



Written by [Bob Adelman](#) on May 7, 2014

## Media Celebration Over Fracking Verdict Is Premature

On April 22, when the six-person jury's verdict awarding \$2.95 million in a strange nuisance lawsuit in Dallas [was announced](#), the national media nearly frothed at the mouth, salivating over what they perceived as a "breakthrough" case in the war against what is known in the oil and gas business as hydraulic fracturing or "fracking."

The headline from CNN screamed, "Texas family plagued with ailments gets \$3M in 1st-of-its-kind fracking judgment." The *Los Angeles Times* wrote that the verdict "is thought to be the first of its kind in the nation," and quoted environmentalist Gary Wocker, who exclaimed: "It's a game-changing verdict that may have repercussions throughout the United States," implying that the first olive out of the bottle is always the hardest and that the next ones will now come out more easily.



Their celebrations, however, are premature, as several experts say the verdict may well be overturned on appeal.

The story that culminated in this lawsuit goes back 13 years. Bob Parr, now a 53-year-old stonemason and cattle rancher, bought a 40-acre spread near Decatur, Texas (about 40 miles northwest of Fort Worth) in 2001. Lisa and her daughter, Emma, moved in with him in 2007, and the two were married a year later. Surrounding their ranch were more than 20 oil and natural gas wells, some as close as 1,000 feet.

Lisa, a stay-at-home mom, first began to feel poorly in November 2008, but thought it was just the flu. Her symptoms kept getting worse, however: blinding headaches and nausea coupled with skin rashes. Emma, then nine, started having nosebleeds, while her stepfather developed memory problems.

They noticed that some of their calves were born with birth defects, and some of their pets began to die. In January 2010, the Parrs hired an environmental air quality company to test the air in their home, which found traces of benzene, toluene, ethyl benzene, and xylene. In August 2010, the Parrs moved out of their home and lived until March 2011 in a back room of Bob's business office in Denton, about 30 miles away.

In September 2011, with the help of three Dallas law firms, the Parrs sued nine companies operating the wells around their ranch, asking for \$66 million in damages.

Those are the *facts*.

The *assumptions* are that the symptoms the Parrs experienced all came from those nearby wells.



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As Brad Gilde, head of an environmental law firm in Dallas and lead attorney in the lawsuit, put it, “This lawsuit was really about air emissions from the totality of unconventional [read: fracking] shale gas development.”

Here are some more inconvenient facts. By the time the lawsuit actually went to a jury trial, all but one of the companies included in the suit had either been dismissed, or had decided to settle out of court for undisclosed sums. And the amount demanded in damages had been reduced to \$9 million. After hearing from Aruba Petroleum, the jury voted 5-1 to award a third of that demand to the Parrs, subject to the judge’s approval.

When the judge signs off, Aruba plans to appeal, asserting,

We contended [that] the plaintiffs were neither harmed by the presence of our drilling operations nor was the value of their property diminished because of our natural gas development.

We presented thorough and expert testimony from recognized toxicologists and medical professionals, as well as local real estate professionals, to help the jury make an informed decision.

Unfortunately, they returned a verdict that we believe is counter to the evidence presented.

The appeal is likely to overturn the award, according to at least two attorneys closely connected with the case. Wendy May, a Dallas attorney who defended one of the other drilling companies named in the suit, stated:

The knee-jerk reaction by people not understanding the limitations of this verdict in this case may, in fact, cause others to believe there is an avenue for cases that there may not ultimately turn out to be.

I don’t think it presents any precedents, certainly not from a legal perspective. I think the case is ripe for review by the appellate courts and, based on clear laws that have been laid out by the Texas Supreme Court, a decision like this should not stand.

Gail Wurtzler, named one of the best lawyers in America in 2010, agreed with May that this is a “one-off” case, adding, “Nuisance cases [such as this one] are very fact-specific and [so] the results in one would not have implications for others.”

In addition, it will be hard for the Parrs or their attorneys, on appeal, to uphold their claim that it was only Aruba’s wells that allegedly made them sick.

More inconvenient facts in the case include the decision by the Parrs to move back to their home after Aruba added additional air monitors and scrubbing equipment to their wells, and the Parrs now say they are feeling just fine. In addition, the Parrs admit that their lawsuit wasn’t against fracking at all, just that, in their opinion (aided and abetted by hungry law firms) Aruba wasn’t acting as a good neighbor, hence the “nuisance” lawsuit filing in the beginning.

Besides, Bob Parr owns some oil leases, and his wife, Lisa, favors fracking. They have said, “We are not anti-fracking or anti-drilling. My goodness, we live in Texas. Keep it in the pipes and if you have a leak or a spill, report it and be respectful to your neighbors. If you are going to [put these chemicals into wells operating] in close proximity to homes, be respectful and careful.”

The closer one looks at the facts behind the headlines, the clearer it becomes that the celebration of the victory in Dallas against the “greedy, self-serving, uncaring,” and “ruthless” oil and gas industry is very premature. As the case moves on to appeal, expect to hear nothing more from the frantic media about



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this so-called victory over fracking.

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