filed friend-of-the-court briefs in the case on behalf of Chesapeake Energy Co. and other gas companies. "It does certainly look like a victory for the oil and gas industry."

The decision is expected to settle dozens of other cases pending in Pennsylvania's state and federal courts.

In this case, landowner Herbert Kilmer and others had sued ElexCo Land Services Inc. and Southwestern Energy Production Co., contending that such leases were invalid because state law guarantees landowners a minimum one-eighth royalty from the production of oil and gas on their land.

Justice Max Baer, who wrote the court's decision, noted that the term "royalty" and the method of calculating a one-eighth share is not defined by the state's Guaranteed Minimum Royalty Act. However, he cited various texts on the industry that say a royalty is paid from the net amount remaining after deduction of certain production and well development costs.

Kilmer's lawyer, Laurence M. Kelly, said Wednesday evening that he was unaware of the decision and did not want to comment until he had read it.

Industry representatives have suggested the lawsuits were sour grapes on the landowners' part because they had signed leases at values well below what their neighbors were negotiating months or years later from companies pursuing the Marcellus Shale.

Some geologists predict that the formation below a large swath of Appalachia could become the country's biggest gas field.

The case was being closely watched by the company executives, who worried that a decision against their companies could invalidate tens of thousands of leases and throw the industry into chaos.

In addition, the royalty issue was being raised in more than 70 lawsuits filed in Pennsylvania's federal and state courts by plaintiffs seeking a judgment that the leases they signed were never valid.

Judicial decisions in two of the cases raised the prospect of a myriad of different legal opinions.

In Susquehanna County, the judge in the Kilmer vs. ElexCo case had handed the companies an initial victory, saying the law does not specifically prohibit the subtraction of costs.

Separately, a federal judge in Scranton hearing a case against Cabot Oil & Gas Corp. denied a motion to dismiss the case, saying the law's silence did not necessarily mean the costs can be legally deducted.

Kilmer appealed to state Superior Court, but industry lawyers asked the Supreme Court to step in and effectively settle the matter for everyone.

It did, and heard arguments in September.

Opinion: <http://www.courts.state.pa.us/OpPosting/Supreme/out/J-78-2009mo.pdf>

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