



TEXAS JURY AWARDS \$2.925M IN DAMAGES IN HYDRAULIC FRACTURING VERDICT IN SUIT FOR NUISANCE: *PARR, ET AL. V. ARUBA PETROLEUM, INC., ET AL.* DALLAS COUNTY COURT AT LAW NO. 5 CASE NO. CC-11-01650-E

By: Justin Zucker¹

In a monumental jury verdict award by a Dallas County court, plaintiffs Lisa Parr, Robert Parr, and daughter, Emma Duval were awarded \$2.925M in damages for personal injury and property damages.² The Plaintiffs had brought suit against Aruba Petroleum, Inc. (“Aruba”) and several other oil and gas production companies alleging their hydraulic fracturing activities (“Fracking”) led to the release air pollutants, causing them harm.³ This is the first jury verdict in the United States for damages resulting from Fracking. Like the other defendants in the Parr’s lawsuit, oil and gas production companies historically settle with plaintiffs to resolve matters.⁴

After prolonged motion practice, the Court ruled on Aruba’s No Evidence Motion for Summary Judgment, dismissing all of plaintiffs’ causes of actions except for their claims for nuisance and trespass.⁵ Plaintiffs’ characterizations of their damages sought, specifically for “symptoms typical of *discomfort* rather than *disease*”⁶ disclaimed any personal injury damages requiring proof under *Havner*.⁷ This disclaimer was a strategic decision by Plaintiffs to avoid having to establish causation, whether general or specific.⁸ As a

result, the Court ordered that “plaintiffs’ personal injury damages are limited to injuries that are (1) within the common knowledge and experience of a layperson, and (2) the sequence of events is such that a layperson may *determine causation without the benefit of expert evidence*.”⁹ As such, Aruba moved to exclude testimony from Plaintiffs’ testifying experts on the basis that their opinions, in addition to opining about causation, were based on all Defendants’ actions without any distinction between the activities of Aruba alone and the other Defendants.¹⁰ Due to the lack of any evidence presented to establish causation, it is apparent that the jury returned a plaintiffs’ verdict based on emotion alone.

Surprisingly, Plaintiffs’ claims did not implicate ground water contamination and/or seismic activity. Rather they focused on other activities incumbent to most all oil and gas production and not just Fracking.¹¹ Thus, the implications of this case may not be as expansive to pending and future Fracking cases as the plaintiffs’ bar is likely to believe.

Aruba has stated that it will be appealing this jury verdict should judgment be entered. ⚖️

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² *Parr, et al. v. Aruba Petroleum, Inc., et al*, No. CC-11-01650-E, Jury Charge (Court at Law No. 5, Dallas County, Texas, April 22, 2014) (\$2M for pain and suffering sustained in past; \$0.25M for pain and suffering reasonably probable to be sustained in the future; \$0.4M for mental anguish sustained in the past; and \$0.275M for loss of market value of real estate).

³ The operative pleading was Plaintiffs’ Eleventh Amended Petition.

⁴ See *Scoma v. Chesapeake Energy Corp.*, No. 3:10-cv-01385 (N.D. Tex., July 15, 2010); *Heinkel-Wolfe v. Williams Prod. Co., LLC*, No. 2010-40355-362 (362nd Dist. Court, Denton County, Texas, Nov. 3, 2010).

⁵ *Parr, supra*, Order, p. 1 (December 13, 2013).

⁶ *Parr, supra*, Eleventh Amended Petition, ¶ 76-77 (September 17, 2013) (“Plaintiffs disclaim any and all claims seeking recovery for a diagnosed “disease” that also occurs genetically and for which a large percentage of the causes are unknown.”)

⁷ *Merrel Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 714-15; 720 (Tex. 1997) (provides the standard applied in Texas to expert testimony for establishing causation in a toxic tort).

⁸ *Id.* (“General causation is whether a substance is capable of causing a particular injury or condition in the general population, while specific causation is whether a substance caused a particular individual’s injury.”)

⁹ *Parr, supra*, Order, p. 1 (December 13, 2013) (emphasis added).

¹⁰ *Parr, supra*, Motion of Aruba Petroleum to Exclude Plaintiffs’ Experts, p. 3 (March 21, 2014)

¹¹ *Parr, supra*, Eleventh Amended Petition, ¶ 17 (September 17, 2013) (Some of Plaintiffs’ alleged damages resulted from transportation activity and emissions, flaring, venting, and fugitive emissions).