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Client Alert

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For Their Failure To Comply With The Court's Lone Pine Case Management Order, Colorado Court Dismisses Family's Personal Injury Claims Against Exploration and Production Companies

In mid-2011, the Strudley family — Mr. and Mrs. Strudley and their two minor sons — filed suit against three exploration and production companies in Denver County, Colorado. The Strudleys claimed they were injured from exposures to air and water contaminated by a variety of "hazardous substances," including hydrogen sulfide, hexane, toluene, propane, isobutane, n-butane, isopentane, and n-pentane, when the defendants drilled and completed three gas wells near the Strudleys' home in Silt, Colorado. In addition to their vague health injuries, the Strudleys alleged that the defendants' activities were a nuisance and diminished the value of their property. Recognizing that the Strudleys' case was a "complex toxic tort action" — as opposed to a typical oil and gas dispute — the trial court, at the defendants' behest, entered a "Lone Pine" case management order.

Named for *Lore v. Lone Pine Corporation,* a 1986 New Jersey Superior Court case, Lone Pine orders are designed to increase judicial efficiency and prevent the waste of legal fees in large, complex toxic tort cases by culling non-meritorious claims. They do this by abating discovery until the plaintiffs come forward with prima facie evidence of a viable claim, which usually means affidavits that identify the chemical or substance the plaintiffs were exposed to, the level and timing of the exposures, the specific injury caused by the substance, and, perhaps most important, expert medical testimony demonstrating a scientifically-reliable link between the plaintiffs' exposures and injuries.

In *Strudley,* the plaintiffs, which were given three and a half months to comply, produced a variety of maps, photos, and air and water reports. Affidavit testimony from their expert, however, was able to suggest only "a very weak circumstantial causal connection" between emissions from the defendants' wells and the Strudleys' medical problems. Consequently, on May 9, 2012, the trial court dismissed their case with prejudice. The case is styled *Strudley v. Antero Resources, et al.,* Case No. 2011CV2218 (Dist. Court of Denver County, Colorado).

It seems likely that exploration and production companies, and possibly mid-stream processing and transportation companies, will face more cases like *Strudley.* Fracking, coupled with effective directional drilling techniques, has led to a proliferation of wells in and around population centers.

Because discovery can be so burdensome, experienced plaintiff's attorneys are adept at using it as a sword. Even when a company seemingly has little to worry about, the prospect of lengthy and expensive pre-trial discovery can be more than enough to compel a settlement. Trial courts throughout the Marcellus Shale states, including those in Ohio, Pennsylvania, New York, and West Virginia, have entered Lone Pine case management orders in a variety of toxic tort actions, although none of those cases involved oil and gas activities. When the circumstances warrant it and the law sanctions it, in-house and litigation counsel should be prepared to advocate zealously for a Lone Pine order.

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The lawyers in Hunton & Williams' national business tort and products liability group have represented major multi-national corporations across multiple jurisdictions in an array of toxic tort actions, including putative class actions, in which the court was convinced to adopt a Lone Pine management order, ultimately leading to dismissal or summary judgment. If you have any questions about this alert or Lone Pine orders, please contact any of the following lawyers.

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