

# PUBLICATION

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## Emerging Trends in Tort Litigation Alleging Health Injuries Caused by Neighboring Oil and Gas Activities

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Last year's \$2.9 million verdict in *Parr v. Aruba Petroleum*, the so-called "first fracking trial," garnered attention in Texas and beyond. The significance laid not only in that the plaintiffs had succeeded on their private nuisance claim, but also because the verdict provided a publicly available measure of damages for tort litigation alleging health issues relating to drilling. The *Parr* verdict remains on appeal and may be modified or overturned, but a recent search indicates that it is far from the only case in which landowners have made health-related personal injury claims due to alleged exposure to hazardous gases and industrial chemicals from neighboring oil and gas activities.

Overall, at least 26 such cases have been brought in federal and/or state courts in Arkansas, Colorado, New York, Ohio, Oklahoma, Pennsylvania, Texas and West Virginia. Eleven have been settled, two have been dismissed on the merits, four have been dismissed for failure to join a necessary party or lack of subject matter jurisdiction, and nine remain pending. Based on a review of these cases, the following trends have emerged:

- The majority of the litigation has been in Arkansas, Pennsylvania and Texas.
- The most frequently asserted causes of action are negligence, nuisance, trespass, strict liability, medical monitoring and, in Pennsylvania, violations of the Pennsylvania Hazardous Sites Cleanup Act.
- The factual allegations are strikingly similar, generally alleging that defendants caused releases, spills and discharges of combustible gases, hazardous chemicals and industrial wastes from its oil and gas facilities causing damage to property, health injuries, loss of use and enjoyment of property, loss of quality of life, emotional distress and other damages.
- The most common reason for a case to be dismissed is settlement.
- Lone Pine Orders remain infrequently used.
- In addition to drilling facilities, plaintiffs have alleged identical injuries from operations at natural gas compression and transmission stations and disposal wells.

While it remains to be seen whether any additional cases will reach a jury verdict, any that does will reveal a great deal regarding whether *Parr* will remain an outlier.