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Fracking Case That Wasn't: Parr V. Aruba Petroleum Inc.

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On April 22, 2014, in Parr v. Aruba Petroleum Inc., an alleged hydraulic fracturing case, a Dallas jury awarded almost $3 million to a Texas family, finding that an energy company's drilling activity in the Barnett Shale constituted a private nuisance. The verdict garnered widespread media attention and was covered by national media outlets such asCNN and NPR.

The media characterization of the trial as a "fracking case," however, is misleading. The plaintiffs' claims did not focus on "typical" fracking-related concerns, such as seismic activity, water use, contamination of water supplies or appropriate disposal of flowback/produced water. Instead, the plaintiffs complained about activities that are commonly required to drill almost any oil or gas well, such as flaring, construction activity, trucking traffic and the emission of gas and chemicals into the air. These types of activities occur even if a well is not hydraulically fractured. Nevertheless, it is likely that the verdict and its attendant media coverage may embolden plaintiffs' lawyers, resulting in an increase in the number of claims against oil and gas exploration companies engaged in fracking activity.

Parr V. Aruba Petroleum Inc.

The Parr family lives on a 40-acre ranch in Wise County, which sits atop the Barnett Shale play near Fort Worth, Texas. The county is home to more than 12,000 drilled wells. Extensive energy exploration and production activity near their home led the Parr family to file a lawsuit in 2011 against Aruba Petroleum and seven other energy companies.

The Parrs alleged that the exploration and production activity polluted the air with hazardous gases. Exposure to this air pollution, they claimed, led to health problems, such as asthma, ear-ringing, headaches and nausea, as well as injury to the family's pets and livestock, including the "physical dwarfing" of a newborn calf. In their petition, the Parrs sought damages of up to $66 million. The Parrs' case was substantially narrowed by the time it was submitted to the jury, and the family's claims against seven defendants were settled or dismissed before trial. Aruba Petroleum, which operated 22 wells in the immediate vicinity of the Parrs' property, was the lone defendant at trial. Furthermore, although the Parrs originally brought negligence and trespass claims, only one claim was submitted to the six-person jury: whether Aruba intentionally created a private nuisance. They did not allege a public nuisance.

In a 5-1 verdict, the jury found that Aruba did intentionally create a private nuisance and awarded a total of $2.9 million in damages to the Parrs: $2.25 million for physical pain and suffering, $400,000 for mental anguish and $275,000 for the loss of market value of the family's property. Aruba's post-trial motions, including a motion to disregard jury findings and for judgment notwithstanding the verdict, are currently pending. Aruba's counsel asserted that Aruba would "certainly appeal" if judgment is entered.

Takeaways

Even if the verdict withstands Aruba's post-trial motions and probable appeal, it is unlikely that Parr v. Aruba Petroleum will dramatically change the legal landscape for companies involved in hydraulic fracturing activity. Most importantly, the Parrs' claims did not challenge activities unique to fracking. Their air pollution claims could be alleged against virtually any drilling operation. As such, Parr is merely one of the numerous nuisance actions routinely filed against oil and gas companies. But perceptions are important and the media coverage of Parr as a "fracking case" may encourage other plaintiffs to file suit against companies engaged in hydraulic fracturing activities. Within a week of the Parrs' jury award, eight families in Arkansas filed a lawsuit seeking $76 million in damages against another natural gas company complaining of injuries sustained as a result of nearby fracking activity.

A true fracking case (i.e., a case which involves more traditional fracking-related concerns such as complaints of seismic activity or groundwater contamination) would face a number of barriers, including the prospect of requiring extensive expert testimony that would be costly to obtain and subject to court scrutiny under Daubert and similar case law.

While the number of cases alleging damages from hydraulic fracturing is increasing, few have resulted in jury verdicts. In fact, many such cases are being settled or otherwise dismissed. For example, Scoma v. Chesapeake Energy Corp., never went before a jury — the parties reached a settlement agreement and the case was dismissed. In another recent case, Harris v. Devon Energy Prod. Co. LP, the plaintiffs originally complained of groundwater contamination from nearby fracking activity. That case, however, was dismissed without prejudice after plaintiffs' groundwater "apparently purged itself of elevated levels of toxic substances." In yet another example, the plaintiffs in Heinkel-Wolfe v. Williams Prod. Co. LLC, dropped allegations of water contamination and reached a settlement agreement at mediation.

Parr v. Aruba Petroleum is unlikely to significantly alter this trend, but the size of the verdict coupled with increased media coverage may result in an uptick in suits filed against companies engaged in hydraulic fracturing.

Company Protection

While the Parr case may embolden plaintiffs' attorneys, there are some straightforward approaches that might help protect against similar claims. First, companies should be increasingly aware of how their activities might negatively affect others in the vicinity and take economically practicable steps to avoid those impacts. This might include scheduling drilling activity in a manner that minimizes disturbances to nearby property owners, especially disturbances that might occur outside of regular business hours.

Second, companies should consider purchasing more land around drilling sites than they have in the past to create a larger buffer zone between drilling activities and nearby property owners. With the dramatic increase in domestic drilling activity in recent years and the steady growth and sprawl of the U.S. population, it comes as no surprise that drilling operations that were once in remote locations are now more consistently taking place near suburban homes. In this instance in particular, the purchase of

additional land in those areas can help companies avoid the allegation that they are disturbing their new neighbors.

Third, while many landowners may recognize the economic benefit to themselves and their communities of increased exploration activity, they may not be aware of the significant efforts made by companies to minimize disturbances. For companies that take additional steps to address these concerns, it may be beneficial to publicize those efforts to garner public goodwill and lessen potentially negative perceptions.

In sum, Parr was a nuisance case in which jurors awarded damages based on specific facts and circumstances arising out of common drilling activities — not fracking concerns. Some cases are tried in courts that hear evidence. Others are tried in the media. Until our society reaches some consensus about the merits of increased energy exploration, companies should keep in mind that media use of the word "fracking" may continue to increase both the number of nuisance cases that are filed and the potential damages and settlement amounts.

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