

PUBLICATION

Nuisance Claims Becoming More Than a Mere Nuisance in Texas

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Plaintiffs Bob and Lisa Parr obtained a \$2.9 million verdict in April 2014 against Aruba Petroleum, Inc. for health problems allegedly related to oil and gas drilling operations and air emissions near their home. The large verdict brought a new focus on a very old cause of action--Private Nuisance. Texans have been suing oil & gas companies for personal injuries and other damages related to private nuisance claims for over 50 years, but pattern jury instructions on private nuisance were not added to the Texas Pattern Jury Charges, as Chapter 12, until 2012. A new focus exists on this old cause of action due to the high dollar amounts at risk and the potential disruption to the booming fracking operations around the State of Texas and elsewhere.

Private Nuisance is an invasion of the plaintiff's interest in private land harming the plaintiff's use or enjoyment of the land. From a general standpoint, it represents a sort of "catch all" tort, and typically involves the harm to the plaintiff caused by an invasion of light, sound, odor or foreign substance. The plaintiff must prove that the defendant invaded or substantially interfered with some interest of the plaintiff. A nuisance may arise by causing physical harm to property, physical harm to a person on his property from an assault on his senses or other personal injury or emotional harm from the deprivation of the enjoyment of the property because of fear, apprehension and loss of peace of mind. The focus in a Private Nuisance case is not on the conduct, but on the essential element of damages. The nuisance can be from the defendant's negligent conduct or the defendant's intentional conduct or simply because the defendant's conduct is abnormal and out of place in its surroundings (of course, it could be argued that an oil well is never out of place in Texas).

As drilling operations move closer and closer to populated areas, local residents, who do not have a financial interest in the success of the wells being drilled, may be more likely to allege "nuisances." Because a Private Nuisance claim is considered a suit to recover damages to real property, venue is usually mandatory in the county in which all or part of the property is located. Selecting a jury willing to hear your side may be difficult if the community is small and has a history of problems associated with oil and gas operations, even if those operations were caused by others.