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Judge Erases Verdict Against Cabot in Bellwether Fracking Case

A federal judge has taken the rare step of tossing a \$4.24 million jury verdict that ended an epic court battle over whether hydraulic fracturing polluted the drinking water of two Pennsylvania families.

Though a new trial is not off the table, US District Magistrate Martin Carlson had strong words for the plaintiffs' legal strategy by asserting that the case was tried on sparse and sometimes contradictory evidence. His sharply worded opinion could discourage others from pursuing litigation against oil and gas companies over alleged water contamination or other harm.

The ruling in the US District Court for the Middle District of Pennsylvania granted a request from Cabot Oil & Gas to vacate the jury's verdict and award. In the 58-page opinion, Carlson cited myriad examples of inappropriate conduct that could have unduly influenced the jurors.

The judge stopped short of finding in favor of Cabot and dismissing the case, as the company had asked him to do. But he did agree with Cabot that the evidence was "sometimes contradictory, frequently rebutted by other scientific expert testimony, and relied in some measure upon tenuous inferences" ([NGW Apr.18'16](#)). He directed the parties to begin settlement talks.

For the better part of a decade, the families have sparred with Cabot in a case that garnered national headlines in 2009 at the start of the Marcellus Shale gas drilling boom. Starting with 44 plaintiffs, the lawsuit alleged that the company's fracking operations in the northeastern Pennsylvania town of Dimock polluted their drinking water with methane.

The allegations, featured in the polarizing, Oscar-nominated 2010 documentary *Gasland*, at the time became a public relations nightmare for a gas industry trying to win over local landowners and regulators in new drilling frontiers, particularly Appalachia. The legal case sparked fears that toxic tort claims against energy companies would proliferate.

The number of plaintiffs in the district court suit ultimately dwindled to nine following settlements with Cabot, and the litany of personal injury and other claims the judge described as a "legal broadside" were winnowed to private nuisance claims.

Following a three-week trial earlier this year, six jurors awarded \$1.3 million each to Scott Ely and Monica Marta-Ely. Each of their three children received an award of \$50,000. A second couple, Ray and Victoria Hubert each received \$720,000, and their daughter was awarded \$50,000.

But Carlson's ruling makes clear that he was less than happy about how the trial went. The opinion suggests several times that plaintiffs' lawyers stepped around evidentiary restrictions, such as referencing the earlier settlements with Cabot, which could have prejudiced the jury.

"The aggregate effect of this repeated trespass into prohibited areas was compounded during a highly irregular closing argument, which ultimately created the impression for the jury that Cabot must have been responsible for all of the

plaintiffs' alleged water problems" some of which pre-dated Cabot's Dimock operation, the judge wrote.

Included among the evidence the judge said was disallowed: a consent decree issued by the Pennsylvania Department of Environmental Protection and information about the state's investigation, which found Cabot responsible for methane migration due to faulty well construction.

Carlson also criticized the jury verdict's price tag, saying the "evidence at trial was bereft of any information that could have allowed the jury to calculate a multi-million dollar award."

Cabot welcomed last week's ruling, with a company spokesman saying the company was always "confident that once a thorough review of the overwhelming scientific evidence and a full legal analysis of the conduct of the plaintiff's counsel was conducted, the flaws in the verdict would be understood."

The plaintiffs' attorney, Leslie Lewis, said in a public statement floated by Food & Water Watch that Carlson's unusual ruling "marks another dark chapter for the victims of water contamination from gas drilling operations" -- and that the opinion does not accurately reflect the trial record.

There is generally a high bar for tossing out a jury verdict; a judge must be convinced that a "reasonable jury" would not have solid legal ground to reach a certain conclusion.

"It's pretty rare for a judge to strike a jury decision," said Shoshana Schiller, an attorney with Manko Gold Katcher Fox law firm in Pennsylvania.

There is a fair amount for the gas industry as a whole to like about Carlson's ruling. Schiller said the judge's decision could send a signal to other plaintiffs' attorneys in similar litigation "you want to be really careful."

Causation is typically a tricky point in negotiating toxic tort claims, but with fracking cases, where there is often no clear pathway for contamination, it is often even more difficult. Carlson's ruling made "quite clear that [the plaintiffs] didn't really draw the line from point A to point B," Schiller said.

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