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Fiorentino v. Cabot Oil and Gas Corp.

No. 09-cv-2284; 750 F.Supp. 2d. 506 (M.D. Pa. Nov. 15, 2010)

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Sixty-three (63) property owners (“Plaintiffs”) filed a complaint against Cabot Oil and Gas (“Cabot”) to recover damages allegedly arising from Cabot’s operation of natural gas wells in Dimock Township, Susquehanna County, Pennsylvania. Specifically, Plaintiffs alleged that Cabot improperly conducted hydraulic fracturing and other activities causing the release of methane, natural gas, and other toxins into Plaintiff’s land and groundwater.

After Plaintiffs filed a second amended complaint, Cabot moved to strike certain allegations contained in this complaint, and moved to dismiss the second amended complaint entirely.

The court addressed each claim Cabot sought to strike individually. Cabot argued that claims under the Hazardous Sites Cleanup Act must be dismissed due to Plaintiffs’ failure to provide sixty-days (60) notice prior to commencing the lawsuit. With respect to the notice requirement, the court held that such notice is only required in suits for

property damage and actual or potential bodily injury. In this case, the suit was for response costs, and thus no notice was required prior to filing the suit.

With respect to the strict liability claim, the issue was whether hydraulic fracturing constituted an abnormally dangerous activity. The court began its analysis by noting that this question has yet to be definitively answered in Pennsylvania. The court mentioned that some activities ancillary to drilling, such as the operation of a pipeline, have not been held abnormally dangerous, but it declined to rule on the issue as the record was insufficiently developed to make such a determination. Accordingly, the court denied Cabot's motion on this claim.

The next count Cabot sought to dismiss was the Medical Monitoring Trust Fund claim. This type of claim is appropriate where a plaintiff can prove exposure to a dangerous substance and that creates a heightened risk of medical problems warranting medical monitoring to be paid by the responsible defendant. Accepting all averments in the complaint as true, the court ruled that "fracking fluid" as well as the released methane could be the cause of the alleged injuries and that they may be reoccurring and ongoing. Accordingly, the court denied Cabot's motion to dismiss this claim.

With regard to Plaintiffs' Gross Negligence claim, the court initially noted that Pennsylvania does not recognize claims based on gross negligence. Accordingly, the court granted Cabot's motion to dismiss this claim. However, the underlying allegations that support this claim were allowed to remain in the complaint to the extent that they support Plaintiffs' claim for punitive damages.

Finally, the court addressed Cabot's motion to strike from the second complaint all allegations regarding entitlement to relief under various damage theories.

The court ruled that future illness, emotional distress, punitive damages, and attorneys' fees are all plausibly recoverable, and the record was not sufficiently established to rule on the appropriateness of such relief. Accordingly, the court denied Cabot's motion to strike all allegations relating to the recovery of such damages.



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