

***Hydraulic Fracturing & How Chemical Companies
Could Be Brought Into Contamination Cases***

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- Assume you are a chemical manufacturer that sells products to various industry sectors across the country. You know very little about the natural gas business, but are aware that some of your customers use your chemicals for hydraulic fracturing. Some of these chemicals allegedly present risks to human health and the environment. You get word that private and public drinking water wells may have been contaminated by the hydraulic fracturing activities of a customer and that your chemicals have been detected in the wells. Can your company be sued for personal injury or property damage even though the company had nothing to do with the actual hydraulic fracturing?
- Hydraulic fracturing is the process of recovering natural gas and other petroleum products trapped thousands of feet below ground in low-permeability rock formations. Chemicals, along with water and sand, are injected into the well at high pressures to help create fractures in the rock so that the natural gas flows more easily into the well and back to the surface. Each chemical serves a unique role in the process, such as dissolving minerals in the rock, preventing pipe corrosion in the well, or increasing the viscosity of the fracturing fluid. While there have been instances of environmental contamination involving these chemicals, due to incidents like spills on the surface or poor well casings, plaintiffs who have filed suit for damages have usually targeted the gas companies and well operators as defendants, not the chemical manufacturers.
- Lawyers representing plaintiffs interested in pursuing the chemical manufacturers might look to similar cases for guidance involving a gasoline additive known as MTBE. The additive has contaminated drinking water supplies across the United States and plaintiffs have successfully recovered hundreds of millions in damages from MTBE manufacturers. The plaintiffs alleged that the manufacturers were liable, even though the defendants did not directly cause the contamination, because the manufacturers allegedly knew MTBE could easily contaminate groundwater and that it may pose health risks. The plaintiffs brought several causes of action, including product liability (design defect and failure to warn), trespass, and nuisance. One could see plaintiffs making the same allegations in hydraulic fracturing cases – that chemical manufacturers knew or should have known that hydraulic fracturing can lead to groundwater contamination and that their chemicals may pose various hazards to human health and the environment.
- These lawsuits would raise many interesting issues. For example, what hurdles will plaintiffs face in proving that a certain chemical caused an alleged disease, especially where only small amounts of the chemical were used in the fracturing process? Would large chemical companies who purchase the chemicals and then blend them into the fracturing fluid potentially face more liability than the small, upstream chemical manufacturer? And what can manufacturers do to limit their litigation exposure?