

<p style="text-align: center;"><b>FRACKING AND CONTAMINATION LITIGATION</b> <b>Professor Blake Watson, University of Dayton School of Law (09-14-12)</b></p>
--

**Hydraulic fracturing is safe.** Shale gas wells extend 5,000 to 8,000 feet down, thousands of feet below freshwater aquifers. After a well is drilled and secured, a mixture that is approximately 98 percent sand and water, with a small amount of chemical additives, is injected at a very high pressure to fracture the shale. Geologically speaking, hydraulic fracturing fluid cannot rise to the surface. The bedrock between the fracked site and the surface is so dense that it makes it impossible for frack fluid to travel upward into freshwater aquifers. **Source:** Ohio Department of Natural Resources, *The Facts About Hydraulic Fracturing*, at <http://ohiodnr.com/Portals/11/pdf/fracking-fact-sheet.pdf>.

**Hydraulic fracturing is not safe.** The fracking process involves the use of toxic chemicals, and produces large quantities of highly polluted wastewater. Drinking water sources have been contaminated with explosive methane, as well as other dangerous substances, such as benzene and arsenic, that can cause cancer and other serious illnesses. Toxic chemicals, as well as erosion and runoff from drilling operations, have fouled treasured fishing streams and aquatic habitat. Leaks and spills of hazardous materials have polluted bodies of water, forests, farms, and backyards. **Source:** Natural Resources Defense Council, *Fracking Facts: Protecting Americans from the Risks of Fracking*, at <http://www.nrdc.org/energy/files/frackingrisks.pdf>.

**Fracking Litigation: Helpful Blogs**

<a href="http://fulbrightfrackingblog.blogspot.com/">http://fulbrightfrackingblog.blogspot.com/</a>	Hydraulic Fracking (Fulbright & Jaworski)
<a href="http://www.nofrackohio.com/news/">http://www.nofrackohio.com/news/</a>	No Frack Ohio (No Frack Ohio Coalition)
<a href="http://ohiocitizen.org/">http://ohiocitizen.org/</a>	Ohio Citizen Action blog
<a href="http://fracking.velaw.com/">http://fracking.velaw.com/</a>	Shale & Fracking Tracker (Vinson & Elkins)
<a href="http://www.shaleohio.com/">http://www.shaleohio.com/</a>	Shale Ohio (Brickler & Eckler)
<a href="http://shalewatchblog.com/">http://shalewatchblog.com/</a>	Shale Watch (Goldberg & Segalla)

**Articles about Fracking and Tort Litigation**

Allen, Brent, and Lesley Lawrence-Hammer, *Hydraulic Fracking and Marcellus Shale: Drilling for Mass Torts?*, 13 No. 1 ABA Environmental Litigation and Toxic Torts Committee Newsletter 3 (Dec. 2011) (accessible on internet)

Coman, Hannah, Note, *Balancing the Need for Energy and Clean Water: The Case for Applying Strict Liability in Hydraulic Fracturing Suits*, 39 Boston College Environmental Affairs Law Review 131 (2012) (accessible on internet)

Pierce, David E., *Developing a Common Law of Hydraulic Fracturing*, 72 University of Pittsburgh Law Review 685 (2011) (accessible on internet)

Rubin, Leonard S., Note, *Frack to the Future: Considering a Strict Liability Standard for Hydraulic Fracturing Activities*, 3 George Washington Journal of Energy & Environmental Law 117 (2012)

### Summaries of Fracking Litigation (Internet)

Arnold & Porter, LLP, *Hydraulic Fracturing* (summarizes different types of lawsuits), available at <http://www.arnoldporter.com/resources/documents/Hydraulic%20Fracturing%20Case%20Chart.pdf>

Earthjustice, *Fracking Damage Cases and Industry Secrecy*, available at <http://earthjustice.org/features/campaigns/fracking-damage-cases-and-industry-secrecy>

Nicholson, Barclay, and Kadian Blanson, *Tracking Fracking Case Law: Hydraulic Fracturing Litigation*, 26 *Natural Resources & Environment* 25 (Fall 2011), also available at <http://www.fulbright.com/images/publications/20110801TrackingFrackingCaseLawHydraulicFracturingLitigation.pdf>

Nicholson, Barclay, and Steve Dillard and Kadian Blanson, *Analysis of Litigation Involving Shale & Hydraulic Fracturing*, Fulbright & Jaworski LLP (September 2011), available at [http://www.fulbright.com/index.cfm?fuseaction=publications.detail&pub\\_id=5131&site\\_id=494&detail=yes](http://www.fulbright.com/index.cfm?fuseaction=publications.detail&pub_id=5131&site_id=494&detail=yes)

Penn State Law, Marcellus Shale Resource Area, *Case Law - United States Federal Court Opinions*, at [http://law.psu.edu/academics/research\\_centers/agricultural\\_law\\_center/resource\\_areas/marcellus\\_shale/case\\_law/federal\\_courts](http://law.psu.edu/academics/research_centers/agricultural_law_center/resource_areas/marcellus_shale/case_law/federal_courts)

Wurtzler, Gail, Davis Graham & Stubbs LLP, *Fracking Litigation Update* (April 2012), available at <http://www.dgslaw.com/images/materials/CHWMS-Wurtzler-041012.pdf>

### Contamination suits – pleadings only [WL = Westlaw]

2009	01-30	Payne v. Ohio Valley Energy Systems Corp. (Ct. of Common Pleas, Geauga Cty., Ohio) (PDF)
2009	08-27	Maring v. Nalbene, Index No. K12009001499 (N.Y. Sup. Ct., Chautauqua County)
2009	09-21	Zimmermann v. Atlas America, 2009 WL 3753890 (Ct. Common Pleas, Washington Cty., Pa.)
2010	05-07	Hallowich v. Range Resources., C-63-CV-201003954 (Ct. Common Pleas, Washington Cty, Pa.)
2010	08-11	Scoma v. Chesapeake Energy Corp., 2010 WL 3706170 (N.D. Tex.)
2010	10-18	Ruggiero v. Aruba Petroleum, Inc., No. 10-10-801 (District Court, Wise County, Tex.)
2010	10-27	Armstrong v. Chesapeake Appalachia, LLC, (Ct. Common Pleas, Bradford County, Pa.)
2010	11-03	Heinkel-Wolfe v. Williams Prod. Co., LLC, No. 10-40355-362 ( Dist. Ct., Denton Cty, Tex.)
2010	11-03	Sizelove v. Williams Production Co., LLC, No. 10-50355-367 (Dist. Ct., Denton Cty, Tex.)
2010	12-15	Mitchell v. Encana Oil & Gas (USA), Inc., 2010 WL 5384210 (N.D. Tex.)
2011	01-31	Smith v. Devon Energy Production Co., No. 11-CV-0196 (N.D. Tex.)
2011	03-08	Parr v. Aruba Petroleum, Inc., No. 11-01650 (Dallas County Ct., Tex.)
2011	03-09	Baker v. Anschutz Exploration Corp., 10-CV-61190 (W.D. N.Y.)
2011	03-30	Magers v. Chesapeake Appalachia, LLC, No. 5:12-CV-49 (N.D. W. Va.) (Removal)
2011	04-10	Rine v. Chesapeake Appalachia, LLC, No. 11-0004 (N.D. W. Va.)
2011	04-15	Andre v. EXCO Resources, Inc., No. 11-00161 (W.D. La.)
2011	04-18	Beckman v. EXCO Resources, Inc., No. 11-00617 (W.D. La.)
2011	06-09	Hearn v. BHP Billiton Petroleum (Arkansas) Inc. 11-CV-0474 (E.D. Ark.)
2011	07-20	Evenson v. Antero Resources Corp., No. 2011-CV-5118 (Dist. Ct., Denver Cty., Colorado)
2011	08-12	Beca v. Antero Resources, 11-CV-1040 (W.D. Pa.)
2011	09-12	Scoggin v. Cudd Pumping Services, Inc., 2011 WL 4217619 (E.D. Ark.)
2012	05-27	Haney v. Range Resources, et al., (caption uncertain) (Ct. Common Pleas, Washington Cty, Pa.)

### Contamination suits with a written order or decision

2010	11-15	Fiorentino v. Cabot Oil and Gas Corp., 705 F.Supp.2d 506 (M.D. Pa.)
2011	02-03	Berish v. Southwestern Energy Production Co., 762 F.Supp.2d 702 (M.D. Pa.)
2011	04-25	Phillips v. Chesapeake Appalachia, LLC, 2011 WL 8153167 (M.D. Pa.) (Arbitration motion)
2011	06-14	Harris v. Devon Energy Production Company, L.P., 2011 WL 2729242 (E.D. Tex.)
2011	06-14	Bombardiere v. Schlumberger Technology Corp., 2011 WL 2443691 (N.D. W. Va.)
2011	08-31	Burnett v. Chesapeake Appalachia, LLC, 2011 WL 3876412 (M.D. Pa.)
2012	02-17	Tucker v. Southwestern Energy Co., 2012 WL 528253 (E.D. Ark.)
2012	03-19	Kamuck v. Shell Energy Holdings GP, LLC, 2012 WL 1463594 (M.D. Pa.)
2012	04-27	Kamuck v. Shell Energy Holdings GP, LLC, 2012 WL 1466490 (M.D. Pa.)
2012	03-24	Strudley v. Antero Resources Corp., 2012 WL 1932470 (Dist. Ct., City and Cty. of Denver, Co.)
2012	05-03	Berish v. Southwestern Energy Production Co., 2012 WL 1569592 (M.D. Pa.)
2012	05-11	Bidlack v. Chesapeake Appalachia, LLC, 2012 WL 1657934 (M.D. Pa.)
2012	05-11	Otis v. Chesapeake Appalachia, LLC, 2012 WL 1657930 (M.D. Pa.)
2012	05-17	Hagy v. Equitable Production Co., 2012 WL 1813066 (S.D. W. Va.)
2012	06-29	Hagy v. Equitable Production Co., 2012 WL 2562856 (S.D. W. Va.)
2012	07-10	Dillon v. Antero Resources, 2012 WL 2899710 (W.D. Pa.)
2012	08-13	Boggs v. Landmark 4 LLC, 2012 WL 3485288 (N.D. Ohio)
2012	08-23	Lipsky v. Range Resources Corp., 2012 WL 3600014 (Ct. of Appeals of Texas, Fort Worth)

### Summary of contamination suits – pleadings only

*Payne et al. v. Ohio Valley Energy Systems Corp., et al.*, (Court of Common Pleas, Geauga County, Ohio) (complaint, filed Jan. 30, 2009, available at <http://www.tddlaw.com/documents/Complaint.pdf>)

This case involved allegations of insufficient cementing of production casing of a vertical gas well (rather than contamination due to horizontal fracturing). In December 2007 gas seeped into nearby water wells and caused an explosion at a residential home in Bainbridge, Ohio. See <http://www.acfan.org/wp-content/uploads/2012/04/bainbridge-incident.pdf>. Plaintiffs brought an action "in trespass, negligence, private nuisance, nuisance per se, engaging in an ultra hazardous activity, fraudulent concealment, failure to warn, and negligent infliction of emotional distress, for actions and inactions stemming from the drilling of a gas well that has caused the explosion of Richard and Thelma Payne's home ... and the contamination of Plaintiffs' properties, including but not limited to the groundwater aquifer which serves as the drinking water supply for Plaintiffs' properties." Complaint page 7. The lawsuit, filed by forty-three households, was settled for an undisclosed amount, and Bainbridge Township received \$50,000 for replacement of a water well and other expenses at its police station. In 2008, the Ohio Department of Natural Resources issued a lengthy report on the incident. See <http://www.dnr.state.oh.us/Portals/11/bainbridge/report.pdf>.

*Maring v. Nalbhone*, Index No. K12009001499 (N.Y. Sup. Ct., Chautauqua County, Aug. 27, 2009)

Plaintiff alleges that defendants, oil and gas companies, have contaminated her water well with methane gas, making it unfit to drink. The complaint alleges causes of action for trespass, nuisance, and negligence. Source: Arnold & Porter, LLP, *Hydraulic Fracturing*.

*Zimmerman v. Atlas America, LLC*, No. 09CV02284 (Court of Common Pleas, Washington County, Pa.), 2009 WL 4680900 (Sept. 21, 2009) and 2010 WL 4680900 (Aug. 23, 2010) (amended complaint)

Surface owners George and Lisa Zimmermann claim Atlas America used toxic chemicals during the fracturing process that polluted the freshwater aquifers and destroyed farmland. The suit alleges trespass, nuisance, negligence, negligence per se, res ipsa loquitor, fraud and misrepresentation, breach of the settlement agreement, and violation of the casing requirements of the Pennsylvania Oil & Gas Act. See newspaper article at <http://www.reuters.com/article/2009/11/09/us-fracking-suit-idUSTRE5A80PP20091109>

*Hallowich v. Range Resources Corp., et al.*, No. C-63-CV-201003954 (Court of Common Pleas, Washington County, Pa., May 27, 2010) (praecipe to issue a writ of summons; no complaint was ever filed)

Plaintiffs claim that gas wells and gas processing facilities caused their health to deteriorate. The parties settled in June 2011. On August 23, 2011, the Court of Common Pleas closed proceedings to the public, approved a confidential settlement, and entered an order sealing the record. Subsequent developments – On January 31, 2012, the court denied motions by the several newspapers to intervene and to unseal the record. The decision has been appealed, and an environmental group, doctors, and several medical organizations filed a joint amicus brief in April of 2012 in support of the position of the newspapers. Sources: [http://www.rcfp.org/sites/default/files/docs/20120208\\_165629\\_jt\\_court\\_rev1.pdf](http://www.rcfp.org/sites/default/files/docs/20120208_165629_jt_court_rev1.pdf); and <http://blogs.artvoice.com/avdaily/2012/05/01/pennsylvania-doctors-newspapers-sue-frac-k-companies-over-secrecy/>.

*Scoma v. Chesapeake Energy Corp.*, No. 3:10-CV-1385-N (N.D. Tex., Aug. 11, 2010), 2010 WL 3706170

Property owners in Johnson County, Texas, allege their water well is contaminated due to hydraulic fracturing actions, including storage of drilling waste and disposal of fracturing waste in injection wells. Plaintiffs claim negligence, nuisance, and trespass and seek the cost of testing, loss of use of land, loss of market value of land, loss of intrinsic value of well water, emotional harm, nominal damages, exemplary damages, and injunctive relief.

*Ruggiero v. Aruba Petroleum, Inc.*, No. 10-10-801 (District Court, Wise County, Texas, Oct. 18, 2010)

The Ruggieros learned in 2009 that their ten acres was part of a lease held by Aruba Petroleum, who soon thereafter drilled two gas wells within 300 feet of their back door. According to the Ruggieros, thousands of gallons of drilling mud were negligently discharged, the ground was saturated when a frac tank valve was not shut properly, and another tank overflowed and gushed out condensate for more than twelve hours. See <http://shalegasoutrage.org/wp-content/uploads/2011/09/Tim-Christine-Ruggieros-Story.pdf>. An out of court confidential settlement was reached in 2011.

*Armstrong v. Chesapeake Appalachia, LLC*, (Court of Common Pleas, Bradford County, Pa., Oct. 27, 2010)

This lawsuit was filed in Bradford County, Pennsylvania, removed to federal court (*Armstrong v. Chesapeake Appalachia, LLC*, No. 10-0680 (M.D. Pa, Oct. 27, 2010)) and then remanded back to state court. Plaintiffs, who owned property and wells within three miles of oil and gas wells owned by defendant company, alleged that the company's drilling practices caused methane, ethane, barium and other substances to contaminate plaintiffs' water. The complaint includes causes of action for negligence, negligence per se, strict

liability, trespass, medical monitoring, and violation of the Pennsylvania Hazardous Sites Cleanup Act. Source: Arnold & Porter, LLP, *Hydraulic Fracturing*.

*Heinkel-Wolfe v. Williams Production Co., LLC*, No. 2010 40355 362 (District Court, Denton County, Texas, Nov. 3, 2010)

Margaret and Paige Heinkel-Wolfe claim drilling operations contaminated the water and air on and surrounding their property. In their amended complaint, plaintiffs dropped their negligence claims and allegations of water contamination, but retained causes of action for nuisance and trespass. Source: Nicholson and Blanson, *Tracking Fracking Case Law: Hydraulic Fracturing Litigation*.

*Sizelove v. Williams Production Co., LLC*, No. 2010 50355 367 (District Court, Denton County, Texas, Nov. 3, 2010)

John and Jayme Sizelove claim drilling operations and gas compressor stations harmed their health. Plaintiffs allege claims for nuisance and trespass, and seek property damages, damages for mental anguish, and exemplary damages. Source: Nicholson and Blanson, *Tracking Fracking Case Law: Hydraulic Fracturing Litigation*.

*Mitchell v. Encana Oil & Gas (USA)*, No. 3:10CV02555 (N.D. Tex., Dec. 15, 2010), 2010 WL 5384210

Property owner in Johnson County, Texas, who alleges her water well is contaminated due to hydraulic fracturing and associated storage of drilling wastes, raises claims of nuisance, negligence, fraud, and trespass. Internet Article: *Resident files lawsuit against Encana, Chesapeake* (Dec. 21, 2010). Subsequent developments – According to Arnold & Porter, *Hydraulic Fracturing*, the suit was voluntarily dismissed in November 2011 after a settlement was reached.

*Smith v. Devon Energy Production Co.*, No. 11-CV-0196 (N.D. Tex., Jan. 31, 2011); *Smith v. Devon Energy Production Company, L.P.*, No. 11CV00104 (E.D. Tex., Mar. 21, 2011)

Damon and Amber Smith of Denton County, Texas, allege that fracturing fluids and associated drilling wastes contaminated their water well. They assert trespass, nuisance, negligence, fraudulent concealment, and strict liability. See 2011 WL 474901. The case was transferred to the Eastern District of Texas on March 3, 2011, and the Plaintiffs' first amended complaint was filed on March 21, 2011, asserting trespass, nuisance, and negligence. See 2011 WL 2936737.

*Baker v. Anschutz Exploration Corp.*, No. 2011 1168 (N.Y. Sup. Ct., Feb. 11, 2011), removed to federal court, *Baker v. Anschutz Exploration Corp.*, 10-CV-61190 (W.D. N.Y., Mar. 9, 2011)

Fifteen landowners in Chemung County, New York, claim that improper drilling, well capping, and/or cement casing caused toxic chemicals to be discharged into their groundwater. The plaintiffs also claim Conrad Geoscience failed to conduct a reasonable investigation of possible contamination. The Plaintiffs allege negligence per se, common law negligence, nuisance, strict liability, trespass, premises liability, fear of developing

cancer, future medical monitoring, and deceptive business acts and practices. Source: Nicholson and Blanson, *Tracking Fracking Case Law: Hydraulic Fracturing Litigation*.

*Parr v. Aruba Petroleum, Inc.*, No. 11 01650 (Dallas County Ct., Mar. 8, 2011)

Plaintiffs claim natural gas drilling operations in Wise County, Texas, including releases, spills, emissions, and discharges of hazardous gases, have caused the Plaintiffs and their property to be exposed to hazardous gases, chemicals, and industrial wastes. Plaintiffs allege negligence per se, common law negligence, nuisance, strict liability, trespass, assault, and intentional infliction of emotional distress. A protective order governing discovery was entered in February 2012. Sources: Nicholson and Blanson, *Tracking Fracking Case Law: Hydraulic Fracturing Litigation*; and Earthjustice, *Fracking Damage Cases and Industry Secrecy*.

*Magers v. Chesapeake Appalachia, LLC*, 2012 WL 1202801 (N.D. W. Va., Mar. 30, 2012 (Notice of Removal)

Jeremiah and Andrea Magers filed suit on February 24, 2012, in the Circuit Court of Marshall County, West Virginia, alleging that Chesapeake Appalachia's activities caused contamination of their water supply. Chesapeake Appalachia, on March 30, 2012, removed the action to federal court. Plaintiffs assert that they noticed methane gas in their well water and in a nearby stream as soon as Chesapeake Energy started drilling gas wells. Plaintiffs claim that they did not purchase water before the drilling commenced. Source: <http://www.statejournal.com/story/17746954/environmental%20challenges%20to%20natural%20gas%20activity>.

*Rine v. Chesapeake Appalachia, LLC*, No. 11-0004 (N.D. W. Va., Apr. 10, 2011)

Larry and Jane Rine claim gas wells and associated waste ponds led to various chemicals contaminating their property and causing emotional distress. An out of court settlement was reached, and the case was dismissed on July 7, 2011. Source: Earthjustice, *Fracking Damage Cases and Industry Secrecy*.

*Andre v. EXCO Resources, Inc.*, No. 11-00161 (W.D. La., Apr. 15, 2011); and *Beckman v. EXCO Resources, Inc.*, No. 11-00617 (W.D. La., Apr. 18, 2011)

Plaintiff David Andre brought suit on April 15, 2011 on behalf of consumers of water in Caddo Parish, Louisiana. Three days later, Daniel Beckman and seven other plaintiffs filed a similar suit. According to both complaints, on April 18, 2010, a natural gas well operated by EXCO contaminated the Caddo Parish aquifer and the plaintiffs' property. While the complaints do not allege that EXCO engaged in hydraulic fracturing, they seek to compel disclosure of the drilling muds and solutions used by EXCO. Both complaints allege causes of action for negligence, strict liability, nuisance, trespass, unjust enrichment, and impairment of use of property. Source: Nicholson and Blanson, *Tracking Fracking Case Law: Hydraulic Fracturing Litigation*.

*Hearn v. BHP Billiton Petroleum (Arkansas) Inc.*, No. 11-CV-0474 (E.D. Ark., Jun. 9, 2011)

Proposed class action, on behalf of landowners in central Arkansas, alleging that the disposal of fracking wastewater into injection wells caused earthquakes and damaged property. Causes of action include public nuisance, private nuisance, strict liability for ultra-hazardous activities, negligence, and trespass. On May 4, 2012, defendant Deep Six Water Disposal Services, LLC, filed a motion for summary judgment. See <http://shalewatchblog.com/wp-content/uploads/2012/06/Brief.pdf>. On June 25, 2012, the court dismissed Deep Six as a party and consequently denied the summary judgment motion as moot.

*Evenson v. Antero Resources Corp.*, No. 2011-CV-5118 (Denver Co. Dist. Ct., July 20, 2011)

Several families residing in Garfield County, Colorado, filed a lawsuit alleging that drilling and exploration activities of defendant company exposed their properties to hazardous gases, chemicals, and industrial wastes. Plaintiffs are seeking class action status. The complaint includes causes of action for negligence and medical monitoring, among others. Source: Arnold & Porter, LLP, *Hydraulic Fracturing*.

*Beca v. Antero Resources*, 11-CV-1040 (W.D. Pa., Aug. 11, 2011)

Paul and Yvonne Beca claim drilling operations contaminated their drinking water. Defendant moved for protective order governing discovery on April 2, 2012. Source: Earthjustice, *Fracking Damage Cases and Industry Secrecy*.

*Scoggin v. Cudd Pumping Services, Inc.*, No. 4:11 cv 678 JMM BD (E.D. Ark. Sep. 12, 2011), 2011 WL 4217619

Suit on behalf of children in White County, Arkansas, for personal injury resulting from exposure to chemicals released during fracking operations conducted 250 feet from children's residence. Plaintiffs, who assert claims based on strict liability, nuisance, trespass, and gross negligence, seek \$20 million in compensatory damages, \$50 million in punitive damages; the establishment of a monitoring fund to pay for monitoring of the plaintiffs; attorney fees; and prejudgment interest.

*Haney v. Range Resources, et al.*, (caption uncertain); (Court of Common Pleas, Washington Cty, Pa., May 25, 2012)

Plaintiffs, who are landowners of farmland in Washington County, claim that their water was contaminated from fracking flowback, and that the families and their farm animals have become ill from drinking the water. The three families claim that they face serious health problems, including a heightened risk of cancer, due to exposure to toxic spills, leaks and air pollutants. Plaintiffs also allege that Range Resources intentionally hid test results from them. Plaintiffs are Stacey Haney, Beth, John and Ashley Voyles, Loren and Grace Kiskadden. In addition to Range Resources, defendants named in the suit include twelve of the drilling company's subcontractors or suppliers, two individuals, and two water testing laboratories. Sources: <http://shalewatchblog.com/2012/05/25/new-contaminated-drinking-water-lawsuit-filed-in-pennsylvania/>; and <http://www.post>

**Summary of contamination suits with a written order or decision**

*Fiorentino v. Cabot Oil and Gas Corp.*, 705 F.Supp.2d 506 (M.D. Pa., Nov. 15, 2010)

Residents in Dimock and Montrose, Pennsylvania, alleged Defendants conducted hydrofracturing and other extraction activities that released methane, natural gas, and other toxins onto their land and into their groundwater. See pleadings at 2010 WL 931974, 2010 WL 2070478, and 2010 WL 46220704. Plaintiffs assert claims based on negligence, gross negligence, private nuisance, strict liability, breach of contract, fraudulent misrepresentation, the Hazardous Sites Cleanup Act; and medical monitoring. [Note: the problems in Dimock were featured in the *Gasland* documentary.]

The federal district court, on November 15, 2010, refused for the most part to grant Defendants' motion to dismiss for failure to state a claim. With respect to the Pennsylvania Hazardous Sites Cleanup Act, the court held that Plaintiffs stated a plausible claim for relief under Section 702, which provides that a defendant who is responsible for releasing hazardous substances is strictly liable for response costs, including the cost of a health assessment or health effects study. As for common law strict liability, the court allowed the claim to proceed, noting that Pennsylvania courts have concluded that storage and transmission of gas and petroleum products are not abnormally dangerous activities, but have not decided whether gas well drilling and operation are the same. Plaintiffs also alleged plausible facts necessary to support a claim for medical monitoring. The cause of action for gross negligence, however, was dismissed since it is not recognized under Pennsylvania law. With respect to the claim for fear of future illness and emotional distress, the court noted that Pennsylvania law does not allow recovery without some manifestation of actual physical injury, but held that plaintiffs did allege physical injury. Although punitive damages is not a separate claim, because the Defendants were allegedly grossly negligent, the court declined to strike the allegations regarding punitive damages. Subsequent procedural rulings: 2011 WL 4944274 (Oct. 17, 2011); 2011 WL 5239068 (Nov. 1, 2011); and 2012 WL 959392 (Mar. 19, 2012).

Subsequent developments – The Pennsylvania Department of Environmental Protection also sued Cabot Oil, and reached a settlement in December 2010. The affected families received \$4.1 million and Cabot paid a \$500,000 penalty to the PDEP. The settlement allowed Cabot to resume its hydraulic fracturing activities. In May of 2012, the U.S. Environmental Protection Agency announced that its well water test results "did not show levels of contaminants that would give EPA reason to take further action." The test results were both praised and criticized. USA Today, *EPA: Pa. Village's Water not Polluted by Gas Fracking* (May 11, 2012) (internet). The parties settled in August of 2012. See Christian Science Monitor, *Pa. Drilling Town Agrees to Settlement in Fracking Federal Lawsuit* (Aug. 15, 2012) (internet) ("Documents indicate that residents of Dimock Township, Pa., who claim their water was poisoned by fracking, have reached a confidential settlement").



*Berish v. Southwestern Energy Production Co.*, 762 F.Supp.2d 702 (M.D. Pa., Feb. 03, 2011)

The lawsuit was first filed in September 2010 in Susquehanna County, Pennsylvania, but was removed to federal district court. The complaint alleges that improper casing of fracking wells allowed chemicals to migrate and contaminate water wells. Plaintiffs assert claims for violation of the Hazardous Sites Cleanup Act, negligence, private nuisance, strict liability, trespass, and medical monitoring. See pleadings at 2010 WL 3627011 and 2010 WL 4230599. The federal district court held in February 2011 that the plaintiffs stated a claim for strict liability, but failed to state a claim for emotional distress (except as to one plaintiff). With respect to the strict liability claim, the court noted that Pennsylvania cases have held that oil and gas extraction activities are not abnormally dangerous, but nevertheless declined to grant the motion to dismiss because the determination of whether a particular activity is abnormally dangerous is a fact intensive inquiry. In Pennsylvania, claims for emotional distress require that the plaintiff allege an attendant physical injury. Pennsylvania, however, does recognize a cause of action for inconvenience and discomfort caused by interference with another's peaceful possession of his or her real estate. Subsequent developments -- On May 3, 2012, the district court allowed the plaintiffs to file a third amended complaint and add four additional defendants. The court, however, reserved the right to determine whether the claims against the new defendants are barred by the statute of limitations. See 2012 WL 1569592.

*Phillips v. Chesapeake Appalachia, LLC*, 2011 WL 8153167 (M.D. Pa., Apr. 25, 2011) (Petition to Compel Arbitration)

Six individuals from Wyalusing, Pennsylvania, who leased their oil and gas rights, allege that Defendants' oil and gas drilling activities caused releases, spills, and discharges that have contaminated the Plaintiffs' properties and water supply. Plaintiffs assert claims for negligence, gross negligence, trespass, nuisance, strict liability, and breach of contract. On April 25, 2011, Defendants petitioned to compel arbitration of the dispute. Subsequent developments – On June 21, 2012, it was reported that Chesapeake Energy agreed, after three days of arbitration, to pay \$1.6 million in damages. The case may be the first Marcellus contamination lawsuit to be resolved without a nondisclosure agreement. In a written statement, Chesapeake Energy noted no pre-drill water tests were conducted at these homes, and that pre-drill testing done in other area homes showed methane contamination. See <http://www.platts.com/RSSFeedDetailedNews/RSSFeed/NaturalGas/6413043>.

*Harris v. Devon Energy Production Company, L.P.*, 2011 WL 2729242 (E.D. Tex., Jun. 14, 2011)

Doug and Diana Harris sued Devon Energy Production Company in December 2010 for negligence, strict liability, nuisance, and trespass. See pleadings 2010 WL 5384209. Plaintiffs allege that hydraulic fracturing operations near their property caused groundwater contamination, and assert claims of nuisance, trespass, negligence, strict liability, and fraudulent concealment. With respect to fraud, plaintiffs argued that, by concealing the fact that the gray substance in the well water contained chemicals typically found in drilling mud, Defendant intended to induce Plaintiffs to drill a new well. On June 14, 2011, the U.S. Magistrate recommended that the fraud claim be dismissed because plaintiffs failed to identify any damages which resulted from the alleged false representation. [Plaintiffs did

not ask for damages related to the costs of constructing and maintaining the well.] Subsequent developments – On Jan. 25, 2012, the court dismissed all claims against Devon Energy “on the basis that recent testing of the plaintiffs' groundwater wells showed no contamination present at levels that are toxic for human consumption.” Margaret A. Hill, Mary Ann Mullaney, and Heather L. Demirjian, Blank Rome LLP, *United States: Shale Development And Fracking Litigation Trends* (Aug. 7, 2012) (internet).

*Burnett v. Chesapeake Appalachia, LLC*, 2011 WL 3876412 (M.D. Pa., Aug. 31, 2011)

Truman and Bonnie Burnett of Grandville Summit, Pennsylvania, claim they were falsely told their lands would not be damaged by the drilling and operating of gas wells, but in fact suffered injuries when toxic materials were released onto the property and into the water supply. Plaintiffs sued in the Court of Common Pleas of Bradford County, Pennsylvania, asserting nine causes of actions: Hazardous Sites Cleanup Act, negligence, negligence per se, private nuisance, strict liability, trespass, medical monitoring trust funds, breach of contract, and fraudulent inducement. Chesapeake removed the action to federal court, but on August 31, 2011, the court remanded the case back to state court. The court disagreed that one of the defendants was included in the suit solely to defeat diversity jurisdiction.

*Bombardiere, Sr. v. Schlumberger Technology Corp.*, 2011 WL 2443691 (N.D. W. Va., Jun. 14, 2011)

This is not a water contamination case, but rather a lawsuit brought by a worker who was exposed to chemicals while performing hydraulic fracturing near Waynesburg, Pennsylvania. The plaintiff claims he handled fracking chemicals without training or protective gear and developed an increased risk of cancer, psychological trauma, and other medical disorders. After Defendants removed the state action to federal district court, a motion was filed to transfer venue to the U.S. District Court for the Western District of Pennsylvania. The Court agreed that Pennsylvania tort law will apply to Plaintiff's claims, but held that “the balance of the factors for transfer are strongly in favor of not transferring this action.” Subsequent developments -- In April of 2012, the district court vacated a protective order by a federal magistrate regarding the dissemination of Schlumberger's trade secrets in three of its fracking chemicals.

*Tucker v. Southwestern Energy Co.*, 2012 WL 528253 (E.D. Ark., Feb. 17, 2012)

On May 17, 2011, three class actions were filed alleging that hydraulic fracturing operations polluted the atmosphere, groundwater, and soil. *Tucker v. Southwestern Energy Co.*, 2011 WL 1980530 and 2011 WL 2148645; *Ginardi v. Frontier Gas Services, LLC*, No 4 11 cv 0420 BRW; and *Berry v. Southwestern Energy Co.*, No. 1:11 cv 0045 BRW. The plaintiffs' causes of action include strict liability, nuisance, trespass, and negligence. On February 17, 2012, the district court in *Tucker* ruled on the motion to dismiss some of the claims. The court held that the Plaintiffs have not yet pled enough facts to state a nuisance claim, noting that “[g]eneral statements about dangerous substances used in fracking, and conclusory statements about the migration of those substances, will not suffice.” With regard to strict liability, the court followed *Fiorentino* and *Berish* and held that the legal adequacy of the claim should be decided at the summary judgment stage. The Defendants next argued that allegations about air contamination cannot support a trespass claim, but can only support a

nuisance claim. Although other states favor this view, the court did not dismiss the trespass claim, stating that “Arkansas law has not answered whether a trespass occurs when a thing passes unwanted through the air above a person's property.” Subsequent developments - The district court on July 24, 2012, granted a joint motion to dismiss all claims against one defendant, BHP Billiton Petroleum (Fayetteville) LLC, pursuant to a confidential settlement.

*Kamuck v. Shell Energy Holdings GP, LLC*, 2012 WL 1463594 (M.D. Pa., Mar. 19, 2012); and *Kamuck v. Shell Energy Holdings GP, LLC*, 2012 WL 1466490 (M.D. Pa., Apr. 27, 2012)

A surface owner, Edward Kamuck, alleges that fracking activities have harmed him and his property. His complaint asserts claims sounding in contract and in tort, including claims for anticipatory trespass, private nuisance, negligence and strict liability. On March 19, 2012, the U.S. Magistrate issued his report and recommendation. The Magistrate recommended dismissal of the anticipatory trespass claim, which does not allege an actual intrusion onto Kamuck's land. The Magistrate recommended that the gross negligence and negligence per se claims should be dismissed, but the “simple” negligence claim should not be dismissed. Gross negligence in Pennsylvania is not a separate cause of action, but is instead a factor which may support a claim for punitive damages. Negligence per se was not properly pled because the complaint did not identify any breaches of statutes designed to protect persons like the Plaintiff, and did not identify any statutory violation which was the proximate cause of some injury to the Plaintiff. As for strict liability, the Magistrate noted prior precedents holding that the question of whether a specific activity is abnormally dangerous is a question of law for the court to resolve, typically after discovery is complete. As for private nuisance, the Magistrate stated that the complaint alleges actions which, if proven, could support a private nuisance claim. Subsequent developments – On April 27, 2012, in a summary opinion, the district court adopted the foregoing recommendations. See 2012 WL 1466490.

*Strudley v. Antero Resources Corp.*, 2012 WL 1932470 (District Court, City and County of Denver, Colorado, May 9, 2012)

On March 23, 2011, the Strudley family sued Antero Resources Corporation and two drilling and service companies, alleging damages due to contamination from the drilling of three natural gas wells in Silt, Colorado. Plaintiffs allege negligence, negligence per se, nuisance, strict liability, trespass, and medical monitoring trust funds, and violation of the Colorado Hazardous Waste Act and the Oil and Gas Conservation Act. See pleading at 2011 WL 1156763. On May 9, 2012, the district court dismissed the case. The court noted that the central issue was whether Defendants caused Plaintiffs’ alleged injuries. Following *Lore v. Lone Pine Corp.*, 1986 WL 637507 (N.J. Sup. Ct., Nov. 18, 1986), the Colorado court required Plaintiffs -- before allowing full discovery -- to make a prima facie showing of exposure and causation. The court noted that the Colorado Oil and Gas Conservation Commission had concluded that the water supply was not affected by oil and gas operations.

Lone Pine order – Plaintiffs were instructed to establish (1) the identity of each hazardous substance from Defendants’ activities to which they were exposed and which caused them injury; (2) whether these substances can cause the types of disease or illness that Plaintiffs claim (general causation); (3) a quantitative measurement of the concentration, timing and duration of their exposure to each substance; (4) if other than the Plaintiffs’ residence, the

precise location of any exposure; (e) an identification, by way of reference to a medically recognized diagnosis, of the specific disease or illness from which each Plaintiff allegedly suffers or for which medical monitoring is purportedly necessary; and (5) a conclusion that such illness was in fact caused by such exposure (specific causation). Plaintiffs were ordered to provide all reports that contain any finding of contamination on their property; a list of the health care providers who provided Plaintiffs with health services along with a release authorizing transmittal of medical records; and identification and quantification of the contamination of the Plaintiffs' real property attributable to Defendants' operations.

The Court, on May 9, 2012, found that Plaintiffs "failed to produce sufficient information and expert opinions upon which to establish the prima facie elements of their claims, including exposure, injury, and both general and specific causation." The court noted that the Plaintiffs' doctor opined that environmental and health information exists to merit further substantive discovery," but failed to provide an opinion as to whether exposure was a contributing factor to Plaintiffs' alleged injuries or illness. In the words of the court, "Plaintiffs' requested march towards discovery without some adequate proof of causation of injury is precisely what the [*Lone Pine* order] was meant to curtail."

The court noted that the Oil and Gas Commission had concluded that "there is no data that would indicate the water quality in [Plaintiffs'] domestic well has been impacted by nearby oil and natural gas drilling and operations." The court stated that, "[t]hough the evidence shows existence of certain gases and compounds in both the air and water of Plaintiffs' Silt home, there is neither sufficient data nor expert analysis stating with any level of probability that a causal connection does in fact exist between Plaintiffs' injuries and Plaintiffs' exposure to Defendants drilling activities." The Court concluded that Plaintiffs failed to make a prima facie claim for injuries, and dismissed the claims with prejudice.

Subsequent developments – The Strudleys have announced that they intend to appeal. Vinson & Elkins LLP and Hogan Lovells represent Antero. According to Vinson & Elkins, this is the first time a court has dismissed a hydraulic fracturing contamination case for failure to comply with a *Lone Pine* order. See Vinson & Elkins article at <http://www.velaw.com/resources/FirstKnownIndustryOrderDismissingPlaintiffsCaseFailureToComplyLonePineOrder.aspx>. Andrew Scholz, writing for the Shalewatchblog.com on May 15, 2012, stated that the *Strudley* decision "has set an early and important precedent in toxic tort related hydrofracking litigation regarding expert standards necessary for plaintiffs to establish a prima facie case. As the decision reflects, a plaintiff's failure to show both general and specific causation early in the litigation can result in early dismissal."

Articles on *Lone Pine* orders - James P. Muehlberger and Boyd S. Hoekel, *An Overview of Lone Pine Orders in Toxic Tort Litigation*, 71 *Defense Counsel Journal* 366 (October 2004); William A. Ruskin, *Prove it or Lose It: Defending Against Mass Tort Claims Using Lone Pine Orders*, 26 *American Journal of Trial Advocacy* 599 (Spring 2003); John T. Burnett, Comment, *Lone Pine Orders: A Wolf in Sheep's Clothing for Environmental and Toxic Tort Litigation*, 14 *Journal of Land Use & Environmental Law* 53 (Fall 1998) (also available at <http://www.law.fsu.edu/journals/landuse/Vol141/burn.htm>); and David R. Erickson and Justin W. Howard, *Fighting For a Lone Pine Order in Complex Toxic Tort Litigation*, at <http://www.thefederation.org/documents/V57N4-Erickson.pdf>.

*Bidlack v. Chesapeake Appalachia, LLC*, 2012 WL 1657934 (M.D. Pa., May 11, 2012); and *Otis v. Chesapeake Appalachia, LLC*, 2012 WL 1657930 (M.D. Pa., May 11, 2012)

Plaintiffs' suits, which allege that Defendants operated natural gas wells in a manner that contaminated Plaintiffs' groundwater supplies, were both filed in the Court of Common Pleas of Bradford County, Pennsylvania. After Defendants removed the actions to federal district court, the parties in both cases filed a joint motion for a stay pending arbitration. The court granted the motions and directed the parties to engage in binding arbitration. However, before the parties engaged in binding arbitration, the Plaintiffs filed the present motions seeking relief from the court's order. The district court held, in both cases, that Plaintiffs failed to articulate a sufficient basis to set aside the parties' stipulation to arbitrate.

*Hagy v. Equitable Production Co.*, 2012 WL 1813066 (S.D. W. Va., May 17, 2012); and *Hagy v. Equitable Production Co.*, 2012 WL 2562856 (S.D. W. Va., Jun. 29, 2012)

The Hagy family filed suit in state court in October 2010, alleging contamination of the family's property and water well due to defendants' natural gas wells. The case was removed to federal district court. Plaintiffs' causes of action include negligence, nuisance, strict liability, trespass, and medical monitoring trust funds. See 2010 WL 8767305. Noting a complete absence of evidence in support of Plaintiffs' claims against one of the defendants, Halliburton Energy Services, Inc., the court on May 17, 2012, granted Halliburton's motion for summary judgment. On June 29, 2012, the court granted summary judgment to BJ Services Company, USA, the remaining defendant at that time. Plaintiffs claim BJ Services negligently cemented shale-gas wells, but the court held the Plaintiffs failed to provide evidence of any wrongful act. As for trespass, no support was offered for the assertion that fracturing fluids and other chemicals intruded upon Plaintiffs' aquifer. Plaintiffs also failed to provide sufficient evidence to avoid summary judgment on their private nuisance claim.

*Dillon v. Antero Resources*, 2012 WL 2899710 (W.D. Pa., Jul. 10, 2012)

Two families claim various harms to their personal and property interests arising from hydraulic fracturing activities on drilling sites adjacent to their land. Defendant moved for a "Confidentiality Order" regulating certain elements of the discovery process. The Court noted that a protective order was appropriate for discovery of information such as Plaintiffs' medical records, private property appraisals, business methods and gas recovery processes used by Defendant, and the terms of business arrangements between the Defendant and vendors. The court issued an order that placed the burden of demonstrating the need for confidentiality on the party asserting it, and reserved to the Court the decision as to whether any specific information is to be treated as confidential in whole or in part.

*Boggs v. Landmark 4 LLC*, 2012 WL 3485288 (N.D. Ohio, Aug. 13, 2012)

After filing – and then voluntarily dismissing – a state action in 2010, this suit was filed on March 12, 2012. Complaint at 2012 WL 960913; see also *Mangan v. Landmark 4, LLC*, 2012 WL 924852 (N.D. Ohio, Mar. 12, 2012) (No. 12CV00613). William and Stephanie Boggs of Chatham, Ohio, allege they suffered health injuries, loss of use and enjoyment of their property, loss of quality of life, emotional distress, and other damages due to drilling

and hydraulic fracturing activities. Plaintiffs claim fracking fluids and other chemicals were discharged into the ground or into the waters near their home and water well. Plaintiffs allege the Defendant failed to disclose, to the Plaintiffs and to public authorities, material facts concerning the nature and extent of the contaminants. The wells are approximately 2500 feet from Plaintiffs' property. Plaintiffs assert claims for negligence, strict liability, private nuisance, unjust enrichment, negligence per se, battery, intentional fraudulent concealment, and negligent misrepresentation. On August 13, 2012, Judge Donald Nugent refused to dismiss the negligence and strict liability claims on statute of limitations grounds. The battery claim, which was not raised in the state action, was held to be time barred. The fraudulent concealment claim was not pled with requisite particularity to withstand dismissal because "failure to warn of potential contamination or exposure to dangerous chemicals, without more, is not actionable as fraudulent concealment."

*Lipsky v. Range Resources Corp.*, CV11-0798 (District Court, Parker County, Texas., Jun. 20, 2011), order on appeal, *Lipsky v. Range Resources Corp.*, 2012 WL 3600014 (Court of Appeals of Texas, Fort Worth, Aug. 23, 2012)

Plaintiffs, who created a YouTube video of a flaming hose connected to his well, alleges Defendants contaminated his water well with its fracking operations. Defendants filed a counterclaim for defamation. Plaintiffs appealed the trial court denial of their "Anti-Slapp" motion to dismiss the counterclaim, but the state court of appeals held it lacked appellate jurisdiction. The court did state that the Plaintiffs could request mandamus relief. See [http://blogs.dallasobserver.com/unfairpark/2012/08/fight\\_over\\_fracking\\_and\\_flamin.php](http://blogs.dallasobserver.com/unfairpark/2012/08/fight_over_fracking_and_flamin.php).

---

## Cases Listed By State

AR Hearn v. BHP Billiton Petroleum (Arkansas) Inc. 11-CV-0474 (E.D. Ark.)  
AR Scoggin v. Cudd Pumping Services, Inc., 2011 WL 4217619 (E.D. Ark.)  
AR Tucker v. Southwestern Energy Co., 2012 WL 528253 (E.D. Ark.)

CO Evenson v. Antero Resources Corp., No. 2011-CV-5118 (Dist. Ct., Denver Cty., Colorado)  
CO Strudley v. Antero Resources Corp., 2012 WL 1932470 (Dist. Ct., City and Cty. of Denver, Co.)

LA Andre v. EXCO Resources, Inc., No. 11-00161 (W.D. La.)  
LA Beckman v. EXCO Resources, Inc., No. 11-00617 (W.D. La.)

NY Baker v. Anschutz Exploration Corp., 10-CV-61190 (W.D. N.Y.)  
NY Maring v. Nalbene, Index No. K12009001499 (N.Y. Sup. Ct., Chautauqua County)

OH Boggs v. Landmark 4 LLC, 2012 WL 3485288 (N.D. Ohio)  
OH Payne v. Ohio Valley Energy Systems Corp. (Ct. of Common Pleas, Geauga Cty., Ohio)

PA Armstrong v. Chesapeake Appalachia, LLC, (Ct. Common Pleas, Bradford County, Pa.)  
PA Beca v. Antero Resources, 11-CV-1040 (W.D. Pa.)  
PA Berish v. Southwestern Energy Production Co., 762 F.Supp.2d 702 (M.D. Pa.)  
PA Bidlack v. Chesapeake Appalachia, LLC, 2012 WL 1657934 (M.D. Pa.)  
PA Burnett v. Chesapeake Appalachia, LLC, 2011 WL 3876412 (M.D. Pa.)  
PA Dillon v. Antero Resources, 2012 WL 2899710 (W.D. Pa.)  
PA Fiorentino v. Cabot Oil and Gas Corp., 705 F.Supp.2d 506 (M.D. Pa.)  
PA Hallowich v. Range Resources., C-63-CV-201003954 (Ct. Common Pleas, Washington Cty, Pa.)  
PA Haney v. Range Resources, et al., (caption uncertain) (Ct. Common Pleas, Washington Cty, Pa.)  
PA Kamuck v. Shell Energy Holdings GP, LLC, 2012 WL 1466490 (M.D. Pa.)  
PA Otis v. Chesapeake Appalachia, LLC, 2012 WL 1657930 (M.D. Pa.)  
PA Phillips v. Chesapeake Appalachia, LLC, 2011 WL 8153167 (M.D. Pa.) (Arbitration motion)  
PA Zimmermann v. Atlas America, 2009 WL 3753890 (Ct. Common Pleas, Washington Cty., Pa.)

TX Harris v. Devon Energy Production Company, L.P., 2011 WL 2729242 (E.D. Tex.)  
TX Heinkel-Wolfe v. Williams Prod. Co., LLC, No. 10-40355-362 ( Dist. Ct., Denton Cty, Tex.)  
TX Lipsky v. Range Resources Corp., 2012 WL 3600014 (Ct. of Appeals of Texas, Fort Worth)  
TX Mitchell v. Encana Oil & Gas (USA), Inc., 2010 WL 5384210 (N.D. Tex.)  
TX Parr v. Aruba Petroleum, Inc., No. 11-01650 (Dallas County Ct., Tex.)  
TX Ruggiero v. Aruba Petroleum, Inc., No. 10-10-801 (District Court, Wise County, Tex.)  
TX Scoma v. Chesapeake Energy Corp., 2010 WL 3706170 (N.D. Tex.)  
TX Sizelove v. Williams Production Co., LLC, No. 10-50355-367 (Dist. Ct., Denton Cty, Tex.)  
TX Smith v. Devon Energy Production Co., No. 11-CV-0196 (N.D. Tex.)

WV Bombardiere v. Schlumberger Technology Corp., 2011 WL 2443691 (N.D. W. Va.)  
WV Hagy v. Equitable Production Co., 2012 WL 2562856 (S.D. W. Va.)  
WV Magers v. Chesapeake Appalachia, LLC, No. 5:12-CV-49 (N.D. W. Va.)  
WV Rine v. Chesapeake Appalachia, LLC, No. 11-0004 (N.D. W. Va.)