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COLLATERAL DAMAGE IN THE MARCELLUS SHALE REGION:
THE DESTRUCTIVE IMPACT OF FRACK POLLUTION AND
DEFECTIVE GAS LEASES ON PROPERTY VALUATIONS AND
TAXPAYER GUARANTEED MORTGAGES

“Frack gas leases pose an unacceptable and irreversible risk to public health and to the public treasury.”

“Signing a gas lease without lender consent is grounds for a mortgage default that ultimately will further distort and destabilize the real estate, financial services, and energy markets alike.”

“How can the State SGEIS regulate the toxic frack chemicals and frack waste that the State exempts from regulation?”

“The only safe solution is a total ban on fracking in New York State.”

OVERVIEW: HOW THE GAS RUSH AND DEFECTIVE GAS LEASES
COMPOUND THE RISK TO PUBLIC HEALTH, TO PUBLIC FINANCIAL
OBLIGATIONS AND TO COMMUNITY REAL ESTATE

Gases leases throughout the New York Marcellus Shale Region, especially on those properties having existing mortgages, are fatally flawed and may universally be invalid.

Dependent on horizontal drilling and high-volume slick-water fracking, gas leases are being exposed for omitting necessary mortgage ownership approvals, for concealing shoddy deed recordings, for failing to disclose contamination, health and financial liability risks, for misleading lease sellers, and for ignoring zoning restrictions and property devaluation consequences.
Gas drilling promoters promise wealth to land owners and often pay lease signing bonuses that are worth more per acre than what the entire fee simple sale of that property could bring on the open market -- land that could be contaminated, devalued and become a public burden if ever abandoned.

News reports reveal that banks and other financial lenders have stopped issuing mortgages for refinancing or for the new purchase of homes having gas leases due to the systematic risk of property devaluation caused by contamination from the toxic fracking process, and due to the property devaluation caused by the lease mechanism itself. The gas lease would strip off and decouple the value of the underground gas wealth from the remaining aboveground property asset, and would also restrict the surface use whether or not any pollution occurred. Each circumstance produces a risk that did not previously exist, and each reduces the collateral value of the property which secures the mortgage loan and any other property lien such as child support obligations, consumer and college tuition loans, mechanic liens, or criminal court fines or restitution judgments.

While the presence of a gas lease has introduced a new obstacle to the sale of a property to a new purchaser, the enormity created by the tens of thousands of properties having existing mortgages and existing defective gas leases without necessary bank/third party consent – each of which could be fracked and converted into a mini-superfund wasteland – presents a new, unimagined ticking time bomb which could blow up the entire national housing market and drown the banking system yet again.

**GAS LEASE CONTRACTS + SIPHONED ASSETS = DEVALUED PROPERTY AND TOXIC MORTGAGE LOANS**

The value of a home mortgage is predicated on the value of the entire deeded property including subsurface mineral assets, water resources, septic system performance, and aboveground buildings, which collectively become the collateral guaranteeing the mortgage loan. The value of a particular home is also related to the condition and value of the adjacent neighborhood properties and to the community as a whole. Further, a stipulation of the mortgage prohibits the introduction of pollution or any activity that could compromise the collateral value of the property.

A gas lease is a voluntary contract between a home owner and a drilling company which not only purchases the underground gas rights but which also indelibly alters the functional use of the land surface, the ownership rights to a property, and the character of the greater community.
The gas lease removes the gas as a component part of the mortgage collateral. The gas lease further diminishes the value of the property because it also controls the aboveground use related to gas production including but not limited to the construction of well pads, access roads, collection pipes, frack fluid/sludge waste storage pits, gas compressors and processing facilities, easements, and, surface or underground storage facilities for gas produced on site, and/or for frack waste and for gas transported in from other frack gas production locations. The risk of pollution and the high cost of remediation erode the value of the residual surface property and inversely raise the financial risk to the lender.

The potential for gas production makes the underground lease exponentially more valuable than the surface land and structures, which become a shell to which the mortgage remains attached. Paradoxically, the mortgage owner and lien holder would have the loan value sucked out from under them, but would receive no benefit, no signing bonus payment, or no shared royalty from the actual sale of the gas, the production of which can only pollute the air, land, and potable water which would make the surface property unusable and the mortgage worthless. Further, the landowner has no obligation to use the gas proceeds to pay off the mortgage.

The alteration of the ownership relationships and property values caused by a gas lease is a major reason requiring mortgage owners to approve and give written consent to the gas lease prior to the signing of the gas lease contract. That includes all mortgage owners listed on the deed/title such as the originating bank and all other parties which have a financial interest like that of a home equity loan or second mortgage, or a mortgage derivative, or the holder of a lien or an easement or rights secured by a restrictive covenant. That is why the lease must also be recorded together with the deed in the office of the County Clerk to satisfy title search and title insurance requirements upon which the transfer and sale of real estate depends.

The signed consent must be made by the current mortgage owner of record whether that owner be the originating bank, a government agency operating a secondary mortgage market like Fannie Mae, or a hedge fund which owns portions of the mortgage in any number of blended derivative security packages. All of those ownership and lease transactions should be documented as they occur and then mapped and filed in the County Clerk property/deed records just like that of land subdivided into building lots for the construction of new homes.

Not only must the mortgage owner consent to the gas lease, so too must the home insurance companies who are obligated to evaluate the new liability risks and adjust the terms and premium costs of the policy coverage.
The signed consent and deed registration requirements for gas leases are presenting ominous barriers for the anticipated fracking and gas production. As the current national housing bubble and mortgage-banking meltdown are revealing, the actual owners of the mortgage debt instruments have not been able to be identified to allow foreclosure actions to proceed. Mortgages sold and traded in the secondary market have routinely been "misplaced" or lost, affidavits have been forged and subject to "robo-signing" perjury. Authentication cannot be trusted.

Since over 90 percent of all mortgages are sold into the secondary market and are securitized into investment products for further resale, and since gas leases for each property must be "co-signed" by the actual mortgage owner, there exists a high probability that the gas leases do not contain the necessary signed consents just as the repackaged mortgages do not contain valid signatures of the actual owners. The lease contracts and the companion deed amendments most likely are equally defective.

On the other hand, should the bank or other mortgage owner like Fannie Mae actually approve and sign the necessary lease consent, the bank places itself into a Catch-22 conflict because the bank would become a silent partner with the lease owner and would thereby be in violation of its own anti-pollution, anti-degradation requirements. The bank would also become an accomplice in the devaluation of its own property interest and be in violation of its fiduciary responsibility to its own shareholders, investors and to the U.S. Treasury, which guarantees the financing. Likewise, if the bank does not consent to the lease but does not challenge the validity of the lease either, the bank could still be exposed to extensive liability for any toxic spill and contamination clean-up expenses in addition to loss of investment principal, unpaid property taxes and related utility and maintenance expenses incurred by a deserted property for which it has responsibility.

THE SHIFT AND SHAFT TRANSFER OF PRIVATE CONTRACT RISK TO PUBLIC LIABILITY AND FINANCIAL RISK

Whether the gas leases are faulty or valid, their existence has an overwhelming negative impact on the entire national housing market and on costs to the public at large within and beyond the Marcellus Shale Region since most mortgages are sold on the secondary market to government sponsored home finance agencies and market makers such as Fannie Mae and the Federal Housing Administration. Those mortgages are guaranteed by the U.S. Treasury, and those guarantees transfer the risk of equity devaluation and pollution liability directly to the public taxpayer. Those mortgage products, in turn, are purchased by other public institutions such as municipalities and public pension funds like the NYS Retirement System, as "safe" investments when those mortgages with gas leases do not even meet the basic standards for resale into the secondary market.
If the pollution potential and the depreciating property value caused by the gas lease are concealed, the investors are deceived into buying misrepresented assets shilled as having "AAA" quality ratings, but which are intrinsically worthless.

The giant institutions like Fannie Mae and Freddie Mac are able to force the originating banks to nullify the gas leases or to buy back the mortgages made defective through the gas lease contracts concocted without their informed consent. Not doing so would expose the U. S. Treasury and taxpayers to a perpetual mortgage/foreclosure scam spiked by pollution liability costs, loss of regional water resources, and a housing overhang that cannot be resold just like the condemned homes on Love Canal.

The functional change of land use from rural-residential-agricultural to commercial-industrial caused by gas drilling is a monumental community Master Plan/Zoning change which threatens the quality of life and the real estate values throughout the region. Property values are routinely reduced which also imperils the property tax revenue which municipalities and school districts need in order to provide basic services. Fracking increases demands on local budget expenditures through higher road repair, solid waste disposal, and wastewater treatment costs. Further, New York State has reserved the regulation of the gas drilling industry to itself, but has assigned the responsibility to police the safety of the drilling operations to the local county health departments -- a classic unfunded mandate/cost transfer to local government and to local tax rolls. Those additional expenses also affect a municipality's credit rating and ability to borrow/bond for traditional municipal projects.

FRACK POLLUTION: THE CREATION OF LETHAL TOXINS

All of the issues relating to real estate devaluation, toxic mortgages, natural resource degradation, and public health risks start with frack pollution. The Marcellus frack gas drilling process consists of three general phases: the shaft construction/perforation phase; the shaft capping and gas production phase; and, the post-production, hazardous waste disposal phase.

First, the drill shaft construction perforates the installed casings and fractures the surrounding shale bed with controlled explosives. A large volume of existing underground toxic "flow back" water and drill tailings collectively containing brine, benzine, heavy metals, and radioactive materials including radon, are expurgated from the shafts and brought to the surface. Uncapped preproduction "fugitive" methane and small particulates injurious to human health form ground-level ozone/smog, and are also discharged into the upper atmosphere in concentrations much more damaging to global warming than that caused by carbon dioxide
discharged by coal-fired power plants as detailed by the 2011, peer-reviewed research report by Professor Robert Howarth of Cornell University.

Second, the frack gas production phase consists of capping the shaft and injecting high volumes of water, sand, and toxic chemicals (frack fluid) under high pressure through the shaft perforations to further fracture the shale bed and prop open the shale passageways to extract the entrained methane, a process which also produces benzine. The methane is dewatered, stored, compressed, and pipe-lined to market. This radon-rich Marcellus gas presents a special health hazard to end-use urban customers who are dependent on methane for space heating, for domestic hot water, and for cooking since the radon vents off into their enclosed living quarters.

Third, the post-production disposal phase results in a slurry of radioactive drill tailings, toxic flow-back water and frack injection fluid that had been pumped from the shafts to uncontrolled open air waste water/sludge storage pits subject to evaporation, seepage into the ground and surrounding waterways, and shipment to municipal landfills and to municipal sewage treatment plants (STP), or to points unknown.

However, no capability exists safely to dispose of those millions of gallons of radioactive toxic sludge and fluids. No municipal solid waste facility or STP can remove radioactivity or can remediate the toxic material contained in frack waste. Most facilities do not even attempt to process that waste. The municipal expense to construct and operate such an industrial hazardous waste treatment facility, which would also have to process radioactive material, would be astronomical and would only be marginally effective. Recently, the Niagara Falls municipal STP, which has some ability to treat industrial waste, has refused to accept toxic frack fluids. Like the spent nuclear fuel rods stored at the Indian Point reactor site, the exact reclamation method to process frack waste is still unknown. The destination of that toxic frack waste also is unknown since frack waste is exempt from regulation and is not even tracked.

**FRACK POLLUTION: THE CONSEQUENCES OF LETHAL TOXINS ON PUBLIC HEALTH AND THE FALSE SECURITY OF REGULATIONS AND PERMITS**

Frack chemicals are known cancer-causing agents and endocrine disruptors that are restricted and kept from human contact. Those and similar toxic compounds, however, have been exempted by the '05 U. S. Energy Policy Act from federal clean air and clean water regulations when those chemicals are used by the gas industry in the gas fracking process (the so-called "Halliburton Loophole"). The drilling companies also keep the identity and quantity of
specific chemicals used at specific well sites secret. But even if disclosed, unless those chemicals are also banned, they remain toxic and are no less dangerous.

Further, New York State has its own "Halliburton Loopholes" such as ECL 27-0903 which exempts all hazardous waste produced by the oil and natural gas industries like drilling fluids, flow-back water, radioactive drill tailings, and toxic frack injection chemicals from being regulated as "hazardous waste" even after proven to be "hazardous" and which would be subject to regulation if produced by any other industry. Consider that chemicals which are labeled as toxic and hazardous and which are individually regulated, are mixed together and injected into the ground as frack fluid, but then are declared by magical legislative decree no longer to be a hazardous concern upon their resurrection to the surface as frack waste. Such linguistic detoxification does not inspire confidence in the government's ability to protect the public or to regulate anything.

Gas industry salespeople, armed with regulatory exemptions, definition contortions, and confidential non-disclosure settlement agreements which silence victims of frack pollution, essentially claim that gas fracking does not cause pollution because their internal records are secret, and because of legislative sophistry that commands pollution no longer to be "pollution" if produced by the frack gas companies.

However, calling something "pollution free," in reality, does not make it "pollution free." Just as the repeated assertions by state and federal officials that the air in the vicinity of the World Trade Center after 9/11 was "safe," did not, in truth, make that air "safe" as evidenced by the critical health problems that first responders contracted thereafter.

Additionally, even if frack waste were regulated by the federal or state governments, the issuance of a permit does not insure public safety either. Consider the legal permit that was issued by New York State to General Electric allowing disposal of PCBs into the Hudson River. GE was knowingly granted a license to pollute the Hudson justified by "best practices" which recognized PCBs to be poisonous at the time. The current dredging-out of those PCBs from the Hudson River is a living example of the fallacy of solely relying on permits and impermanent "best practices" to protect public health. Permits by themselves do not make the toxic substances they "regulate" any less toxic.

And, consider the widespread illegal disposal that also takes place such as the toxic paint sludge dumped by the Ford Motor Company in the Ramapo Hills and Valleys throughout the NY-NJ Highlands Region. Consider the illegal construction and demolition waste and chemicals dumped on the banks of the Ramapo River in Sterling Forest, a crime scene under the direct supervision of corrupt and
subsequently imprisoned NYS DEC staff who were bribed by organized crime carters.

Consider that deep underground methane and its toxic constituents under high pressure cannot be contained and cannot be herded and corralled like beef cattle on a Mid-Western feed lot. The peer-reviewed research published during 2011, by Professor Rob Jackson (the Duke University study...), documents how methane from Marcellus Shale strata 8,000 feet below the surface somehow infiltrated aquifers and home water wells in proximity to gas drilling activity. The migration of underground methane is facilitated by the initial explosions which perforate the casings and shale bed, but which also fracture rock formations above and below the Marcellus strata. Those formations had been expected to contain the dispersal of the methane which is under intensified high pressure which forces the gas to follow all fractured pathways including those in unpredictable directions.

Undeterred by the get-rich-quick, snake oil sales pitch, science confirms that gas fracking is an industrial process, which can never prevent risk or cleanse the natural or man-made environment. Pollution is an unavoidable byproduct, and accidents will happen. The only safe solution is a total ban on fracking.

THE PERVERSE IDIOCY OF STATE REGULATION OF TOXIC FRACK CHEMICALS THAT EXEMPTS THOSE TOXIC CHEMICALS FROM STATE REGULATION

Both landowners who sold gas leases and who expect windfall personal profit from gas royalty dollars and the gas industry PR machine assert that fracking chemicals are safe. When refuted, they deny that fracking causes pollution. When again refuted, they claim that any pollution was either preexisting or naturally occurring and exempt from regulation. And when overwhelming evidence refutes them once again, they uncharacteristically support government intervention by promoting the Big Lie that state laws, state staff and the pending State Environmental Quality Review Act (SEQRA) evaluation will guarantee safe fracking and will protect public health, knowing that to be impossible.

The reality is that necessary laws and rules to regulate the horizontal drilling process do not exist, and the NYS Department of Environmental Conservation (DEC) staff has been depleted to the point of being unable to enforce any regulations if and when enacted.

But even if perfect laws and regulations were in effect, and even if adequate enforcement staff were on patrol, enforcement would be an illusion, since those toxic frack chemicals and hazardous frack waste are exempt from any regulation. How can
the State Supplemental Generic Environmental Impact Statement (SGEIS) regulate the toxic frack chemicals and frack waste that the State exempts from regulation?

THE MIRAGE AND DECEPTION OF THE DRAFT SGEIS

The state and federal governments have irreconcilable missions to promote gas and oil commerce and at the same time to protect the health and safety of their citizens from the harm caused by that gas and oil commerce. In New York, fracking supporters praise the DEC SGEIS as being the most protective regulation possible, and the gas industry flatters the State for having the most restrictive drilling laws of any state. No amount of puffery and public relations spin can change the fact that the SGEIS is not a law, nor is it a Rule or Regulation having the full force and effect of law needed to prohibit pollution. Rather, the SGEIS is a planning document that presupposes drilling and that exploits and facilitates gas production. It is a remarkably deficient legal construct incapable of overcoming market realities and natural environmental constraints. The SGEIS ignores an assessment of the full-build-out cumulative impact of 70,000 potential wells being drilled. It likewise ignores the project-specific cumulative impact of the withdrawal volume of millions of gallons of fresh water, the inter-basin transfer of that water, and the disposal volume of millions of gallons of hazardous frack waste from each well. The draft omits health impact assessments, hazardous frack waste remediation, real estate and mortgage devaluation costs, gas lease contract validity issues, or the full range of available energy alternatives to gas drilling that can entirely avoid the risks and the need for fracking. In the absence of meaningful rules and regulations, the SGEIS becomes a disappointing burlesque. Under such contrary mandates, the SGEIS represents a futile attempt to control and to promote responsible gas drilling which the draft shows to be neither controllable nor responsible.

LOCAL HOME RULE ZONING AND POLICE POWER:
LAND GUZZLING GAS LEASE CONTRACTS VS MORTGAGE ANTI-POLLUTION CONTRACTS

No matter what the Clean Air Act, the Clean Water Act, the DOE Energy Policy Act, the NYS Environmental Conservation Law (ECL) Rules and Regulations, etc., allow, disallow or exempt, the inherent, fundamental police power of the State to protect the health, safety, and welfare of the entire population empowers and obligates the state to ensure the integrity of a poison-free living environment and a safe, clean source of potable water. In New York State, local Home Rule authority extends the police power of the state to county-town-village-city governments for enforcement including their local zoning authority above and beyond state or federal gas drilling regulatory pre-emptions. While the state can give one party a license to pollute, the state thereby
cannot give that party the right to harm the health or property of another person as a consequence of that license to pollute.

Local Home Rule has also empowered town-village-city governments to designate the use of land through zoning authority. While the NYS DEC has the authority to regulate how methane is produced, local government has the authority to determine where methane may be produced. Unless a property already is zoned “commercial-industrial,” and drilling is specifically permitted, the land owner may be required to obtain a variance or special use permit from the municipal building inspector or planning board or zoning board of appeals. Any such decision may require SEQRA review and may provoke court litigation. Those unique land use powers and duties were reaffirmed by two recent NYS Supreme Court decisions in Tompkins County (Town of Dryden) on February 21, 2012, and in Otsego County (Town of Middlefield) on February 24, 2012. In both cases, each Town legislated zoning that banned gas drilling within their respective jurisdictions. Each court upheld the zoning that banned fracking, and each ruled that while NYS had pre-emptive authority to regulate gas drilling, that regulatory authority did not supersede equally compelling local government zoning and land use authority that could ban gas drilling altogether.

**ANTI-DEGRADATION REQUIREMENTS OF MORTGAGE LOAN AND HOME INSURANCE COVERAGE**

As Congress and state governments continue a treadmill of circular deliberation over the definition of "pollution," and over the purpose of "regulation and/or enforcement," contract law has long accepted the plain meaning of "pollution" and "toxic chemicals," and has rejected the legislative subterfuge taking place behind closed doors. **While the “Halliburton Loophole" and legislative mendacity may allow the use of toxic chemicals for fracking on residential property, real estate investors and mortgage contract stipulations do not.** Conditions of the mortgage prohibit the property owner from reducing the value of the property, which guarantees the mortgage loan. Among other conditions, the owner must comply with municipal zoning regulations and building codes, must prohibit the introduction of toxic or polluting substances that could degrade the property and water supply, and must not change the use of the property or conduct any activity on the property that would place the collateral guaranteeing the mortgage at risk, like a gas lease.

Home insurance is also required for a mortgage, and insurance companies have similar anti-degradation stipulations.

Not only are mortgage lenders and insurance companies on guard to prevent a loss of their investment capital regarding the purchase price and replacement costs of the property, they are also sensitive to the additional unlimited liability expenses from
personal injury law suits and from pollution and remediation expenses for which they would be held responsible.

**Those same anti-degradation stipulations and mortgage/lender lease consent requirements are included in the basic standards that allow a mortgage to be resold and insured in the secondary market to investors and to the federally guaranteed mortgage market makers like Fannie Mae, Freddie Mac, and Farmer Mac. Violations of those anti-degradation conditions which would devalue the property by the home owner or by a third party could result in both the home insurance policy being canceled and the mortgage being defaulted, triggering a demand for instant repayment or foreclosure.**

No amount of insurance or bonding or pooled remediation funds would be adequate to address an unexpected catastrophe such as the BP Deep Water Horizon explosion in the Gulf of Mexico during 2010, or the prospect of 70,000 leaking gas wells and mini-spills throughout the Catskills, the Delaware and Susquehanna River Basins and the Southern Tier due to fracking.

**PUMP-AND-DUMP GAS LEASE SPECULATION AND CONFISCATED GAS/PROPERTY RIGHTS**

When a gas lease contract is signed, the drilling company pays the property owner a signing bonus for the methane rights, and pays subsequent royalties for gas that is produced. The lease has a set time period, usually for five or more years, but for all practical purposes, the gas company could extend the lease forever.

The terms of an individual lease are important to the homeowner. But to the gas company, the aggregation of a sufficient number of contiguous lease properties needed to establish a legally defined "Spacing Unit" is even more important to allow drilling and asset speculation to commence.

A spacing unit is designated when the DEC determines that a drilling company controls gas leases on 60 per cent or more of an area of 640 acres. The land owners who elect not to sell their gas rights but who are included within the boundary of the spacing unit are forced to relinquish their gas assets through a process called "compulsory integration" as though they had voluntarily sold their property rights. The conscripted property is eligible to receive a reduced, non-negotiated royalty payment but no signing bonus.

The "land-jacking" of the property is a form of an eminent domain "taking" by the gas company authorized by NYS law, but without just compensation. That commandeered property faces all of devaluation and pollution risks that also place it
in violation of mortgage and home insurance anti-degradation prohibitions as well as resale limitations to new buyers due to the industrialization and pollution risk confronting all properties within and adjacent to the spacing unit sacrifice zone.

The syndication of gas assets from multiple, separately owned lease properties is critical to maximizing the gas reserves, to maximizing gas extraction efficiencies, and to maximizing profits from the financial transactions linked to the estimated reserves. The gas lease contract may be sold to another gas company or to an investment group and may be traded in the secondary market just like a mortgage. Or the gas represented by the lease may be sold, traded as a commodity on the futures exchange, used as collateral for loans, or used for reserve requirements supporting other transactions. The owner of the lease may borrow against the newly acquired gas asset using the estimated volume of gas as security for the loan which could pay for signing bonuses, drilling expenses and for business profits much like a stock company leveraged buy out. The company that owns the lease may use the estimated gas reserves and the expected rise in gas prices to prop up its own share price in the stock market. Generally, the gas company which structures and buys the gas lease has extracted the maximum profit from the “promise” of gas production soon after signing the lease contract and before any drilling and gas production actually begins.

THE ABSOLUTE NECESSITY OF FULL DISCLOSURE AND FULL RESPONSIBILITY

The gas asset, used as investment collateral, and the rest of the property, used as mortgage collateral, may have separate financial interests and obligations that conflict with one another. When the gas company markets the gas reserves as an investment product or pumps up its own share price on the stock market, the Securities and Exchange Commission requires that the gas company disclose reliable, independent estimates of the volume and value of the gas reserves and the significant risks inherent in the gas drilling enterprise to assist investors in making sound, informed decisions regarding their investment dollars. Gas companies, however, are not required to provide the same disclosure and risk advisory to the landowner selling the lease or to the public. The toxic chemical formula in frack fluid, for instance, is declared “proprietary” and is not disclosed at all. The first sales deception is the rosy scenario hyped to the landowner at the same time that a worst-case, high-risk scenario is provided to the stock market investor regarding the same gas drilling action. The second deception by omission is that the landowner may become a co-defendant with the driller and mortgage owner regarding pollution injury lawsuits and cleanup costs.

The lease seller and stock market investor and mortgage lender, additionally, are all shielded from the prospect that the gas lease contracts themselves may be defective,
and may be nonconforming with local zoning. Further, litigation may be initiated by property owners who sold leases under false pretenses, by land owners involuntarily incorporated into spacing units via compulsory integration dictates, or by neighboring land owners located outside the “spacing unit.” Unless the collective leases are valid, and all other conditions are met, a "spacing unit" may not be created and area-wide drilling may not take place. If the gas leases are defective, the entire financial alchemy would be exposed as a gigantic pyramid scheme analogous to the related housing-bank mortgage derivative scandal based on overvalued assets and straw buyers propped up by toxic sub-prime financing, and rationalized by exotic accounting machinations.

CAVEAT EMPTOR: PREDATORY GAS LEASE PURCHASE CONTRACTS

In any business transaction, trust, transparency, and full disclosure are essential elements, especially where risk and many unknown factors exist. Some recent examples of predatory gas company behavior are instructive.

A case of interest involves Chesapeake Energy Corp., which extracted a lease signature at a steal for $50 an acre from a 94-year-old grandmother who was confined to a nursing home. The contract was concluded without the knowledge of her three grandchildren who were co-owners of the family property located in Susquehanna County, PA. On October 1, 2010, Chesapeake Energy claimed that it was not legally bound to get the signatures of all four joint owners and also refused to renegotiate the terms of the lease. However, once this story made headlines, Chesapeake quickly reversed itself, renegotiated the lease with all four owners for a far higher price of $8,000 per acre, and agreed to pay royalties of 20 per cent without the need for court intervention.

A common but false industry position also is that leases are not "real" leases at the time of contract signing and payment of the signing bonus, and, therefore, the land owner does not have to obtain bank consent or to document the transaction with the deed records of the County Clerk until after the drilling actually begins... That advice is not only wrong; it is a perfect set-up for the landowner to lose the family home.

An example of a violation of the signed consent requirement is the recent case of Weiden Lake Property Owners Association v. Cabot Oil and Gas Corp., heard in NYS Supreme Court in Sullivan County. Cabot had signed a gas lease contract and paid the homeowner a signing bonus of $99,255, knowing that commercial activity on the property was prohibited by the Property Owners Association restrictive covenant. Cabot's response in court was that production and sale of gas were not "commercial" activities. Justice Gilpatric ruled that, "...the evidence clearly demonstrated that Cabot, a sophisticated business entity, made a calculated and knowing decision to enter into
the lease, approve title and pay the signing bonus with full knowledge of the Protective Covenants...." The judgment of the court on August 18, 2011, decided against Cabot, nullified the lease, and allowed the homeowner to keep the $99,255 signing bonus.

**THE TRANSITION IS OVER. FRACK GAS IS A BRIDGE TO THE PAST**

Gas company brokers promise exaggerated projections of methane supply to investors and hedge fund speculators who are sold gas leases or bonds and futures contracts based on the promise of paper profits from the public's artificial dependency on methane products.

Gas production for domestic consumption is advertised to all levels of government as a public good needed to lower taxes, and to revive the local and national economies. The simple facts that a decade-long natural gas glut exists, and that our taxes remain high in order to provide unnecessary public subsidies to the gas industry to produce a still greater oversupply of gas that is not needed in the USA are conveniently suppressed. Engineering advances in electricity generation and transmission efficiency as demonstrated by "smart" grid technology and IBM's new circuit management controls, coupled with the replacement capacity of clean renewable solar and wind resources have significantly discounted the role of fossil fuels to support the economy. Witness the 4,000 solar panel system being installed by the Town of Esopus in Ulster County, NY, to supply most municipal office, water and sewage treatment needs.

And, the lesson of Solyndra, the high cost, high-tech alternative solar panel maker, is not that its public grant and investor funded research and business model failed, but rather that an international production breakthrough and huge drop in the cost of traditional silicon-based solar panels took place that put Solyndra's more expensive innovations out of business, and which also can put all fossil fuel-based generators out of business as well.

In the short run, however, the industry objective is to produce Marcellus Shale gas for export, not for domestic consumption. That foreign export would keep domestic energy costs high and keep subsidized drilling profits even higher. Further, the production of gas from fracking would have a depressing, recoil effect on the domestic housing-construction-finance economy which has been the predominant commercial engine driving the entire U. S. service-oriented economy during the past forty years.

Frack gas leases pose an unacceptable and irreversible risk to public health and to the public treasury under the best of circumstances. Gas lease contracts that are not in
good order will further depress property values and further inflate gas assets that ultimately will further distort and destabilize the real estate, financial services, and energy markets alike.

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