

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

DOUG HARRIS and DIANA  
HARRIS,

Plaintiffs,

v.

DEVON ENERGY PRODUCTION  
COMPANY, L.P.,

Defendants.

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CIVIL ACTION NO. \_\_\_\_\_  
ECF

**PLAINTIFFS' ORIGINAL COMPLAINT**

Plaintiffs Doug Harris and Diana Harris file this Original Petition complaining of Defendant Devon Energy Production Company, L.P., and in support of this Complaint, Plaintiffs say:

I.

**JURISDICTION AND VENUE**

The Court has jurisdiction over the lawsuit under 28 U.S.C. § 1332(a)(1) because the Plaintiffs, Doug Harris and Diana Harris, and the Defendant, Devon Energy Production Company, L.P., are citizens of different states and the amount in controversy exceeds \$75,000, excluding interest and costs. The contamination in question occurred in Denton County, which is within the Northern District of Texas.

## II.

### **PARTIES**

1. Plaintiff Doug Harris, husband of Diana Harris, is an individual who resides in Denton County, Texas and is a citizen of the State of Texas.

2. Plaintiff Diana Harris, wife of Doug Harris, is an individual who resides in Denton County, Texas and is a citizen of the State of Texas.

3. Defendant Devon Energy Production Company, L.P., is an Oklahoma corporation located at 20 N. Broadway Ave., Oklahoma City, Oklahoma 73102-8202. Defendant regularly conducts business in the State of Texas and has an office at 1700 County Road 197, Whiteface, Texas 79379. Process of service may be had upon this Defendant by serving citation to its registered agent, CT Corporation System, 350 N. St. Paul Street, Dallas Texas 75201.

## III.

### **FACTS**

1. Plaintiffs Doug and Diana Harris own a tract of land located at (address provided to Defendant) in Denton County, Texas. Their land is situated on the geographic strata known as the Newark East Field or Barnett Shale.

2. Defendant performed, and continues to perform, drilling-related activities near Plaintiffs' property. Among its activities, Defendant has applied a gas extraction

method known as hydraulic fracturing, or “fracking,” to increase productivity of their wells by injecting chemical fluids underground at high pressure to fracture rock formations. It is believed Defendant has also stored drilling waste at sites and disposal wells near the Harris’s property.

3. Soon after Defendant commenced drilling and fracking operations and as a result of Defendant’s activities, Plaintiffs’ ground water, which was their primary source of water, became contaminated. Plaintiffs can no longer use the water from their well for consumption, bathing, or washing clothes. Approximately in April 2008, their ground water became polluted with a gray sediment.

4. The extent to which the Defendant has drilled bore holes under and near the Plaintiffs’ property is extensive and is evidenced by the attached **Exhibit A**, which displays the well sites and bore holes under and near the Plaintiffs’ home. Upon information and belief, it is stated that the subsurface strata for a great distance around each bore hole has been extensively and significantly fractured by the hydraulic injection of chemical fluids under enormous pressure.

5. Plaintiffs had previously given Defendant Devon notice of the contamination by Defendant’s drilling-related activities. In response, Devon asserted that a new water well needed to be drilled, which Mr. and Mrs. Harris had completed.

But the same gray contaminated substance continues to be found in the second well's water.

6. Testing results performed on the well ground water showed water contamination with high levels of metals: aluminum, arsenic, barium, beryllium, calcium, chromium, cobalt, copper, iron, lead, lithium, magnesium, manganese, nickel, potassium, sodium, strontium, titanium, vanadium, and zinc, some of which upon information and belief, are contained in a commercial compound called "bentonite" used in drilling mud.

#### IV.

#### **NUISANCE CAUSE OF ACTION AGAINST DEFENDANT**

1. Plaintiffs adopt and re-allege each paragraph set forth above.
2. When Defendant conducted its drilling-related activities, as described above, Defendant interfered with and invaded the Plaintiffs' private interests in their land by contaminating their ground water.
3. Defendant's drilling-related activities including hydraulic fracturing and storage of drilling waste in disposal wells, injection wells, waste lagoons, and/or other sites near Harris's property constitute conduct that is negligent, or intentional and unreasonable, or abnormal and out of place in its surroundings.
4. The acts and omissions of Defendant, which resulted in the

contamination of the ground water under Plaintiffs' land, has substantially interfered with and prevented Plaintiffs from the use and enjoyment of their ground water for drinking, bathing, and washing. The contaminated well water offended Plaintiffs' senses and made their enjoyment of their property uncomfortable and inconvenient.

5. The contamination of the well water is a proximate cause of Plaintiffs' damages, for which the named Defendant is liable.

V.

### **TRESPASS CAUSE OF ACTION AGAINST DEFENDANT**

1. Defendant trespassed upon Plaintiffs' land by exceeding the rights granted for drilling on land adjacent to and under Plaintiffs' land because Defendant's drilling-related activities resulted in contamination of Plaintiffs' sub-surface ground water beneath their property.

2. Defendant physically, intentionally, and voluntarily caused and permitted petroleum by products to cross Plaintiffs' property boundaries and enter into Plaintiffs' land and contaminate Plaintiffs' ground water.

3. Defendant's trespass resulted in physical damage to Plaintiffs' property and caused injury to Plaintiffs' right of possession. As a result of each of the Defendant's unauthorized entry, Plaintiffs could neither drink from, nor use, the well water for washing or daily living activities.

4. Through horizontal drilling activities, Defendants entered and invaded Plaintiffs' land by drilling bore holes into Plaintiffs' sub-surface property without notice to Plaintiffs of the Defendant's intent to do so.

5. Defendant's trespass is a proximate cause of Plaintiffs' damages for which Defendant is liable.

## VI.

### **NEGLIGENCE CAUSE OF ACTION AGAINST DEFENDANT**

1. In conducting its drilling activities, Defendant owed a duty of care to Plaintiffs to not negligently or unnecessarily damage Plaintiffs' surface estate, including the subsurface of Plaintiffs' estate, *i.e.*, the Plaintiffs' ground water.

2. Defendant failed to use the ordinary care of a reasonable person to protect the land, and especially the water, near its drilling and hydro-fracking activities. It knowingly continued drilling and hydro-fracking activities that caused the contamination of Plaintiffs' ground water.

3. The acts and omissions of Defendant constitute negligence and were a proximate cause of the occurrence, damages, and injuries sustained by Plaintiffs; and Defendant is liable to Plaintiffs.

## VII.

### **FRAUD/FRAUDULENT CONCEALMENT CAUSE OF ACTION AGAINST DEFENDANT**

1. Defendant failed to warn Plaintiffs of and have concealed the dangers of the hydro-fracking process and the chemicals used by Defendant in its drilling operation near Plaintiffs' home. Defendant's failure to disclose amounts to fraud, and facts were concealed knowingly and with reckless disregard to Plaintiffs' health and well being, and have proximately caused Plaintiffs' damages, for which Defendant is liable to Plaintiffs.

#### VIII.

#### **ULTRA-HAZARDOUS ACTIVITIES - ABNORMALLY DANGEROUS ACTIVITY STRICT LIABILITY CAUSE OF ACTION AGAINST DEFENDANT**

1. Petroleum drilling and hydraulic fracturing bore holes are ultra-hazardous and abnormally dangerous activities.

2. The contamination caused by Defendant's drilling and hydro-fracking activities created an unacceptable risk of harm to Plaintiffs. Having undertaken an ultra-hazardous and abnormally dangerous activity, the Defendant is strictly liable for the injuries and damages caused by its activities. The Defendant's ultra-hazardous and abnormally dangerous activities are a proximate and producing cause of Plaintiffs' damages; and Defendant is liable to Plaintiffs.

#### IX.

## **DAMAGES FOR PLAINTIFFS DOUG AND DIANA HARRIS**

1. Plaintiffs have suffered loss of the use of their land and ground water and such loss will, in all reasonable probability, continue in the future.

2. Plaintiffs have suffered loss of market value of their property and such loss, in all reasonable probability, will continue in the future.

3. Plaintiffs have suffered loss of the intrinsic value of the well water and such loss, in all reasonable probability, will continue in the future.

4. Plaintiffs have suffered emotional harm and mental anguish from deprivation of enjoyment, loss of peace of mind, annoyance, inconvenience, anxiety, and their bodies have been physically injured from the contaminated well water and such mental anguish, in all reasonable probability, will continue in the future.

5. As a result of the incident described herein, Doug and Diana Harris have incurred expenses related to testing the contaminated water and buying water from an alternative source during the contamination and such expenses, in all reasonable probability, will continue in the future.

6. **Medical Monitoring Damages:** Plaintiffs were wrongfully and significantly exposed to toxic chemicals through the negligent and wrongful actions of the Defendant. As a proximate result of the exposure, Plaintiffs suffer an increased risk of serious latent diseases. The increased risk makes early and periodic diagnostic medical examinations reasonably necessary. Monitoring and testing procedures exist

which make the early detection and treatment of latent diseases possible and beneficial. Plaintiffs are entitled to lifetime medical monitoring and testing so that serious diseases that may arise as a result of this toxic exposure will be discovered and treated as early as possible, and so the likelihood of advancing disease or death is minimized.

7. Remediation: Plaintiffs seek remediation or the cost of restoring the land and its ground water to their pre-drilling conditions.

9. Plaintiffs seek to recover nominal damages for each trespass by Defendant, in addition to actual damages described above.

10. Plaintiffs seek to recover exemplary damages against Defendant in accordance with Texas Civil Practice and Remedies § 41.001 *et seq.*

X.

**CLAIM FOR PREJUDGMENT INTEREST**

Plaintiffs herein claim interest in accordance with Texas law.

XI.

**JURY DEMAND**

Plaintiffs request that a jury be convened to try the factual issues in this cause.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that upon trial of this cause, this Honorable Court enter judgment for Plaintiffs against

Defendant for the damages requested herein, for cost of bringing this action, for interest from the date of the incident made the basis of this suit, and for such other relief as may appear to the Court to be proper.

Respectfully submitted,

TURLEY LAW FIRM

/s/ Windle Turley

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