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WHAT'S THE 'FRACKING' PROBLEM

JOEL S. SONNENBERG[†]

When General Motors reported their recent record breaking profits the media took this as an opportunity to indicate the United States economy is on the mend.¹ In the same breath the media identified a cloud of caution that still loomed due to the volatility of the economic status of the European Union.² If the European Union is so economically volatile, how do the European lawmakers have a much easier time acknowledging and acting on the concerns and weighing them against the economic advantages of Fracking? Domestically, United States lawmakers have yet to impose regulations with a reach beyond driller's own voluntary moratoriums although research has identified a number of growing concerns.³ Proponents of fracking are quick to downplay these concerns in the name of industry growth and job creation.⁴ How can much more volatile economic societies clearly weigh the facts in favor of supporting the safety of their citizens over the availability of an economic advantage?⁵

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¹ See Jeff Green & Keith Naughton, *UAW Bonuses on GM Profit May Lift Economy*, Bloomberg Businessweek (Feb. 17, 2012), <http://www.bloomberg.com/news/2012-02-17/uaw-7-000-bonuses-on-record-gm-profit-drives-u-s-economy-cars.html>.

² See Fred Meier, *European Loss Drags Down GM's Fourth-Quarter Profit*, U.S.A. Today (Feb. 16, 2012), <http://content.usatoday.com/communities/driveon/post/2012/02/european-loss-drags-down-gms-fourth-quarter-profit/1>; Pan Pylas, *Eurozone Has One Foot in Recession: Economy Shrank in Q4*, U.S.A. Today (Feb. 15, 2012), <http://www.usatoday.com/money/world/story/2012-02-15/eurozone-economy/53101316/1>.

³ See Susan Phillips, *Industry Objects to Federal Plans to Regulate Fracking on Public Lands*, N.P.R. (Feb. 16, 2012), <http://stateimpact.npr.org/pennsylvania/2012/02/16/industry-objects-to-federal-plans-to-regulate-fracking-on-public-lands/> (Capitol Hill has not yet tackled regulations on public lands, let alone private lands, leaving limited enforcement options on a state and national level).

⁴ See Shobhana Chandra, *Job Outlook Brightens from U.S. Factories to Fracking: Economy*, Bloomberg Businessweek (Jan. 18, 2012), <http://www.businessweek.com/news/2012-01-18/job-outlook-brightens-from-u-s-factories-to-fracking-economy.html>.

⁵ See Elizabeth Konstantinova & Joe Carroll, *Bulgaria Bans Gas Fracking, Thwarting Chevron Drilling Plan*, Bloomberg Businessweek (Jan. 19, 2012), <http://www.businessweek.com/news/2012-01-19/bulgaria-bans-gas-fracking-thwarting-chevron-drilling-plan.html> (becoming the second country in the European Union and the World, after France, to ban fracking); see also Liz Rosenbaum, *Global Guide to Fracking*, BrynMawr-GladwynePatch (Nov. 7, 2011, 2:37 PM), http://brynmawr.patch.com/blog_posts/global-guide-to-fracking (England bans fracking operations temporarily following two earthquakes, the largest measuring a magnitude of 1.5 compared to Ohio's 4.0 magnitude earthquake; Germany's regulations have disrupted gas development; Wales "unanimously voted to deny permits for exploratory wells;" in Australia "opposition to fracking is surging").

The impacts on the citizens closest to fracking operations are becoming blurred with efforts by environmentalists.⁶ Beyond the environmental concerns, the concerns include sub-surface property rights, negative impacts on underground water supplies, and safety concerns due to earthquakes in areas with building codes that are inadequate.⁷ The immediacy of the concerns do not create the long term paternalistic approach typically identified with environmentalists. Instead, these issues create an immediate reasonable risk for the safety of those who live in close proximity to fracking operations.

Undeniably, the United States' position on fracking has an impact on the international growth of these operations.⁸ Chevron, who was most impacted by the fracking ban in Bulgaria, is a United States corporation.⁹ Due to corporate and political relationships within the United States, this primarily unconfirmed process, first developed within the United States, remains unregulated in the name of job growth.¹⁰ Therefore, the countries with lawmakers who can be most unaffected by the influence of large corporations, promises of economic advantages, and influence of the United States can best form their own unbiased opinions truly based upon the facts. Only then can these unbiased beliefs be reflected in regulations imposed by lawmakers. Therefore, foreign lawmakers are in the best position to avoid all of these influences. A number of European countries have arguably taking the lead by putting safety ahead of economic advantage. It is best said, "Some economists and environmentalists say that while the governments of poorer countries may benefit from the new tax revenues and jobs, they may not be paying enough attention to the environmental risks of drilling. They also note that local residents – who bear the brunt of the air pollution, potential water contamination from spills or underground seepage, and truck traffic that comes with drilling – may see few benefits."¹¹

⁶ See 4.0 *Earthquake Strikes in Northeast Ohio*, U.S.A. Today (Dec. 31, 2011), <http://www.usatoday.com/news/nation/story/2011-12-31/northeast-ohio-earthquake/52307134/1> (coupling environmentalists with property owners).

⁷ See *id.* The Director of the Ohio Department of Natural Resources, a government employee, quoted as saying "the seismic events are not a direct result of fracking" before any confirming studies were performed. *Id.* Michael Winter, *Ohio Quakes Linked to Oil-Drilling Waste Pumped Into Wells*, U.S.A. Today (Jan. 2, 2012), <http://content.usatoday.com/communities/ondeadline/post/2012/01/11-ohio-quakes-linked-to-oil-drilling-waste-pumped-in-wells/1> (studies done by Columbia University confirmed fracking is conclusively linked to earthquakes); see also Frank A. Verrastro, Lisa Hyland, & Molly Walton, *Fracking and Seismic Activity*, Center for Strategic & International Studies (Jan. 12, 2012), <http://csis.org/publication/fracking-and-seismic-activity>; Ian Urbina, *Drilling Down: Hunt for Gas Hits Fragile Soil, and South Africans Fear Risks*, N.Y. Times (Dec. 30, 2011), http://www.nytimes.com/2011/12/31/world/south-african-farmers-see-threat-from-fracking.html?_r=3&ref=world&src=me&pagewanted=all.

⁸ See Alexander Mosiak, *'Fracking' (and Its Risks) Goes Global*, C.S.I.D. (Jan 12, 2012), <http://cas-csid.cas.unt.edu/?p=2849>.

⁹ See Konstantinova & Carroll, *supra* note 5.

¹⁰ See Mosiak, *supra* note 8.

¹¹ *Id.*

The United States has not yet reached a definite conclusion on the impacts of this U.S. developed process.¹² In an attempt to balance the economic advantages with the safety concerns, the United States lawmakers are additionally hesitant to impose regulations, of which there are no local community enforcement options.¹³ Yet, the safety concerns are mounting and United States based corporations are not hesitating to promote this unproven process in poorer countries that have even fewer legal options to protect the safety of local residents and their water supplies.¹⁴

¹² See Phillips, *supra* note 3.

¹³ See *id.*

¹⁴ Urbina, *supra* note 7.