

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

GRACE MITCHELL,

Plaintiff,

v.

ENCANA OIL & GAS (USA), INC.,
CHESAPEAKE OPERATING, INC.,
and CHESAPEAKE
EXPLORATION, LLC,

Defendants.

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CIVIL ACTION NO. _____
ECF

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiff Grace Mitchell files this Original Petition complaining of Defendants Encana Oil & Gas (USA), Inc., Chesapeake Operating, Inc., and Chesapeake Exploration, LLC, and in support of this Complaint, Plaintiff says:

I.

JURISDICTION AND VENUE

The Court has jurisdiction over the lawsuit under 28 U.S.C. § 1332(a)(1) because the Plaintiff Grace Mitchell and the Defendants, Encana Oil & Gas (USA), Inc., Chesapeake Operating, Inc., and Chesapeake Exploration, LLC, are citizens of different states and the amount in controversy exceeds \$75,000, excluding interest and

costs. The contamination in question occurred in Johnson County, which is within the Northern District of Texas.

II.

PARTIES

1. Plaintiff Grace Mitchell is an individual who resides in Johnson County, Texas and is a citizen of the State of Texas.

2. Defendant Encana Oil & Gas (USA), Inc., is a Colorado corporation located at 370 17th Street, Suite 1700, Denver, Colorado 80202. Defendant regularly conducts business in the State of Texas and has an office at 14001 North Dallas Parkway, Suite 1000, Dallas, Texas 75240. Process of service may be had upon this Defendant by serving citation to its registered agent, C.T. Corporation Systems, 350 N. St. Paul Street, Dallas Texas 75201.

3. Defendant Chesapeake Operating, Inc., is an Oklahoma corporation located at 6100 North Western Avenue, Oklahoma City, Oklahoma 73118. Defendant regularly conducts business in the State of Texas and has its branch office at 301 Commerce Street, Suite 600, Fort Worth, Texas 76102. Process of service may be had upon this Defendant by serving citation to its registered agent, C.T. Corporation Systems, 350 N. St. Paul Street, Dallas Texas 75201.

4. Defendant Chesapeake Exploration, LLC, is an Oklahoma corporation located at 6100 North Western Avenue, Oklahoma City, Oklahoma 73118. Defendant regularly conducts business in the State of Texas and has its branch office at 301 Commerce Street, Suite 600, Fort Worth, Texas 76102. Process of service may be had upon this Defendant by serving citation to its registered agent, C.T. Corporation Systems, 350 N. St. Paul Street, Dallas Texas 75201.

III.

FACTS

1. Plaintiff Grace Mitchell owns a tract of land located at (address provided to Defendant) in Johnson County, Texas. Her land is situated on the geographic strata known as the Newark East Field or Barnett Shale.

2. Defendants performed, and continue to perform, drilling-related activities near Plaintiff's property. Among their activities, Defendants have 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 Defendants have also stored drilling waste at sites and disposal wells near Mitchell's property.

3. Soon after the Defendants commenced their drilling and fracking operations and as a result of Defendants' activities, Plaintiff's ground water, which

was her primary source of water, became contaminated. Plaintiff can no longer use the water from her own well for consumption, bathing, or washing clothes because in approximately May 2010, the well water started to feel slick to the touch and give off an oily, gasoline-like odor. Testing results performed on the well ground water confirmed it was contaminated with various chemicals, including C-12-C28 hydrocarbons, similar to diesel fuel.

4. The extent to which the Defendants have drilled bore holes under and near the Plaintiff's property is extensive and is evidenced by the attached **Exhibit A**, which displays the well sites and bore holes under and near the Plaintiff's 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.

IV.

NUISANCE CAUSE OF ACTION AGAINST EACH DEFENDANT

1. Plaintiff adopts and re-alleges each paragraph set forth above.
2. When Defendants conducted their drilling-related activities, as described above, Defendants interfered with and invaded the Plaintiff's private interests in her land by contaminating her ground water.

3. Defendants' drilling-related activities including hydraulic fracturing and storage of drilling waste in disposal wells, injection wells, waste lagoons, and/or other sites near Mitchell'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 Defendants, which resulted in the contamination of the ground water under Plaintiff's land, has substantially interfered with and prevented Plaintiff from the use and enjoyment of her ground water for drinking, bathing, and washing. The contaminated well water offended Plaintiff's senses and made her enjoyment of her property uncomfortable and inconvenient.

5. The contamination of the well water is a proximate cause of Plaintiff's damages, for which the named Defendants are jointly and severally liable to Plaintiff.

V.

TRESPASS CAUSE OF ACTION AGAINST EACH DEFENDANT

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

2. Defendants physically, intentionally, and voluntarily caused and permitted petroleum by-products to cross Plaintiff's property boundaries and enter

into Plaintiff's land and contaminate Plaintiff's ground water.

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

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

5. Defendants' trespass is a proximate cause of Plaintiff's damages, for which the Defendants are jointly and severally liable to Plaintiff.

VI.

NEGLIGENCE CAUSE OF ACTION AGAINST EACH DEFENDANT

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

2. Defendants 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 Plaintiff's ground water.

3. The acts and omissions of Defendants constitute negligence and were a proximate cause of the occurrence, damages, and injuries sustained by Plaintiff, and Defendants are jointly and severally liable to Plaintiff.

VII.

FRAUD/FRAUDULENT CONCEALMENT CAUSE OF ACTION AGAINST EACH DEFENDANT

1. Defendants failed to warn Plaintiff of and have concealed the dangers of the diesel range organic discharges into ground water. Defendants' failure to disclose amounts to fraud and facts and were concealed knowingly and with reckless disregard to Plaintiff's health and well being, and have proximately caused Plaintiff's damages, for which Defendants are jointly and severally liable to Plaintiff.

VIII.

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

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

2. The contamination and discharge of diesel range substances created an unacceptable risk of harm to Plaintiff. Having undertaken an ultra-hazardous and abnormally dangerous activity, the Defendants are strictly liable for the injuries and

damages caused by their activities. The Defendants' ultra-hazardous and abnormally dangerous activities are a proximate and producing cause of Plaintiff's damages, for which Defendants are jointly and severally liable to Plaintiff.

IX.

DAMAGES FOR PLAINTIFF

1. Plaintiff has suffered loss of the use of her ground water and such loss will, in all reasonable probability, continue in the future.

2. Plaintiff has suffered loss of market value of her property and such loss, in all reasonable probability, will continue in the future.

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

4. Plaintiff has suffered emotional harm and mental anguish from deprivation of enjoyment, loss of peace of mind, annoyance, inconvenience, anxiety, and her body has 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 activities described herein, Grace Mitchell has incurred expenses from being forced to buy water from an alternative source. In all reasonable probability, these costs will continue in the future.

6. Medical Monitoring Damages: Plaintiff was wrongfully and significantly exposed to toxic chemicals through the negligent and wrongful actions of the

Defendants. As a proximate result of the exposure, Plaintiff suffers 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. Plaintiff is 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: Plaintiff seeks remediation or the cost of restoring the land and its ground water to their pre-drilling conditions.

8. Plaintiff seeks to recover nominal damages for each trespass by each Defendant, in addition to actual damages described above.

9. Plaintiff seeks to recover exemplary damages against all Defendant in accordance with Texas Civil Practice and Remedies § 41.001 *et seq.*

X.

CLAIM FOR PREJUDGMENT INTEREST

Plaintiff herein claims interest in accordance with Texas law.

XI.

JURY DEMAND

Plaintiff requests that a jury be convened to try the factual issues in this cause.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that upon trial of this cause, this Honorable Court enter judgment for Plaintiff against Defendants 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

Windle Turley

State Bar No. 20304000

T Nguyen

State Bar No. 24051116

6440 North Central Expressway

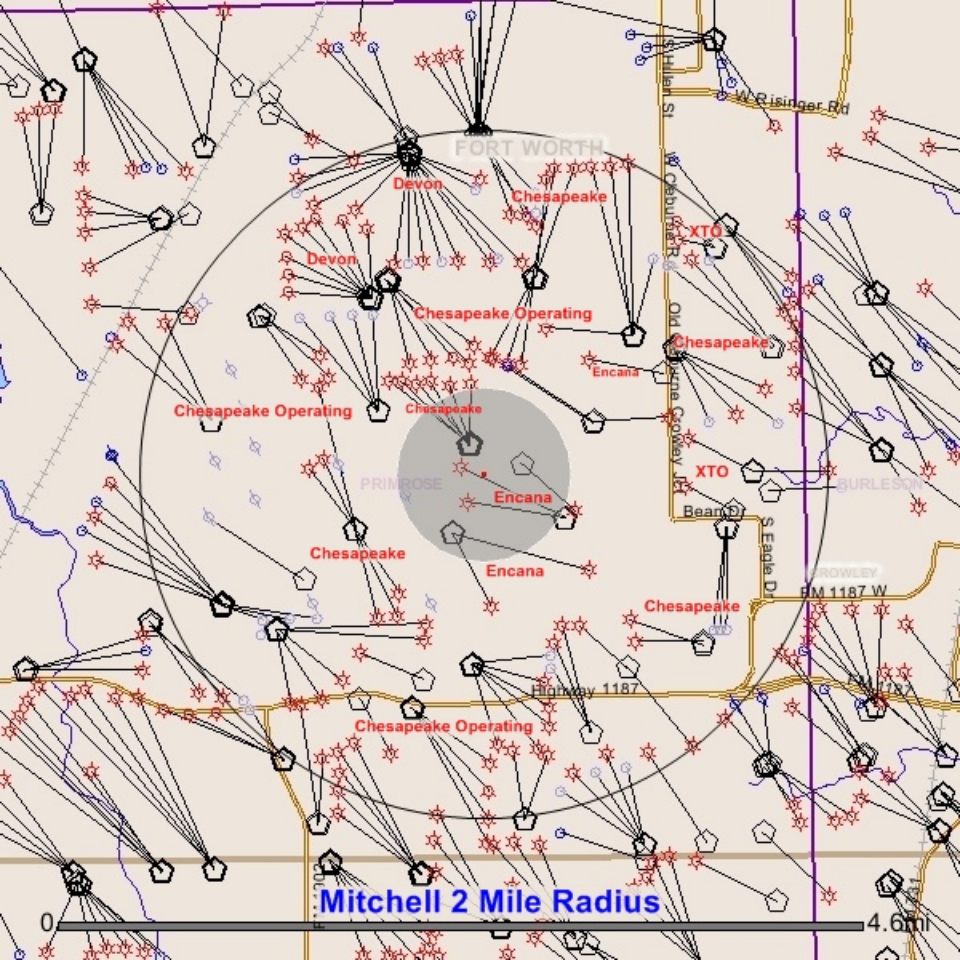
1000 Turley Law Center

Dallas, Texas 75206

Telephone No. 214/691-4025

Telecopier No. 214/361-5802

ATTORNEYS FOR PLAINTIFF



FORT WORTH

Devon

Chesapeake

Devon

Chesapeake Operating

XTO

Chesapeake Operating

Chesapeake

Encana

Chesapeake

XTO

Encana

Chesapeake

Encana

Chesapeake

Chesapeake Operating

Highway 1187

Mitchell 2 Mile Radius

4.6mi