



Toxic Tort Litigation and the Propriety of *Lone Pine* Modified Case Management Orders

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With oil and gas drilling and production occurring more frequently near residential areas, home owners are filing toxic tort claims alleging that oil and gas operations are causing toxic chemical exposure which results in their physical injuries and property damage. In the recent case of *Strudley, et al. v. Antero Resources Corp., et al.*, Case No. 2011CV2218, filed in Denver District Court, the plaintiff's complaint contained no offer of proof that their alleged injuries were causally related to exposure from the nearby oil and gas operations. Similarly, the plaintiff's initial disclosures did not provide any evidence of exposure, injury, or causation.

Thereafter, Judge Frick granted the defendant's request for a modified case management order. Her order required that before full discovery could commence plaintiffs must make a *prima facie* showing (this is a rebuttable presumption standard and not a requirement to prove their entire case at this initial discovery stage) that: 1) there was toxic chemical exposure during the drilling of the wells and subsequent operations; 2) that plaintiffs suffered physical injuries; and 3) that their alleged exposure to the harmful toxic chemicals from the nearby oil and gas operations was causally related to their alleged personal injuries and property damage. This modification to the case management order in toxic tort cases is known as a "Lone Pine" order, stemming from a case bearing its name from New Jersey. *Lore v. Lone Pine Corp.*, 1986 WL 637507 (N.J. Sup. Ct. Nov. 18, 1986).

The Strudleys were given 105 days by the trial court to present this *prima facie* evidence to the Court. When the Strudleys failed to present any plausible evidence of exposure to toxic chemicals, any injuries, or a causal connection between the alleged exposure and their claimed injuries—thus failing to comply with the Court's *Lone Pine* Order—the Judge dismissed their case with prejudice.

The Strudleys appealed the district court's dismissal of their personal injury case to the Court of Appeals. The Court of Appeals overturned the district court's dismissal of the case and held that *Lone Pine* orders are too restrictive on Colorado plaintiffs and are not permitted under Colorado law. The Court of Appeals further determined that even if *Lone Pine* orders were permitted in Colorado, this case was not sufficiently complex to warrant a *Lone Pine* order.

Thereafter, Antero sought *certiorari* to the Colorado Supreme Court. The Supreme Court granted *certiorari* on April 7, 2014 regarding the two issues raised by the Court of Appeals' decision.

Lone Pine orders make sense in toxic tort and other complex tort cases to promote the just, speedy, and inexpensive resolution of cases, which is a prime directive of the Colorado Rules of Civil Procedure. See C.R.C.P. 1. These complex tort cases usually involve significant discovery and the need for numerous expert witnesses. Because these cases are costly to defend, they are prime cases in which plaintiffs attempt to extract early settlements even when their claims have no merit. *Lone Pine* orders assist the courts in culling out meritless cases, such as this one, that unnecessarily clog up the district court's docket.

The Strudley's case in the Colorado Supreme Court is currently being briefed by the parties. A final decision on the propriety of *Lone Pine* orders in complex tort cases will be forthcoming from the Colorado Supreme Court. For more information, please contact [Karen Spaulding](#) at Beatty & Wozniak.

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