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Injected Gas: Realty or Personalty?

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Injected Gas: Realty or Personalty?

INTRODUCTION

The judicial system has historically encountered difficulty when attempting to classify the nature of a property interest in oil and gas. Common law looked to analogies to describe ownership rights and eventually adopted the *ferae naturae* doctrine because of the migratory characteristics associated with these minerals.\(^1\) The *mineral ferae naturae* theory states that there is no ownership in oil and gas until they are reduced to possession.\(^2\)

Oil and gas are utilized by consumers after they are pumped out of their natural reservoir, transported through pipelines, and then injected into storage facilities near the location where they will be used. Once taken from their natural reservoir, oil and gas are legally classified as personalty.\(^3\) While the minerals are being transported through the pipeline they continue to be personalty.\(^4\) Upon injection of the minerals into a storage reservoir, the authorities are split as to the nature of ownership.

Until recently, Kentucky law was unclear as to whether injected gas is realty or personalty for purposes of perfecting a security interest. In *Texas American Energy Corp. v. Citizens Fidelity Bank & Trust Co.*,\(^5\) the Kentucky Supreme Court addressed this question and held that injected gas is personalty and governed by the filing requirements of the Uniform Commercial Code.\(^6\) This Comment addresses whether hydrocarbons injected

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\(^1\) The *ferae naturae* doctrine is also referred to as the wild animal theory. *See generally 4 Am. Jur. 2d Animals §§ 14-19 (1962).*

\(^2\) *R. Hemingway, The Law of Oil and Gas* § 1.3 (1971).

\(^3\) *W. Thornton & S. Willis, The Law of Oil and Gas,* § 50 (1st ed. 5th printing 1932).


\(^5\) 736 S.W.2d 25 (Ky. 1987).

\(^6\) *Id.*
into a storage reservoir with confinement integrity should be classified as realty or personalty for purposes of perfecting a security interest.

I. Texas American

Texas American involved a declaratory judgment action concerning whether a security interest in injected gas is personal property governed by Article 9 of the Uniform Commercial Code or an interest in real estate containing only a right to extract and secured only by the filing of a real estate mortgage. The Texas American Energy Corporation, owner of the Western Kentucky Gas Company [hereinafter Western], had a revolving loan agreement with the Citizens Fidelity Bank and Trust Company. Citizens Fidelity provided funds for the purchase of native gas extracted from Texas and Louisiana. After extraction, the gas was transported through pipelines to Western's distribution system in Kentucky. The gas was then purchased during the summer months, stored in underground gas reservoirs, and retrieved during the winter months when consumer demand was high.

Texas American contended that injected gas was personal property which could be encumbered merely by filing a financing statement pursuant to Article 9 of the Uniform Commercial Code.

7 Confinement integrity is the ability of a reservoir to prevent leakage into adjacent subterranean areas. In Texas American, confinement integrity was stipulated because of the "cushion gas" method that was used to maintain the integrity of the reservoir. Also, a Kentucky Department of Mines and Minerals Regulation requires 2,000 foot buffer zones around a storage field, and this permit process was followed. 805 Ky. Admin. Reg. 1:080 (1987). Because of this stipulation, confinement integrity was not at issue in the case.

8 736 S.W.2d 25 (Ky. 1987).

9 Ky. Rev. Stat. § 418.020 (Michie/Bobbos-Merrill) [herinafter KRS with all cites being to Michie/Bobbos-Merrill].

10 KRS § 355.9-102(1)(a) (1960).

11 Texas American, 736 S.W.2d 25 (Ky. 1987).

12 Id.

13 Id.

14 Western had six storage fields. These storage fields are natural underground reservoirs, which are surrounded by various types of sandstone formations that are capable of accepting and containing natural gas because the surrounding strata is impervious to the migratory characteristics of natural gas. These reservoirs once contained "native gas" which was depleted. Id. at 26.
Code.\textsuperscript{15} Citizens Fidelity asserted that under Kentucky law, the injected gas was an interest in real estate which could be encumbered by merely filing a real estate mortgage.\textsuperscript{16}

Granting discretionary review, the Kentucky Supreme Court held that natural gas stored in underground reservoirs with confinement integrity remains personalty for purposes of perfecting a security interest.\textsuperscript{17} Upon injection, the gas does not revert back to \textit{mineral ferae naturae}, and thus does not become subject to the surface owner's interest in the real estate overlying the underground reservoirs.\textsuperscript{18} In regard to injected gas, the \textit{Texas American} court specifically overruled all contrary precedent including the landmark case of \textit{Hammonds v. Central Kentucky Gas Co.}\textsuperscript{19} which had originally set forth the \textit{mineral ferae naturae} doctrine.

II. THE HamMONDS Case

Under common law, only water and wild animals were conceived to have fugacious characteristics, which are generally defined as tendencies to migrate.\textsuperscript{20} The \textit{ferae naturae} theory, a possessory concept, was first applied to wild animals.\textsuperscript{21} Title to wild animals is gained only by taking them into possession; however, ownership is lost upon escape of the animal.\textsuperscript{22}

\textit{Hammonds v. Central Kentucky Gas Co.}\textsuperscript{23} is the most significant Kentucky case to apply the \textit{ferae naturae} theory to ownership of oil and gas in underground storage areas.\textsuperscript{24} Mrs. Hammonds owned a fee simple estate within the boundary of the gas company's 15,000 acre storage field. She argued that the

\begin{thebibliography}{99}
\bibitem{15} Id. at 25-26.
\bibitem{16} Id. at 26.
\bibitem{17} Texas American, 736 S.W.2d at 28.
\bibitem{18} Id.
\bibitem{19} 75 S.W.2d 204 (Ky. 1934).
\bibitem{20} See generally R. Hemingway, \textit{The Law of Oil and Gas} § 1.3 (1971). \textit{But cf.} Early courts looked to wild animal and water analogies; however, these analogies are improper because water and oil operate within closed systems, but wild animals operate within open systems.
\bibitem{21} 4 AM. JUR. 2D \textit{Animals} §§ 14-19 (1962).
\bibitem{22} Id.
\bibitem{23} 75 S.W.2d 204 (1934).
\bibitem{24} Id.
\end{thebibliography}
storage of injected gas in an underground storage reservoir which extended into her estate was a trespass. The *Hammonds* court held that the gas company lost ownership rights when it injected the gas into the underground reservoir. Since there was no ownership, there could be no trespass. The court's rationale was that injection of the gas into an underground storage facility, which subsequently developed a leak, resulted in a loss of dominion or control over the gas. The court analogized this loss of control over the gas to the lack of control one has over a wild animal. This analogy wrought the *mineral ferae naturae* doctrine. However, the *Hammonds* court ultimately held that the gas company's lack of control resulted in a loss of ownership of the gas.

Scholars have soundly criticized the *Hammond* opinion because: (1) injected gas differs substantially from gas in its native state; (2) the opinion is based on archaic notions of the properties of subterranean strata; and (3) to prove lost title to personal property, which oil and gas become upon extraction, it is usually necessary to show an intent to abandon. Scientific advances in the oil and gas area, however, have revealed the most profound flaw in the *mineral ferae naturae* rule. As the ability to measure, transport, and confine gas and oil increased, various courts began to acknowledge the inconsistency between the theory and the injected gas process.

**III. The Smallwood Decisions**

After *Hammonds v. Central Kentucky Natural Gas Co.*, Kentucky courts rendered two significant opinions interpreting the *Hammonds* holding. The first case was *Central Kentucky*
Natural Gas Co. v. Smallwood\textsuperscript{34} [hereinafter Smallwood I] which involved a lease for the production and storage of gas.\textsuperscript{35} Initially, the landowner in Smallwood I had conveyed all of the surface rights and one-half of the mineral rights, reserving half to himself.\textsuperscript{36} The grantee subsequently executed an oil and gas production and storage lease.\textsuperscript{37} The lessee provided that the lessor/grantee's rentals would be proportional to his title to the oil and gas.\textsuperscript{38} Thereafter, the lessee used the property only for the storage of injected gas.\textsuperscript{39} A dispute arose when the lessee paid the lessor only half of the rentals, based on the lessor's one-half interest in the mineral rights.\textsuperscript{40} The lessor claimed he was entitled to all the rentals because he owned all of the surface rights.\textsuperscript{41} Traditionally the surface owner has the right to explore for and produce gas.\textsuperscript{42} The lessor argued this right to explore and produce included both stored and native gas, since there was no legal distinction as to ownership between the two types of gas.\textsuperscript{43} The Smallwood court recognized that there was no legal distinction between injected and native gas.\textsuperscript{44} However, the court rejected the lessor's argument, holding that the right to rentals under a lease for the storage and production of gas belonged exclusively to the mineral estate owner, not the owner of the surface estate.\textsuperscript{45} Therefore, the lessor was entitled to only one-

\textsuperscript{34} 252 S.W.2d 866 (Ky. 1952).
\textsuperscript{35} Id. at 866. "The lease conferred . . . for the right of drilling . . . for and storing [of] gas of any kind regardless of the source thereof, including the right of injecting gas in the oil and gas strata and removing the same therefrom." Id.
\textsuperscript{36} Id.
\textsuperscript{37} Id.
\textsuperscript{38} Id. at 867.
\textsuperscript{39} Id.
\textsuperscript{40} Smallwood I at 867.
\textsuperscript{41} Id.
\textsuperscript{42} Id. at 868.
\textsuperscript{43} Id.
\textsuperscript{44} Id. at 867-68.
\textsuperscript{45} Id. Unless precluded by the terms of a lease, the mineral owner would have the exclusive right to explore for and produce gas released for storage as well as native gas. A gas storage lease relinquishes that right and confers it on the lessee. Mere ownership of the surface does not confer on the owner the right to explore for and produce native gas merely because it is located beneath the surface which he owns. There being no distinction as to ownership, he has no greater right with respect to the gas released for underground storage. A lease from a mere surface owner confers no rights on the lessee in connection with the production of gas, native or stored, because he has no rights to confer. Id. at 868.
half of the rental by virtue of his one-half interest in the mineral estate. The importance of *Smallwood I* to this Comment is the court’s refusal to recognize a legal distinction between injected and native gas, relying on *Hammonds*. The court relied on *Hammond’s* reasoning that ownership of an estate in land only gives the right to explore and produce. Ownership of an estate in land is not equivalent with ownership of oil and gas; rather, because of its fugacious nature, native or injected gas is only owned when reduced to possession.

In *Smallwood v. Central Kentucky Natural Gas Co.* [hereinafter *Smallwood II*], the court distinguished between the storage process, which involves injected gas, and the production process which concerns native gas. *Smallwood II* involved a lease that remained effective for five years or “as long thereafter as oil or gas, or either of them, is produced from said land by the lessee.” The lessee argued that since stored gas was being periodically injected and withdrawn from the reservoir, this constituted “production,” and the lease was still in force. The lessor asserted that the leasehold was inoperative because native gas had not been “produced” for several years. The court held for the lessor, finding that the injection and withdrawal of gas is distinct from production of native gas.

In *Smallwood II*, the lessee relied upon *Hammonds* and *Smallwood I*, arguing that under Kentucky case law there was no distinction between native gas and stored gas. However, the *Smallwood II* court distinguished these cases by focusing on the broader rights reserved in the leasehold of *Smallwood I*. *Smallwood I* involved a leasehold that expressly provided for the

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46 *Smallwood I* at 868.
47 Id.
48 Id.
49 Id.
50 308 S.W.2d 439 (Ky. 1958).
51 Id.
52 Id. at 441.
53 Id. at 442.
54 Id. at 441.
55 Id. at 443. “The term ‘produced’ as used in the lease . . . does not mean ‘stored’ in its plain meaning.” Id.
56 308 S.W.2d at 442.
57 Id.
storage and the injection of gas regardless of its source.\textsuperscript{58} Smallwood II's leasehold provided only for the "production" of oil and gas.\textsuperscript{59} Since Smallwood II's lease narrowed the rights of the leasehold, there was a necessity to distinguish between the storage and the production of these mineral rights.

In \textit{Texas American Energy Corp. v. Citizens Fidelity Bank & Trust Co.},\textsuperscript{60} the court specifically overruled any language in Hammonds, Smallwood I, or Smallwood II that indicated that gas injected into a storage reservoir with confinement integrity is not personalty.\textsuperscript{61} What then is left of the landmark case of Hammonds and the Smallwood opinions? Judge Thomas B. Spain, author of the opinion adopted by the Kentucky Supreme Court, noted that the fact situations in Hammonds and Texas American are distinguishable.\textsuperscript{62} He wrote:

Using the \textit{ferae naturae} analogy, Western has captured the wild fox, hence reducing it to personal property. The fox has not been released in another forest, permitting it to revert to the common property of mankind; but rather, the fox has only been released in a private confinement zoo. The fox is no less under the control of Western than if it were on a leash.\textsuperscript{63}

Hammonds involved a known leak in a gas storage reservoir; the Texas American litigants stipulated that the storage reservoirs had confinement integrity.\textsuperscript{64}

To a would-be injector of gas the question of whether confinement integrity exists is all-important because its presence or absence will determine whether the injected gas is governed by Texas American or Hammonds, respectively. What then is confinement integrity? In Texas American the Kentucky Supreme Court cites in full the opinion of the trial court that often used the phrase "confinement integrity" without explanation.\textsuperscript{65} After citing the lower court opinion, the Kentucky Supreme Court

\textsuperscript{58} 252 S.W.2d at 866.
\textsuperscript{59} 308 S.W.2d at 441.
\textsuperscript{60} 736 S.W.2d 25 (Ky. 1987).
\textsuperscript{61} \textit{Id.} at 28.
\textsuperscript{62} \textit{Id.}
\textsuperscript{63} \textit{Id.}
\textsuperscript{64} \textit{Id.}
\textsuperscript{65} 736 S.W.2d at 28.
describes confinement integrity as being composed of two elements. The first element is that the underground reservoir be capable of being defined with certainty; secondly the integrity of the reservoirs must be maintainable. The Kentucky Supreme Court frames the issue in terms of the capacity of the injector to control the gas. The author of this Comment believes that capacity to confine can only be inferred from the injector's actions to impede the escape of the gas. Any action evidencing intent by the injector to confine the gas will result in the presence of confinement integrity for the gas that remains in the reservoir. Texas American does not require absolute confinement integrity or even that a certain percentage of the gas be maintained. Rather, any action of the injector to impede the escape of the gas, no matter how insignificant, will evidence intent and thus establish confinement integrity for the gas which remains in the reservoir.

Theoretically, if gas leaked from a storage facility, the ownership rights over that escaped gas would continue to be governed by Hammonds and the mineral ferae naturae doctrine. In such a fact situation, confinement integrity does not exist as to that gas which has escaped and Texas American would not apply. However, at least one court has held that once gas is reduced to personal possession, the owner is not divested of ownership simply because he stores the gas underground and it migrates.

In his dissent, Justice Stephenson stated that nothing in the Hammonds or Smallwood decisions is overruled because they are so factually distinct. Perhaps so, but these three cases reflect a developing judicial recognition of the scientific ability

\begin{quote}
\textsuperscript{66} "[I]n those instances where previously extracted oil or gas is subsequently stored in underground reservoirs capable of being defined with certainty and the integrity of said reservoirs is capable of being maintained, title to such oil or gas is not lost and such minerals do not become subject to the rights of the owners of the surface above the storage fields." \textit{Id.} at 28.
\textsuperscript{67} \textit{Id.}
\textsuperscript{68} \textit{Id.} at 25.
\textsuperscript{70} \textit{Texas America}, 736 S.W.2d 25.
\end{quote}
to contain injected gas for consumer use. *Hammonds* and *Smallwood I*, which did not distinguish between native gas and injected gas, implicitly held that both types of gas could not be contained. The *Smallwood II* court held that, for purposes of a lease, injected gas and native gas differed. Finally, the *Texas American* court recognized that the presence of confinement integrity dictates the type of ownership.

**IV. JURISDICTIONAL SURVEY**

Several states have addressed the issue of whether injected gas is subject to the doctrine of *mineral ferae naturae*. Two states, Texas and Pennsylvania, have rejected the wild animal theory by court decision. Whereas, Oklahoma and Kansas courts have retained the doctrine. Other states have adopted statutes which provide that gas remains the property of the injector unless the gas migrates from the contained area, at which point it becomes subject to the law of capture.

In *White v. New York State Natural Gas Corporation*, a Pennsylvania court rejected the *mineral ferae naturae* concept, holding that application of the theory was limited to the original capture of native oil and gas. In *White*, the court opined that injected gas differed materially in chemical and physical properties from native gas and could be readily identified for ownership purposes. The court noted that the development and use of underground storage facilities was in the public interest.

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71 *Hammonds*, 75 S.W.2d at 204; *Smallwood I*, 252 S.W.2d at 867-68.
72 *Smallwood II*, 308 S.W.2d at 442.
73 736 S.W.2d at 28.
76 See *Mo. ANN. STAT. § 393.500* (Vernon 1985 Supp.) (Missouri); *OKLA. STAT. ANN. tit. 52 § 36.6* (West 1969) (Oklahoma); *N.M. STAT. ANN. § 70-6-8* (1978) (New Mexico).
77 *Id.* at 342 (W.D. Pa. 1960).
78 *Id.* at 346.
79 *Id.*
80 *White*, 190 F. Supp. at 349.
In *Lone Star Gas Co. v. Murchison*, the Texas courts adopted *White*, rejecting the *mineral ferae naturae* theory. Relying on the new scientific ability to move gas by pressure or other mechanical means, the court dismissed the analogy between gas and wild animals, and stated that: "Gas has no similarity to wild animals. Gas is an inanimate, diminishing nonreproductive substance lacking any will of its own." Since extracted gas becomes personalty, the court reasoned that generally the only process by which personalty can be lost is abandonment. Because the gas company in *Lone Star* did not intend to abandon its property, title to the personalty was retained.

In *Texas American*, the Texas American Energy Corporation argued that the Texas court in *Lone Star* and the Pennsylvania court in *White* had correctly rejected the *mineral ferae naturae* doctrine. Citizens Fidelity countered that these two states had adopted the ownership in place or corporeal rule, and, therefore, *Lone Star* and *White* were not on point. Generally, though not uniformly, the Kentucky courts have adopted the non-ownership or incorporeal rule. The corporeal rule and the *mineral ferae naturae* doctrine state the same premise—there is no ownership of oil and gas until the mineral is reduced to possession. But, the incorporeal rule clearly states that, before the minerals are removed from the land, ownership of oil and gas is an interest in real estate.

Perhaps recognizing the distinction, the *Texas American* court did not discuss Kentucky's incorporeal rule. Classifying an interest as corporeal is distinct from classifying oil or gas interests as realty or personalty. A corporeal or incorporeal interest is based on its possessory nature. The common law distinction

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82 Id. at 879.
83 Id.
85 Appellant's Brief at 11, *Texas American*, 736 S.W.2d 25.
86 1 WILLIAMS & MEYERS, OIL AND GAS LAW, 36 (1985).
87 B. HEMINGWAY, *supra* note 2, at § 1.3.
88 Id.
89 736 S.W.2d 25 (Ky. 1987).
90 See infra notes 91-93 and accompanying text.
between real estate and personality is based on whether the thing possessed was moveable. Land and objects that are securely attached to the earth are immobile; all other objects that are moveable are personality. Application of the incorporeal rule to the realty and personality distinction is unnecessary, but a survey of the case law will reveal that courts often try to correlate the two distinct classifications.

In recent court decisions, two states have ruled to retain the doctrine. In *Bezzi v. Hocker*, a federal circuit court relying on Oklahoma law acknowledged that oil and gas are mobile and fugacious and if possession is lost, title is also lost. The trial court relied on Oklahoma precedent, finding that title to injected gas was lost because of its fugacious nature and that once lost, gas becomes subject to the law of capture. The court stated that whatever title the mineral owner had prior to the date his interest terminated, title was lost when the gas was injected into a common source of supply with the subsequent commingling of native and injected gas.

The Kansas courts also retained the *ferae naturae* rule. In *Anderson v. Beech Aircraft Corporation*, the court held that when the gas company, which was not a public utility, attempted to create an underground storage reservoir under the property of an adjoining landowner without the contractual right to do so, the law of capture was applicable to that injected gas. The court stated: "We thus hold that Beech Aircraft lost its ownership of the stored gas after injecting it into the reservoir in this case." The gas company had contended that it had the right to store gas under the land of an adjoining landowner without obtaining a permit, license, condemnation right, or without pay-

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93 Id.
95 370 F.2d 533 (10th Cir. 1966).
96 Id. at 535.
97 Id.
99 Id. at 1031.
100 Id.
The Anderson court found that such a rule would result in extensive litigation between the producer of the injected gas and the owner of the adjoining estate who owns rights to the native gas. Both of the cases, Bezzi and Anderson, have an element of bad faith or mistake, either by commingling or by injection without a contractual right. They are factually distinct from Texas American which involved a public utility possessing control of an entire underground storage facility with confinement integrity.

V. THE UNIFORM COMMERCIAL CODE’S APPLICATION TO INJECTED GAS

The Texas American court concluded that injected gas is personalty and a "good" under the Uniform Commercial Code [hereinafter U.C.C. or the "Code"). Therefore, the U.C.C. controls the proper method of perfecting a security interest in oil and gas after extraction. Texas American did not discuss the pertinent provisions of the U.C.C. relative to filing a security agreement for injected gas. However, an analysis of Kentucky's version of the U.C.C. reveals that the Texas American holding is consistent with the drafter’s intent that the U.C.C. apply to security agreements covering oil and gas.

The U.C.C. definition of goods requires that they be existing and moveable. Therefore, the U.C.C. does not pertain to gas or oil until they are extracted from the land. Prior to extraction a security interest in oil and gas is an interest in real estate.

The U.C.C. applies to sales or security transactions in goods. In order to qualify as goods under the Code, the

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101 Id.
102 Id.
103 Id. and 370 F.2d 533 (10th Cir. 1966).
104 736 S.W.2d 25 (Ky. 1987).
106 Texas American, 736 S.W.2d at 28.
107 KRS §§ 355.2-103, .2-106 (1958).
109 Id.
110 KRS § 355.2-102 (1958).
product must be existing and moveable at the time of identification to the contract for sale. Therefore, prior to severance, oil and gas are realty and are not governed by the U.C.C. After severance, during the transportation and storage process, the oil and gas are goods. The pertinent Code section provides "'goods' includes all things which are moveable at the time the security interest attaches . . . but does not include . . . minerals or the like (including oil and gas) before extraction." When oil and gas are taken from their original reservoir, they are measured and transported by pipeline. Since they can be transported and measured, oil and gas are existing and moveable; therefore, they are within the U.C.C. definition of goods.

Under the U.C.C. in effect at the filing of the Texas American action, a financing statement covering minerals did not require a description of the land where the minerals were located. Subsequently, Kentucky has adopted amendments to the U.C.C. which provide for the filing of a financing statement covering oil and gas in the same office where the real estate records are filed. Additionally, the financing statement must contain a description of the land where the minerals are located. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner. Thus the drafters of the U.C.C. have attempted to give protection to subsequent lenders by identifying the land where the minerals are located to prevent an over indebtedness on the part of the debtor. Since searching the real estate records will put subsequent lenders on notice, applying the U.C.C. will not lessen the reliability of oil and gas security interests, as compared to the filing of a mortgage.

In Northern Trust Co. v. Buckeye Petroleum Co., a North Dakota court found that upon default of a security interest

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111 KRS §§ 355.2-103, .2-105 (1958).
113 Id. at §§ 355.2-103, .2-105 (1958).
114 Id. at § 355.9-402(4) (1986).
116 Id.
117 KRS § 355.9-402(4) (1986).
118 389 N.W.2d 616 (N.D. 1986). The court opined that section 9-104 of the U.C.C. demonstrated a statutory intent that the U.C.C. governs oil and gas interests since they were not expressly excluded. Id. at 620.
covering real property, oil, and gas, a secured party had the rights and remedies provided in Article 9 of the U.C.C. in addition to those provided in the security agreement.\textsuperscript{119} The creditor had executed an open-ended mortgage, security agreement, and financing statement covering the debtor's interest in oil, gas, and real property.\textsuperscript{120} The open-ended mortgage was recorded in the real estate records and filed as a security agreement and financing statement.\textsuperscript{121} The court found that the collateral involved was both real and personal property, concluding that oil and gas, once extracted, are personal property because the U.C.C. does not expressly exclude them.\textsuperscript{122}

Because the U.C.C. clearly delineates what it does not apply to, it is reasonable to conclude that the absence of oil and gas from this section reflects the drafters' intent that Article 9 of the U.C.C. apply to injected oil and gas.\textsuperscript{123} \textit{Texas American} has done away with the previous uncertainty the oil and gas industry experienced concerning how to perfect a security interest in injected gas.\textsuperscript{124} \textit{Texas American} affirms that the U.C.C. offers greater uniformity and reliability to the industry.\textsuperscript{125}

\textbf{Conclusion}

The purpose of the U.C.C. was not only to make uniform the laws among the various jurisdictions, "but [also] to discard distinctions between different types of transactions where those distinctions have only historical justification."\textsuperscript{126} Before the advent of injected gas, a security interest in these minerals was

\begin{itemize}
  \item \textsuperscript{119} \textit{Id.} at 616.
  \item \textsuperscript{120} \textit{Id.} at 617.
  \item \textsuperscript{121} \textit{Id.}
  \item \textsuperscript{122} \textit{Id.} at 620.
  \item \textsuperscript{123} \textit{See generally KRS} § 355.9-104 (1986) (effective July 1, 1987).
  \item \textsuperscript{124} \textit{Texas American}, 736 S.W.2d at 28.
  \item \textsuperscript{125} \textit{Id.}
  \item \textsuperscript{126} KRS § 355.1-102 (1966). Section 355.1-102 provides:
    (1) Underlying purposes and policies of this act are: a) to simplify, clarify and modernize the law governing commercial transactions; b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; c) to make uniform the law among the various jurisdictions. \textit{Id.}; \textit{see also}, \textit{Bender's Commercial Code Service} (MB) ¶ 16.14 (1966).
\end{itemize}
justifiably analogized to a security interest in real property. However, as the scientific ability to confine and transport oil and gas advanced, Kentucky needed to re-examine the doctrine of *mineral ferae naturae*. The *Texas American Energy Corp. v. Citizens Fidelity Bank & Trust Co.* decision recognizes that the *mineral ferae naturae* doctrine is inappropriate to the injection of gas into a storage reservoir with confinement integrity. Gas and oil can be measured, confined, and transported and, thus, qualify as "goods" under the U.C.C. Since virtually every state has adopted Article Nine of the U.C.C., its applicability will lubricate multi-state transactions. The U.C.C. offers uniformity among jurisdictions in the creation of a security interest in injected oil and gas. Therefore, it also offers greater reliability for creditors. Rejection of the archaic *mineral ferae naturae* doctrine as applied to the injection of gas into a storage reservoir with confinement integrity is founded on commercial reasonableness and acknowledgement of the scientific advances in the area.

PAMELA C. BRATCHER

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127 *See supra* notes 19-21 and accompanying text.
128 736 S.W.2d 25 (Ky. 1987).
129 *See supra* notes 17-19 and accompanying text.
130 *See supra* notes 110-113 and accompanying text.
131 *White & Summers, Handbook on the Uniform Commercial Code* 1 (2d ed. 1980). As of 1980, the U.C.C. has been adopted in all states but Louisiana.