

The Firm Line

October 2013

Welcome to *The Firm Line*, a newsletter designed to inform our clients and friends about developments at the firm, legal issues that may impact your lives and businesses, and other items of interest. Our intention is to keep the information we provide to you in this newsletter concise. We welcome any further discussion on the topics discussed herein and hope that *The Firm Line* will provide you with interesting and noteworthy information about the law and our firm.

Colorado Appeals Court Rejects Fracking Company's Attempt to Make it Harder for victims of Fracking Contamination to Sue for Damages

A Colorado appeals court recently denied a request by a fracking company to issue a "*Lone Pine* order" that would have made it more difficult for plaintiff landowners to sue fracking companies for alleged fracking contamination. The court's rejection reiterates a precedent that such additional hurdles are not appropriate in the context of fracking contamination suits. *Lone Pine* orders hurt a landowner's ability to sue fracking companies because they require landowners to present a certain amount of evidence of contamination and causation *before* the landowner is able to proceed with any of the legal "discovery" process. In the discovery process, documents and information are exchanged and witnesses are deposed. The discovery process often yields the clearest and most valuable evidence establishing fault and causation. For this reason, placing the burden of proof on the landowners *before* the discovery period even commences makes it harder for landowners to establish the required proof, and it would have the practical effect of foreclosing many contamination suits.

In *Strudley v. Antero Resources Corp.*, No. 2011-CV-22 (Colo. Dist. Ct., Denver Co. May 9, 2012), plaintiff landowners alleged that defendant fracking operators within one mile of plaintiffs' property contaminated plaintiffs' water wells with fracking chemicals. The district court issued a "*Lone Pine* order" requiring plaintiffs to demonstrate their exposure, injury, and evidence of causation as a threshold matter before discovery could proceed. Plaintiffs failed to make the requisite prima facie showing of causation, and the district court granted the defendants' motion to dismiss. On July 3, 2013, however, a Colorado Court of Appeals overturned the *Lone Pine* order ruling and dismissal order. The Court of Appeals found that two Colorado Supreme Court cases, along with differences between the state and federal civil procedure rules, made *Lone Pine* orders inappropriate in the context of the *Strudley* suit. The defendants have now asked the Colorado Supreme Court to review the appeals court's rejection of the *Lone Pine* order.

Author



Andy Jacoby

Jones, Swanson, Huddell
& Garrison, LLC
601 Poydras Street
Suite 2655
New Orleans, LA 70130
Phone: (504) 523-2500
ajacoby@jonesswanson.com

Suggestions

Please provide us with ideas and suggestions for topics that you would like to read about in the future, as well as any thoughts you may have that will help us deliver better, more insightful information to you.

Contact Us

Jones, Swanson, Huddell & Garrison, L.L.C.

Pan-American Life Center
601 Poydras Street
Suite 2655
New Orleans, Louisiana
70130
Phone: (504) 523-2500
Facsimile: (504) 523-2508
toll free: (800) 998-6942

Although the *Strudley* case is in Colorado state court, it has important implications nationwide. First, if the Colorado Supreme Court overturns the appeals court ruling and reinstates the *Lone Pine* order, it could establish a precedent for other courts to issue similar *Lone Pine* orders, even outside of Colorado. On the other hand, if the Colorado Supreme Court affirms the Court of Appeals' rejection of the lower court ruling, it would follow most other courts, which have found *Lone Pine* orders inappropriate in the fracking contamination context. See, for example, *Hagy v. Equitable Prod. Co.*, 2:10-CV-01372, 2012 WL 713778 (S.D.W. Va. Mar. 5, 2012); 2012 WL 3864954 (Sept. 5, 2012) (rejecting request for court to issue a *Lone Pine* order); *Kamuck v. Shell Energy Holdings GP, LLC*, No. 4:11-cv-01425-MCC (M.D. Pa., August 3, 2011) (same); but see *Baker, et al. v. Anschutz Exploration Corp.*, No. 11-06119 (W.D.N.Y.) (Doc. 112, filed June 27, 2013). The meaning of the *Strudley* Court of Appeals' decision is that it is now more difficult for an oil company defendant to convince a court to use a *Lone Pine* order, and for this reason the appeals court decision supports landowner rights. All eyes are now on the Colorado Supreme Court to see if they decide to review the matter, and if so, whether they will let stand the appeals court decision or reinstate the *Lone Pine* order.

New Orleans Magazine Names Jones Swanson Attorneys as 2013 "Top Lawyers"

New Orleans Magazine named three attorneys from Jones, Swanson, Huddell & Garrison as 2013 "Top Lawyers," a title given annually to distinguished attorneys practicing in New Orleans.

[Gladstone N. Jones, III](#) was selected in the categories of Bet-the-Company Litigation, Commercial Litigation, and Environmental Law; [Lynn Swanson](#) was named in the category of Commercial Litigation; and [Kevin E. Huddell](#) was recognized in the category of Environmental Law.

Congratulations to Glad, Lynn, and Kevin for their well-deserved awards.



Gladstone Jones



Lynn Swanson



Kevin Huddell

ABOUT THE FIRM

Jones, Swanson, Huddell & Garrison, L.L.C., is a boutique litigation law firm based in New Orleans, Louisiana, which handles complex commercial and environmental/property disputes. In the commercial and environmental litigation arenas, the firm has and continues to represent many of Louisiana's and the Southeast's largest and most active business entrepreneurs and landholders, while also retaining a focus on the representation of small businesses and individuals. Jones Swanson is not limited geographically, having served as lead counsel in litigation elsewhere, including in California, Connecticut, Massachusetts, New York, and Texas as well as Mississippi, Alabama, Florida and Louisiana.



DISCLAIMER

Copyright 2013. All rights reserved. Jones Swanson Huddell & Garrison, LLC, produces the information in this newsletter

as a service to clients and friends of the firm. It should not be construed as legal or professional advice or as an opinion with regard to any particular factual scenario. Legal advice or consultation should be sought before taking action on the information presented in this newsletter.

[Forward this email](#)



This email was sent to mgogreve@joneswanson.com by mgogreve@joneswanson.com | [Update Profile/Email Address](#) | Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).

Jones, Swanson, Huddell & Garrison | 601 Poydras Street, Suite 2655 | New Orleans, | LA | 70130