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The Vicissitudes of Life: *Meier v. Chesapeake Operating*

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ONE J

Oil and Gas, Natural Resources, and Energy Journal

VOLUME 4

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THE VICISSITUDES OF LIFE: MEIER V. CHESAPEAKE OPERATING

KELSEE KEPHART*

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I. Introduction

A. Oklahoma Economy: The SCOOP & STACK

The State of Oklahoma has a rich history of oil and gas development along with an economy that has become highly dependent on oil and gas operations within the state. According to the Oklahoma Energy Resource Board (“OERB”), Oklahoma is the fourth-largest producer of crude oil and the third-largest producer of natural gas in the country.¹ Historically, some of the most sought-after oil and gas drilling and production locations in the country have been found in Oklahoma.² The “highly developed” infrastructure of the industry in the southern states has significantly contributed to Oklahoma’s superior development in the natural resource industry.³ In reference to Oklahoma oil fields, oil and gas analyst Jason Carnovale of the Freedonia Group said, “[n]ot only do they possess strong individual wells, initial production (“IP”) rates and competitive drilling costs, these oil fields feature stacked formations.”⁴

Along with Oklahoma’s advantageous infrastructural position, the state is home to the South Central Oklahoma Oil Province (“SCOOP”) and the

1. *Scoop & Stack: Breaking Down the Economic Impact of O&NG Reserves*, ENERGY HQ: POWERED BY THE OKLAHOMA ENERGY RESOURCE BOARD, <https://energyhq.com/2018/06/scoop-stack-breaking-down-the-economic-impact-of-ong-reserves/> (last visited Jan. 22, 2019).

2. Daniel Debelius, *Layer Cakes: The Geology of Oklahoma’s SCOOP and STACK*, FREEDONIA (Aug. 10, 2017), <https://www.freedoniagroup.com/Content/Blog/2017/08/10/Layer-Cakes--The-Geology-of-Oklahomas-SCOOP-and-STACK>.

3. *Id.*

4. *Id.*

Sooner Trend Anadarko Canadian Kingfisher (“STACK”) shale plays.⁵ The SCOOP, in particular, includes parts of Caddo, Grady, Comanche, Stephens, McClain, Carter, Love, Murray and Garvin counties.⁶ The SCOOP, importantly, overlaps with the geological province under scrutiny in the *Meier v. Chesapeake* case—the Arbuckle Uplift.⁷ The SCOOP and STACK plays are layered with multiple dense formations, including the Woodford Shale formation which is known for its high yields of oil and condensate.⁸

B. Underground Injection Wells

The Federal Safe Water Drinking Act (“SWDA”) of 1974 protects the public by regulating the quality of drinking water.⁹ Pursuant to the Act, a program was enacted to regulate underground sources of public drinking water.¹⁰ Under the program, the Environmental Protection Agency (“EPA”) sets out minimum requirements for state underground injection control (“UIC”) programs.¹¹ Oklahoma’s UIC program was approved by the EPA in 1981, granting the state authority over the entire state, except for the Osage Indian Reserve.¹² The Oklahoma Corporation Commission (“OCC”) is vested with control over Class II wells under 52 O.S. 2011 § 139(B)(1)(f).¹³

Since 1981, the Oklahoma Corporation Commission has held primacy for approval and regulation of underground injection wells.¹⁴ Particularly, within the OCC’s jurisdiction are Class II wells under the Federal Underground Injection Control Program.¹⁵ Class II wells consist of disposal wells, enhanced recovery wells, and hydrocarbon storage wells.¹⁶

5. See *Maps: Oil and Gas Exploration, Resources, and Production*, U.S. ENERGY INFORMATION ADMINISTRATION, <https://www.eia.gov/maps/maps.htm> (last visited Jan. 22, 2019).

6. *Id.*

7. *Id.*

8. See Matt Menchaca, *Oklahoma Oil and Gas: Woodford SCOOP Wells Have Stamina*, DRILLING INFO (Jan. 14, 2014), <https://info.drillinginfo.com/oklahoma-oil-and-gas-woodford-scoop-wells-stamina/>. See also Bob Black, *Exactly What is Condensate and Why is its Export Prohibited?*, DRILLING INFO (Jan. 6, 2015), <https://info.drillinginfo.com/what-exactly-is-condensate/> (providing background information on condensate).

9. 42 U.S.C.A. § 300f, et seq. (West 2016).

10. *Sierra Club v. Chesapeake Operating, LLC*, 248 F.Supp. 3d 1194, 1200 (W.D. Okla. 2017).

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. OKLA. STAT. ANN. tit. 52 §139(B)(1)(f) (2011).

16. EPA Underground Injection Control Program, 40 C.F.R § 144.6 (West 2011).

Operators most commonly use disposal wells to dispose of wastewater generated from production and hydraulic fracturing.¹⁷ Hydraulic fracturing is a method used to create new pathways in a formation for hydrocarbons to flow.¹⁸ This method permanently changes the formation's geology.¹⁹ Water from both production and hydraulic fracturing have high levels of brine from ancient formations and other materials that cannot be allowed to mix with the ground or drinking water.²⁰ Operators often inject wastewater into the depleted wellbores of formations that previously held oil and gas, using them as disposal wells.²¹

Contrary to popular belief, approximately ninety-five percent of the wastewater injected into disposal wells is produced water—formation water that is extracted along with oil and gas—not flowback fluid.²² “Flowback fluid” refers to the fluid that flows back up the wellbore after hydraulic fractionation stages are complete.²³ This fluid often contains brine, chemicals, and sometimes naturally occurring radioactive material.²⁴ Flowback tends to be highly toxic and is often disposed of by injection into underground disposal wells along with produced waters.²⁵ Recovery of hydraulic fracturing water from a reservoir is, in most cases, less than fifty percent.²⁶

C. The Arbuckle Uplift and Seismicity

The Arbuckle Uplift is a geological province that lies under a large portion of Oklahoma.²⁷ The formation has high porosity and is, therefore, commonly

17. Monika U. Ehrman, *Earthquakes in the Oilpatch: The Regulatory Legal Issues Arising out of Oil and Gas Operation Induced Seismicity*, 33 GA. STATE U. L. REV. 609, 626–27 (2017).

18. Monika U. Ehrman, *The Next Great Compromise: A Comprehensive Response to Opposition Against Shale Gas Development Using Hydraulic Fracturing in the United States*, 46 TEX. TECH L. REV. 423 (2014).

19. *Id.*

20. Ehrman, *supra* note 17.

21. *Id.* at 627.

22. Seth Whitehead, *Oklahoma Earthquakes Have Decreased Rapidly Since 2015*, UNITED STATE GEOLOGICAL SURVEY (APRIL 6, 2018), <https://www.energyindepth.org/oklahoma-earthquake-declines-continue-first-quarter-2018/>.

23. Ehrman, *supra* note 18, at 433–34.

24. *Id.*

25. *Id.*

26. *Id.*

27. Joe Wertz, *A Popular but Poorly Understood Oklahoma Rock Layer is Keeping Earthquake Secrets*, STATE IMPACT: OKLAHOMA, <https://stateimpact.npr.org/oklahoma/>

used for wastewater disposal because it can absorb large amounts of water.²⁸ In 2014, Oklahoma was considered the most seismically active state—even more so than California.²⁹ During 2015–2017, the OCC issued several directives and reduction plans to reduce the amount of wastewater disposed into the Arbuckle formation due to concerns about induced seismicity.³⁰ The OCC, as part of its 2015 response, ordered 92 operators of 347 disposal wells to proffer proof that no granite “basement rock” was being disturbed by their wells.³¹

Issues of man-induced seismicity are often found where disposal wells are drilled too deeply into basement rock.³² Seismicity has much to do with the underlying fault lines of the area.³³ In Oklahoma, for example, the plates are “squeezing the region from east to west, which results in most earthquakes occurring along a northwest-southwest fault.”³⁴ Faults are located in basement rock.³⁵ Ancient basement rock tends to fracture along major faults under duress.³⁶ So, “[t]he deeper you inject, the more likely it is that the injected brine is going to make its way into seismogenic fault zone, prone to producing earthquakes.”³⁷

Ultimately, the location of the disposal wells in conjunction with the relative fault scheme of the area, creates the propensity for injection to cause earthquakes. Consequently, the majority of Oklahoma’s disposal wells are not likely to induce earthquakes—only those drilled too deeply into the basement rock.³⁸ Importantly, since the introduction of the 2015 mandates, induced seismic activity in Oklahoma has seen a rapid decline.³⁹ In fact, the

2015/11/30/a-popular-but-poorly-understood-oklahoma-rock-layer-is-keeping-earthquake-secrets/ (last visited Dec. 17, 2018).

28. Ehrman, *supra* note 17.

29. *Earthquakes*, STATE IMPACT: OKLAHOMA, <https://stateimpact.npr.org/oklahoma/tag/earthquakes/> (last visited Oct. 19, 2018).

30. *Sierra Club v. Chesapeake Operating, LLC*, 248 F. Supp.3d 1194, 1202 (W.D. Okla. 2017). The OCC’s response to seismic activity in the formation began as early as 2013.

31. STATE IMPACT: OKLAHOMA, *supra* note 29.

32. Ariane Wu, *Are We Causing Earthquakes in Oklahoma?* (Aug. 17, 2015), <https://www.pri.org/stories/2015-08-17/are-we-causing-earthquakes-oklahoma>.

33. Ehrman, *supra* note 17.

34. *Id.* (citation omitted).

35. Wu, *supra* note 32.

36. Ehrman, *supra* note 17.

37. *Id.* at 627–28 (citation omitted).

38. Whitehead, *supra* note 22.

39. *Id.*

average daily felt earthquake count for the first few months of 2018 was seventy-nine percent lower than that of 2015.⁴⁰

Some blame hydraulic fracturing, in part, for induced seismicity.⁴¹ However, it has been generally accepted that hydraulic fracturing activities rarely—if at all—cause earthquakes within the United States.⁴² In light of same, the regulatory scheme imposed to regulate injection wells, the Safe Water Drinking Act, specifically omits hydraulic fracturing activity from the regulatory scheme, unless there is injection with diesel.⁴³ The Safe Water Drinking Act specifically excludes “the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities[,]” from its definition of “underground injection.”⁴⁴

II. Law before the case

A. Jurisdiction

The question before the court in *Meier v. Chesapeake Operating* was one of first impression for Oklahoma courts. Therefore, it was appropriate that the district court, sitting in diversity, review whether or not the Property Owners should be allowed to recover insurance premiums, in the absence of Oklahoma substantive law, based off of how the court predicted the Oklahoma Supreme Court would rule on the matter.⁴⁵ The court, in making the prediction, was “free to consider all resources available, including decision of [Oklahoma] courts, other state courts and federal courts, in addition to the general weight and trend of authority.”⁴⁶

B. Recovery of Insurance Premiums

Insurance premiums have sometimes been awarded as damages in civil suits. In *Seifts v. Consumer Health Solutions LLC*, participants in a health insurance plan were awarded insurance premiums paid as recovery for a

40. *Id.*

41. Ker Than, *Oklahoma Earthquakes Linked to Oil and Gas Wastewater Disposal Wells, Say Stanford Researchers*, STANFORD UNIVERSITY NEWS (June 18, 2015), <https://news.stanford.edu/2015/06/18/okla-quake-drilling-061815/>.

42. *See Id.*

43. The Federal Safe Water Drinking Act (“SWDA”), 42 U.S.C.A. § 300h(d)(1)(B) (West 2016).

44. *Id.*

45. *See Erie v. Tompkins*, 304 U.S. 64 (1938); *F.D.I.C. v. Schuchmann*, 235 F.3d 1217 (10th Cir. 2000).

46. *Schuchmann*, 235 F.3d at 1225.

breach of contract suit.⁴⁷ Similarly, in *Washington Life Insurance Co. v. Lovejoy*, insured recovered insurance premiums paid after insurance company breached contract.⁴⁸ Also, in *Mills v. Dailey*, a divorcee was allowed to recover certain insurance premiums paid from the father of her children.⁴⁹ In *Inchaustegui v. 666 5th Ave. Ltd. P'ship*, the court was unwilling to award punitive-style tort damages for breach of contract but did allow for the recovery of the cost to purchase insurance.⁵⁰ Further, in *Awuah v. Coverall North American Inc.*, insurance premium recovery was statutorily enforced.⁵¹ Finally, in *Claudet v. Weyrich*, the future cost of insurance premiums to be paid were awarded for medical malpractice.⁵²

However, in *Severn Place Associates v. American Building Services, Inc.*, increased insurance premiums allegedly arising from tortfeasor's negligence were not awarded because the suing party could not show the conduct was the cause of the injury in question.⁵³ On appeal, the appellate court further rationalized the premiums could not be awarded as a policy matter and the damages were "too remote."⁵⁴ Similarly, in *Nikolaus v. City of Baton Rouge*, insurance premiums were not awarded under the *Severn Place*⁵⁵ ruling, based on a lack of cause of action for recovery under theories of strict liability or negligence.⁵⁶

C. Oil and Gas Operations

In Oklahoma and under federal law, landowners generally have recourse against oil and gas operators for their harmful activities or presence on leased property in the form of either tort or environmental claims.⁵⁷ Claims may take the form of nuisance, negligence, trespass, constructive fraud, unjust enrichment, and breach of contract.⁵⁸ Meritorious claims may allow for recovery of damages for permanent and temporary injury to real property;

47. 61 F.Supp.3d 306, 327 (S.D.N.Y. 2014).

48. 149 S.W. 398 (Tex. Civ. App. 1912).

49. 38 So. 3d 731 (Ala. Civ. App. 2018).

50. 749 N.E. 2d 196 (N.Y. 2001).

51. 952 N.E.2d 890, 900 (Mass. 2011).

52. 662 So.2d 131, 132 (La. App. 4th Cir. 1995).

53. 930 So. 2d 125, 129 (La. App. 2006).

54. *Id.*

55. *Id.*

56. 40 So. 3d 1244, 1248 (La. App. 2010).

57. Roger Meiners and Bruce Yandle, *The Common Law: How it Protects the Environment* (May 1, 1998), <https://www.perc.org/1998/05/01/the-common-law-how-it-protects-the-environment/>.

58. *Id.*

injury to personal property; injury to person; lost rents or profits; annoyances, inconveniences, discomfort and loss of enjoyment; costs of investigation and remediation; punitive damages; injunction; abatement; and attorney's fees and costs.⁵⁹ When pursued in the environmental claim context, claims often arise under the Safe Drinking Water Act, National Environmental Policy Act, Clean Air Act, Clean Water Act, or UIC regulatory violations.⁶⁰

Seismicity induced by oil and gas operations has caused a unique strain of litigation. Anthropogenic seismicity, unlike naturally occurring seismicity, is not considered an "Act of God" because it involves human interference.⁶¹ Acts of God are often exempted from liability due to lack of foreseeability or based on force majeure clauses in contracts.⁶² Generally, strict liability as a cause of action has been rejected for oil and gas operations.⁶³

In general-tort actions, plaintiffs often face the impossible obstacle of proving what event caused the alleged damage and what company was specifically responsible for the harmful event.⁶⁴ Further, restraints from the Federal Rules of Evidence and disallowance of speculative evidence under *Shell Oil Co. v. Haunchild*⁶⁵ make establishing legal liability to a particular party extremely difficult without experts and at least circumstantial evidence.⁶⁶ Under the Federal Rules of Evidence:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.⁶⁷

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an

59. *Id.*

60. SDWA, 42 U.S.C. § 300f, *et seq.*; NEPA, 42 U.S.C. § 4321 *et seq.*; CAA, 42 U.S.C. § 7401 *et seq.*; CWA, 33 U.S.C. § 1151 *et seq.*

61. Ehrman, *supra* note 17, at 645–46 (citation omitted).

62. *See* R.R. Co. v. Reeves, 77 U.S. 176 (1869) and *Golsen v. ONG Western, INC.*, 1988 OK 26, 756 P.2d 1209.

63. *See* *Turner v. Big Lake Oil Co.*, 96 S.W.2d 221 (Tex. 1936) and *Doddy v. OXY USA, INC.*, 101 F.3d 448 (5th Cir. 1996).

64. *See* Ehrman, *supra* note 17, at 645–46.

65. 1950 OK 250, 223 P.2d 333.

66. FED. R. EVID. 701. *Opinion Testimony by Law Witness* and FED. R. EVID. 702. *Testimony by Expert Witnesses.*

67. FED. R. EVID. 701. *Opinion Testimony by Law Witness.*

opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.⁶⁸

Though the OCC has primacy and jurisdiction in regulating oil and gas operations, the Oklahoma Supreme Court has held that the OCC powers do not extend to many litigious matters.⁶⁹ The court, in *Ladra v. New Dominion LLC et al.*, ruled that OCC's jurisdiction was "limited to the resolution of public rights, and it lacks jurisdiction over disputes between two or more private persons or entities not involving public rights."⁷⁰

III. Statement of the case

A. Facts

Oklahoma property owners Matt Meier, Sheryl Meier, and Kai Bach ("Property Owners") brought suit in state court in Payne County in 2017, on behalf of themselves and others similarly situated.⁷¹ Defendants to the action included: Chesapeake Operating L.L.C.; Devon Energy Production Company, LP; Midstates Petroleum Company LLC; New Dominion, LLC; Range Production Company, LLC; Special Energy Corporation; and White Star Petroleum, ("Operators") who were considered by the Plaintiffs to be "some of the largest operators of wastewater injection wells in the Arbuckle formation."⁷² Property Owners brought suit to recover alleged damages resulting from insurance premiums paid to obtain earthquake insurance.⁷³

Property Owners believed that Operators' use of wastewater injection wells drilled into the Arbuckle formation had caused thousands of man-made earthquakes throughout the state since 2008.⁷⁴ Property owners claimed that they and those in similar positions, had been forced to acquire earthquake

68. FED. R. EVID. 702. *Testimony by Expert Witnesses.*

69. *Ladra v. New Dominion LLC et al.*, 2015 OK 5 ¶ 10, 353 P.3d 529.

70. *Id.*

71. *Meier v. Chesapeake Operating L.L.C.*, 324 F.Supp.3d 1207 (W.D. Okla. Aug. 13, 2018).

72. *Id.*

73. *Id.*

74. *Id.*

insurance to protect their property and themselves from financial distress.⁷⁵ Property Owners also alleged the increased seismic activity had caused insurance premium prices to skyrocket.⁷⁶

Property Owners brought suit under theories of public and private nuisance, strict liability for ultra-hazardous activities, and negligence.⁷⁷ Damages sought included: punitive damages, attorney's fees and costs, and recoup of costs for acquiring and maintaining earthquake insurance coverage since 2009.⁷⁸

B. Procedural History

Operator Devon Energy removed the Property Owners' action to federal court, in accordance with the Class Action Fairness Act.⁷⁹ All Operators then moved to dismiss Property Owners' complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure.⁸⁰ Operator Midstates also sought to dismiss the complaint and strike all prepetition date claims due to the company's bankruptcy case.⁸¹ Further, Operator Chesapeake sought to dismiss the complaint for a lack of ripeness of claims.⁸² The main issue before the *Meier* court was whether or not a party may recover, as damages in a tort action, the money paid toward insurance premiums to protect against future events.⁸³

C. Holding

The Western District Court held that Property Owners were not entitled to recover for any of the damages sought in their pleading.⁸⁴ Additionally, the court granted Operators' motion to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief may be granted because the Property Owners had not plead to be entitled to any appropriate relief.⁸⁵ Further, Property Owners' class action petition was dismissed with prejudice.⁸⁶

75. *Id.*

76. *Meier*, 324 F.Supp.3d 1207.

77. *Id.*

78. *Id.*

79. *Id.*; The Class Action Fairness Act 28 U.S.C.A. § 1332(d) (West 2011).

80. *Id.*; FED. R. CIV. P. 12(b)(6) (Failure to state a claim upon which relief can be granted).

81. *Meier*, 324 F.Supp.3d 1207 (Federal bankruptcy court order barred collection on claims arising before Midstates' bankruptcy petition).

82. *Id.*

83. *Id.*

84. *Id.* at 1220.

85. *Id.*

86. *Meier*, 324 F.Supp.3d at 1220.

IV. Decision

The Western District Court decided the Property Owners lacked an appropriate cause of action to recoup damages for the insurance premiums.⁸⁷ The court recognized the claim was one of first impression for Oklahoma and relied upon its duty to predict whether the Oklahoma Supreme Court would find the suggested relief “legally cognizable” as the basis for its authority on the matter.⁸⁸ The court rejected the Property Owners’ case law allowing for recovery of insurance premiums as damages, distinguishing the proffered cases as allowing recovery on different basis—contractual, statutory, or other tort theory.⁸⁹ The court, instead, adopted the view taken by the Operators’ authority which, opined that “no right of action exists for recovery of insurance premiums based on a tortfeasor’s negligence or strict liability.”⁹⁰

A. Jurisdictional Issues and Midstates’ Bankruptcy Case

Midstates filed for voluntary Chapter 11 bankruptcy relief in April of 2016.⁹¹ On October 21, 2016, the Chapter 11 repayment plan was confirmed, discharging all claims against Midstates arising prior to the confirmation date.⁹² Midstates argued that due to its bankruptcy discharge, Property Owner’s claims arising before the confirmation date were barred as a jurisdictional issue and as a matter of bankruptcy law.⁹³ Bankruptcy courts are generally charged with jurisdiction over all bankruptcy proceedings.⁹⁴

The court agreed with Midstates, barring any consideration of operations prior to the discharge date, dismissing Property Owners’ claims to the extent that activities arose prior to October 21, 2016.⁹⁵ The court did not, however, on bankruptcy grounds, dismiss any claims arising after the confirmation

87. *Id.*

88. *Id.* at 1215.

89. *Id.* See also *Interkal, Inc. v. UIS, Inc.*, 132 F.3d 33 (6th Cir. 1997); *Seifts v. Consumer Health Sol. LLC*, 61 F.Supp.3d 306 (S.D.N.Y. 2014); *Inchaustegui v. 666 5th Ave. Ltd. P’ship*, 268 A.D.2d 121, 706 N.Y.S.2d 396 (1st Dept. 2000); *Supreme Lodge Knights of Pythias v. Neeley*, 135 1046 (Tex. Civ. App. 1911); *Awuah v. Coverall N. Am., Inc.*, 460 Mass. 484, N.E.2d. 890 (2011); *Bos. Children’s Heart Found., Inc. v. Nadal-Ginard*, 1994 WL 16011252 (D. Mass. 1994); *Claudet v. Weyrich*, 662 So.2d 131 (La. App. 4th Cir. 1995).

90. *Meier*, 324 F.Supp.3d at 1216 (quoting *Nikolaus v. City of Baton Rouge*, 40 So.3d 1244, 1248 (La. App. 1st Cir. 2010)).

91. *Meier*, 324 F.Supp.3d at 1210.

92. *Id.*

93. *Id.*

94. 28 U.S.C.A. § 157 (West 2018).

95. *Meier*, 324 F.Supp.3d at 1211.

date.⁹⁶ The court reasoned that the Bankruptcy Code did not preclude the court from deciding disputes arising post-discharge and therefore, the court could consider the merits of the Property Owners' claims for the post-discharge claims.⁹⁷

B. Motions to Dismiss

Chesapeake Operating L.L.C. sought to dismiss Property Owners' complaint based on the Federal Rules of Civil Procedure 12(b)(1) for lack of standing and lack of ripeness of claims.⁹⁸ The court explained that for Article III standing the Property Owners were charged with proving that (1) they suffered an injury in fact; (2) that the injury was fairly traceable to the action of the Operators; and (3) that it was likely the injury would be redressed by a favorable decision.⁹⁹ The court concluded that, against the Operator's objection, the complaint was sufficient to establish Article III standing.¹⁰⁰

The court explained the injury in fact prong was satisfied because it could "reasonably infer" the Property Owners would have used their money differently had they not been compelled to purchase the earthquake insurance.¹⁰¹ Further, the court explained the second causation prong was satisfied because the Property Owners' complaint sufficiently established their economic injury was not "solely attributable" to their own conduct.¹⁰² Finally, the court explained the final prong of redressability was satisfied because the relief sought would redress the alleged injury, regardless of whether or not the relief was proper.¹⁰³

The court further denied Operator's challenge to Property Owners' claim ripeness.¹⁰⁴ The court explained that because Property Owners' claim did not rest on uncertain or contingent future events, the claim was ripe for adjudication.¹⁰⁵ All Operators challenged the sufficiency of Property Owners' complaint.¹⁰⁶ The court ultimately granted the motion to dismiss

96. *Id.* at 1211–1212.

97. *Id.*

98. FED. R. CIV. P. 12(b)(1) (Lack of subject-matter jurisdiction); *Meier*, 324 F.Supp.3d at 1212.

99. *Meier*, 324 F.Supp.3d at 1212 (citing *Cressman v. Thompson*, 719 F.3d 1139, 1144 (10th Cir. 2013)).

100. *Id.* at 1213–1214.

101. *Id.* at 1213.

102. *Id.* at 1213–1214.

103. *Id.* at 1214.

104. *Id.* at 1214.

105. *Meier*, 324 F.Supp.3d at 1214.

106. *Id.* at 1214–1215.

under 12(b)(6) upon concluding the Property Owners were not entitled to any of the relief set out for recovery in their pleadings.¹⁰⁷

C. Substantive Issues and Loss of Chance Doctrine

The court noted that though the Loss of Chance Doctrine had been adopted by the Oklahoma Supreme Court, the higher court had only done so in a limited medical malpractice scope.¹⁰⁸ The configuration for the doctrine did not include insurance premiums.¹⁰⁹ The Loss of Chance Doctrine, as relied upon by Property Owners, is described by professor David A. Fischer:

This [proportional risk recovery] awards a reduced recovery to any person exposed to a risk of future harm that has not yet come to pass. Not all of these persons will actually suffer harm, but each has suffered a loss in an actuarial sense because his chances of avoiding the harm have been reduced. *These kinds of losses can often be insured against, and plaintiffs that use their recoveries to purchase such insurance are not overcompensated. Those plaintiffs that actually suffer the future loss will receive appropriate compensation from their insurance companies. Those plaintiffs that do not suffer the future loss receive nothing from their insurance companies, and thus are not overcompensated.*¹¹⁰

The court also rejected the Property Owners' contention that recovery was appropriate under Article 2 of the Oklahoma Constitution—“[t]he courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice[,]”¹¹¹—as well as Title 23 of the Oklahoma Statutes.¹¹²

The sections of Title 23 at issue were §§ 3—“[a]ny person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefore in money, which is called damages[,]”—and 61— “[f]or the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly

107. *Id.* at 1220.

108. *Meier*, 324 F.Supp.3d at 1217-1218. See *McKellips v. Saint Francis Hosp.*, 1987 OK 69, 741 P.2d 467.

109. *Id.*

110. David A. Fischer, *Tort Recovery for Loss of Chance*, 36 WAKE FOREST L. REV. 605, 633 (2001).

111. OKLA. CONST. art. II, § 6.

112. *Meier*, 324 F.Supp.3d at 1218-1219 (citation omitted).

provided by this Chapter 1, is the amount which will compensate for all detriment proximately caused thereby, whether it could have been anticipated or not.”¹¹³ The court cited precedent directly from the Western District that did not allow recovery, based off of the constitutional or statute provisions, for medical monitoring expenses.¹¹⁴

Further, the court relied on the Oklahoma Supreme Court’s interpretation of Article 2, citing that Section 6 was intended “to guarantee that the judiciary would be open and available for the resolution of disputes, but not to guarantee that any particular set of events would result in court-awarded relief.”¹¹⁵ In consideration of Property Owners’ Title 23 argument, the court relied on the common law for which the statutes codified.¹¹⁶ The cases did not recognize recovery of insurance premiums.¹¹⁷

D. Oklahoma Tort Law

The court then turned to Oklahoma tort law to determine whether the loss of the Property Owners’ should be passed on to the Operators under tort theory. The court listed several factors for consideration for a cause of action: (1) the severity of the risk of loss; (2) the nature of the activity causing the loss; and (3) whether the loss was sufficiently distinct from the general vicissitudes of life.¹¹⁸ The court further explained the “vicissitudes of life unavoidably present risks of harm which, equally unavoidably, vary in terms of severity and actual impact on any particular individual.”¹¹⁹

The court opined that materialization of risk in the form of “tangible harm,” such as personal injury or property damage, was a prerequisite to a cause of action.¹²⁰ The court further explained that the “limitation simply recognizes the fact that life abounds with events and phenomena by which a generalized risk faced by one person is increased in some way by the activities of another.”¹²¹

113. OKLA. STAT. tit. 23, § 3 (2018) and OKLA. STAT. tit. 23, § 61 (2018), respectively.

114. *McCormick v. Halliburton*, 895 F.Supp.2d 1125, 1156–1157 (W.D. Okla. 2012).

115. *City of Anadarko v. Fraternal Order of Police, Lodge 118*, 1997 OK 14, ¶ 6, 934 P.2d 328, 330 (quotation omitted).

116. *Meier*, 324 F.Supp.3d at 1219. See *WRG Constr. Co. v. Hoebel*, 1979 OK 125, 600 P.2d 334 and *Commercial Fin. Servs., Inc. v. J.P. Morgan Secs, Inc.*, 2007 OK CIV APP 8, 152 P.3d 897.

117. *Meier*, 324 F.Supp.3d at 1219.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Meier*, 324 F.Supp.3d at 1219.

E. No Materialization of Harm

The court's holding rested on the decision that there had been no materialization of harm from risk of earthquake damage to Property Owners' property.¹²² The court recognized the risk of harm was present but equated it to "any other risk," drawing upon the rationale of harms from the "vicissitudes of life."¹²³ The court concluded that since the Property Owners' had not sustained physical damage from the earthquakes, the Oklahoma Supreme Court would not allow for recoup for the insurance premiums.¹²⁴ In a final note, the court nixed the possibility of recovery under economic duress, citing Oklahoma precedent not allowing for economic duress as an independent tort.¹²⁵

V. Analysis

Based on the general trend of authority toward recovery of insurance premiums and Oklahoma's treatment of oil and gas liability, the *Meier* court's decision makes judicial sense and was likely appropriately decided based how the Oklahoma Supreme Court would analyze the matter. The court rested heavily on the undisputed fact that the Property Owners had not felt any physical damage. The only alleged damage was in the form of insurance premiums and of an alleged increase in said insurance premiums due to Operators' activity. The court relied heavily on this distinction for their conclusion.

The court compared the alleged injuries sustained by the Property Owners to that of the general harms and risks of life. The court's decision ultimately rested on the inability to properly assign damages in an instance where there had been no solid or tangible manifestation of the proposed harm—personal or property injury. In consideration of general tort law, this rationale is natural.

Tort law refuses to allow recovery in instances where there are intervening or superseding causes in the chain of events harming the plaintiff.¹²⁶ Where there is uncertainty in causation, it is generally inappropriate to assign all liability of proximate cause to a party. The court's rationale here was parallel with these general tort concepts—as a policy matter, precluding recovery where the causal chain of events and harm cannot be established. Here, the

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *See Stout v. Rutherford*, 1959 OK 128, ¶ 6, 341 P.2d 266, 269.

courts focused on the risks from the “vicissitudes of life” as causing uncertainty where there was no materialization of the harm, a very natural interpretation in the context of Oklahoma tort law.

A. Negligence and Policy Considerations

By relying on the *Severn Place* decision, the *Meier* court inadvertently adopted the policy of the Louisiana appellate court.¹²⁷ The Louisiana court adopted language from a precedent case and opined that when determining the duty of a party in a negligence case, the question as to what falls within the scope of duty is ultimately a policy question.¹²⁸ The court adopted a strict view for analyzing when third parties might be liable to policyholders for increased insurance paid to an insurer because allowing same would “open[] the door to remote damages that are better precluded as a matter of public policy.”¹²⁹

The court explained that allowing such recovery would leave the door for recovery too open with “no sensible or just stopping point.”¹³⁰ The court was concerned with the proportionality of defendants’ responsibility to the alleged injury.¹³¹ The court noted that several other states had taken a similar view, not allowing for recovery of insurance premiums for negligence.¹³²

As a policy matter and in consideration of Oklahoma tort law, this policy conclusion is appropriately translatable to the Oklahoma case. Where there is uncertainty and concern in assigning liability for damages without direct causation and harm and a general concern about assigning insurance premium costs to third parties, it would make no judicial sense to require an alleged party to account for the alleged harm where there is a general dislike for assigning insurance premiums, a missing link in causation, and no materialization of harm.

B. Mechanisms for Recovery in Oil & Gas Litigation

Operators of oil and gas ventures are often held liable for their misconduct and oversight through breach of contract, common law, or statutory mechanisms. Damages to property in Oklahoma, are often recovered based

127. 930 So.2d 125 (La. App. 5th Cir. 2006); *Meier*, 324 F.Supp.3d at 1216–17.

128. *Severn Place*, 930 So.2d at 127.

129. *Id.* at 129.

130. *Id.*

131. *Id.*

132. *Id.* at 128–129.

off of the Reasonable Use Doctrine¹³³ for post-drilling activities or the Surface Damage Act for drilling activities.¹³⁴ The premise for these mechanisms, however, generally only provides relief for the landowners for which the operations are occurring on and are only for damages at the operation site—not for damage done off of the actual site.¹³⁵ For landowners like the Property Owners in *Meier v. Chesapeake Operating*, this gap in Oklahoma Law leaves such landowners susceptible to damage that is unprovable and unrecoverable.

C. *Res Ipsa Loquitur* Possibilities

Going forward, a doctrine that might eventually provide some answers or ability to compensate based on scientific study and OCC regulation, is *Res Ipsa Loquitur*.¹³⁶ The *Res Ipsa* Doctrine provides a way to prove negligence by using an inference or a rebuttable presumption of negligent activity.¹³⁷ The Doctrine requires proof by the landowner that (1) the instrumentality that caused injury was in the operator's exclusive control, (2) the type of damage incurred does not happen but for negligence, (3) there are no other potential causes of the damage, and (4) the operator was not in a position to know about the potential damage.¹³⁸

For this doctrine to ever be appropriate or help landowners like the Property Owners in *Meier v. Chesapeake Operating*, there would have to be a consensus of science and regulators that induced seismicity does not occur but for negligence. Though it might be argued that drilling too deeply into basement rock when drilling or reworking injection wells is negligent, it does

133. See *Briscoe, Inc. v. Peters*, 1954 OK 107, 269 P.2d 787 and *Gulf Refining Co. v. Davis*, 80 So. 2d 467 (Miss.1955).

134. OKLA. STAT. tit. 52, § 318 (2018).

135. See *Briscoe*, 269 P.2d at 790 (quoting *Pure Oil Co. v. Gear*, 1938 OK 511, 83 P.2d 389, 390) (“Under the ordinary oil and gas lease, the lessee in *developing the premises* in the production of oil and gas, is entitled to the possession and use of all that part of the *leased premises* reasonably necessary in producing and saving the oil and gas, including space to construct tanks and ponds, in which to confine salt water and other waste matter coming from the wells, and also including the space necessary to transport such waste matter from the wells into such tanks or ponds in a reasonably prudent manner.”) (emphasis added).

136. See *Norman v. Greenland Drilling Co.*, 1965 OK 77, ¶ 16, 403 P.2d 507, 510 (quoting *Oklahoma Natural Gas Co. v. Colvert, Okl.*, 1953 OK 193, 260 P.2d 1076) (“Where the instrumentality or thing which causes injury is shown to be under the management and control of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendant, that the accident arose from the want of care.”).

137. *Id.*

138. *Id.*

not appear, overall, that there is enough scientific support and consensus to support this as a legal concept, enough to assign negligence liability or meet the required standards of proof.¹³⁹ It appears as though the industry needs more scientific research and trial and error to really be able to appropriately assign liability based on the “but for” prong.

As previously discussed, landowners face evidentiary issues in the assignment of liability against operators.¹⁴⁰ Such an obstacle would have to be overcome for a successful Res Ipsa Negligence claim as well. The damaging instrumentality has to be in the exclusive control of the operator in order to establish Res Ipsa liability.¹⁴¹

Again, there is likely not enough science or consensus to support liability in the current state of the industry. The evidentiary issues stem from a need for experts to have the ability to pinpoint the area and operator who specifically induced seismicity.¹⁴² Also, considering the dramatic change in regulatory schemes dealing with oil and gas operations over the last 50 years, it is hard to regulate and assign liability where many wells were drilled or commissioned in a different regulatory era. However, with the OCC’s recent UIC initiatives it seems as though operators are being held to a higher standard in Oklahoma with what wells they may use and to what depths they may drill new wells.¹⁴³

Further, proving a lack of other potential causes for the damages would be difficult and require considerable expert-input. Particularly, in the *Meier v. Chesapeake Operating* case, Property Owners would be charged with the obstacle of proving that there were no other driving forces behind the increase in earthquake premiums. Any such proof would require expert analysis and testimony from a variety of industries and still might not be accepted.¹⁴⁴

There is the overall question of whether, as a matter of policy considering Oklahoma’s economic dependence on oil and gas operations, it would be a prudent adaptation of law to allow presumptive negligence to attach to induced seismicity. The *Meier v. Chesapeake Operating* court made similar policy considerations in their discussion of the “vicissitudes of life.”¹⁴⁵ Perhaps, as a matter of policy, it is better that such fleeting instances of

139. See Wu, *supra* note 32.

140. Ehrman, *supra* note 17, at 645-46.

141. See *supra* text accompanying note 136.

142. See *supra* note 68.

143. STATE IMPACT: OKLAHOMA, *supra* note 29.

144. See *supra* note 68.

145. *Meier*, 324 F.Supp.3d at 1219.

damage to landowners with such abstract causes and fault are considered part of the risk of living in Oklahoma and benefitting from the oil-rich economy. However, in considering the interests of similarly situated landowners experiencing economic loss from such activities, it is a theory that must at least be considered.

D. Denial of Economic Duress

The *Meier v. Chesapeake Operating* court ruled out economic duress as a basis for recovery for the Property Owners.¹⁴⁶ The court explained that the Oklahoma Supreme Court had ruled out the theory as an independent basis of tort recovery.¹⁴⁷ Based on the Oklahoma Supreme Court ruling, the theory may only be advanced as an “equitable doctrine in contract law.”¹⁴⁸

Economic duress would make for an interesting mechanism for recovery, in theory, for landowners like the Property Owners in *Meier v. Chesapeake Operating*. The elements to prove economic duress under intentional tort law include: (1) a contract that results from a wrongful or unlawful act by coercing party who knew of the coercive impact and acted intentionally to coerce, (2) there is no reasonable alternative for the coerced party to the contract, and (3) the coerced party was detrimentally affected by the coercion.¹⁴⁹ The concept of indemnity and assignment of liability would likely pose a problem for recovery under this theory as the elements would be established against the insurance company for which the contract was made with—not the oil and gas operators.¹⁵⁰

E. Denial of Constitutional and Statutory Arguments

The *Meier v. Chesapeake Operating* court also rejected the Property Owners’ theories of recovery based on Article 2 of the Oklahoma Constitution¹⁵¹ and Oklahoma Statute.¹⁵² The court reasoned, specifically, that Section 6 of Article 2 does not guarantee a plaintiff a specific remedy in

146. *Id.*

147. *Id.*; *Cimarron Pipeline Constr., Inc. v. U.S. Fidelity & Guar. Ins. Co.*, 1993 OK 22, ¶ 10, 848 P.2d 1161.

148. *Cimarron Pipeline Constr., Inc.*, 848 P.2d at 1162.

149. *Centric Corp. v. Morrison-Knudsen Co.*, 1986 OK 83, ¶ 14, 731 P.2d 411, 417.

150. *See Braden v. Hendricks*, 1985 OK 14, ¶ 11, 695 P.2d 1343, 1349 (“While Oklahoma’s jurisprudence does not have a statutorily unrestricted right of contribution among joint tortfeasors, it does recognize a right of indemnity when one—who was only *constructively* liable to the injured party and was in no manner responsible for the harm—is compelled to pay damages because of the tortious act by another.”).

151. *See supra* notes 111, 115.

152. *See supra* notes 112–114.

a case but instead is intended to guarantee the judicial branch be “open and available for resolution of disputes.”¹⁵³

This conclusion by the federal court aligns well with rulings from the Oklahoma Supreme Court. In *Anadarko v. Fraternal Order of Police Lodge, 118* the Oklahoma Supreme Court specifically explained that “Section 6 is most often used to insure equal access to court, regardless of status.”¹⁵⁴ Therefore, it would have been inappropriate for the District Court to have afforded relief to the Property Owners based on the theory that the Article warranted the specific recovery of insurance premiums.

Further, the court considered Property Owners’ contention that Oklahoma Statutes Title 23 Sections 3 and 61 required recovery of insurance premiums.¹⁵⁵ However, the court explained the sections were mere codification of common law and there was no precedence for allowing recoup of insurance premiums based on the statutes.¹⁵⁶ Again, this is a clear distinction of Oklahoma law where the District Court had only one appropriate way to rule.

F. Sierra Club v. Chesapeake Operating, LLC et al.

The Western District Court faced a similar case involving induced seismicity in 2017. In *Sierra Club v. Chesapeake Operating*, an environmental organization brought suit against similar operators under the Resource Conservation and Recovery Act¹⁵⁷ for declaratory and injunctive relief.¹⁵⁸ The environmental organization alleged an increase in seismic activity due to operators’ deep injection of waste.¹⁵⁹ The environmental organization sought to have the operators reduce the amount of waste being injected to fix any structures that might be vulnerable if there were to be a large seismic activity and to engineer a monitoring mechanism for predicting unsafe injection levels.¹⁶⁰ The operators contended that the court should abstain from exercising jurisdiction under the Burford abstention doctrine.¹⁶¹ The Burford abstention doctrine advises that:

153. *Meier*, 324 F.Supp.3d 1207, 1218 (quotation omitted).

154. 1997 OK 14, ¶ 6, 934 P.2d 328 (quotations omitted).

155. *See supra* notes 112–114.

156. *Meier*, 324 F.Supp.3d at 1218–19.

157. 42 U.S.C.A. § 6903(27) *et seq.* (West 2018).

158. 248 F.Supp.3d 1194 (W.D. Okla. 2017).

159. *Sierra*, 248 F.Supp.3d 1194.

160. *Id.*

161. *Id.* at 1199.

Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of the state administrative agencies: (1) when there are difficult questions of law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar; or (2) where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.¹⁶²

The court agreed with the operators that dismissal was appropriate under the Burford abstention doctrine.¹⁶³

Though the court recognized the importance and severity of induced seismicity, it opined that the OCC had “. . . responded energetically . . .” to the challenge of regulatory activity concerning earthquakes.¹⁶⁴ The court also explained that the OCC was technically better prepared to respond to and investigate the concerns of the environmental organization and others similarly situated.¹⁶⁵ This case, like *Meier v. Chesapeake Operating*, did not allow the district court to advance far on the development of law in the area. The framing of the cases along with the procedural implications kept the courts from having the ability to advance the legal framework.

G. Decision Impact

The court’s decision in *Meier v. Chesapeake Operating* will likely have several important impacts on future oil and gas litigation. First, the decision solidifies the state’s favorability of and commitment to the oil and gas industry. Though the court did not exercise judicial overreach and did an admirable job of predicting how the Oklahoma Supreme Court would rule, it potentially could have fashioned a holding, using judicial overreach, to promote the attachment of new liability to oil and gas operators.

Second, since the decision was based centrally on insurance law and not oil and gas principles, it leaves room for future litigation to define the contours of the law surrounding claims similar to Property Owners’. For example, had Property Owners brought a claim supporting and citing cases where operators had been held liable for similar alleged damages under oil and gas principles, an Oklahoma court would have the opportunity to provide

162. *Id.* at 1202–1203.

163. *Id.*

164. *Sierra*, 248 F.Supp.3d at 1209.

165. *Id.*

instruction for an exact framework for the erroneously named “frackquake” cases.

Meier v. Chesapeake Operating managed to sidestep having to make any guesses as to what the Oklahoma Supreme Court would want the framework to be based off the way Property Owner’s attorneys framed the issue, using cases that were insurance and contract oriented. This move by Property Owner’s council was likely a strategic approach, considering the state’s overall favorability to the industry.

Third, the decision will likely prompt prudent insurance carriers to consider the reengineering of insurance policies in terms of earthquake liability. If disturbance of basement rock is going to cause some induced seismicity—however minute—and disturbance of basement rock is going to be a reality, to some extent, in a natural-resource-active state, competitive insurers will want to provide their clients with a competitive advantage in coverage. They will also want to be prepared to protect themselves from future litigation of the *Meier v. Chesapeake Operating* tune that might, under different circumstances, find insurers liable for more than they bargained for.

Furthermore, the decision will likely prompt prudent oil and gas companies of all trades to consider their liability for seismic activity. Being proactive as a company, in terms of foreseeing potential liabilities, is an important function essential to survival. Considering the rise in litigation similar to *Meier v. Chesapeake Operating*, diligence would suggest the legal teams in any such companies should consider how they can be proactive to manage future risk, in the contracts and protocols they are implementing now. It would also be prudent for these companies to consider their policies surrounding environmental proactivity in terms of seismicity and injection wells. Though the OCC imposes certain regulations, companies might consider going above and beyond the regulations to maintain favor with Oklahoma constituents.

Undoubtedly, the beginning of this type of litigation in Oklahoma will likely reinforce the Oklahoma Corporation Commission’s dedication to regulating injection activities to prevent unnecessary disturbance of basement rock. The OCC has already shown dedication to regulating any activity that might cause induced seismicity, however, as individuals begin to look for ways to recover against oil and gas operators for said seismicity, the OCC will have to remain diligent in its pursuit of balanced regulation of the oil and gas industry.

Finally, the Oklahoma decision could potentially influence other states’ treatment of similar cases. Though the court in *Meier v. Chesapeake Operating* sidestepped some oil and gas decision-making, its overall

disposition and treatment of the case could influence other oil-and-gas-friendly states in favor of operators.

As a final thought, it would be interesting to see how liable operators could be held for negligently disturbing basement rock. If the disturbance of basement rock is the main cause of induced seismicity and the OCC is working to regulate injection well depths and quality, could there not be liability found where a company negligently—without conforming to the industry-accepted duty—drilled too deeply into or disturbed basement rock? Operators spend a large amount of money and time on diagnostic tests to promote efficiency in production and operation.

If similar resources were committed to the quality of injection wells and investigatory resources, possibly through the Oklahoma Geological Survey and OCC, maybe negligence could be a cause of action for disturbance of basement rock. For this to ever be a possibility, more consensus must be reached on the cause of induced seismicity, the appropriate legal standards for measuring such negligence must be established, and technology overall needs to be more prepared to cater to such investigatory needs.

VI. Conclusion

It is easy to see why Oklahoma state courts tend to give oil and gas companies the benefit of the doubt when possible. Oklahoma's historical and continued reliance on the industry makes for important policy concerns when courts have to consider liabilities be imposed on such companies. The imposition of certain liabilities without significant scientific and technical support is not realistic for a state that relies on and generally supports the oil and gas industry.

Such notions are expounded when applied to the concept of induced seismicity. Without the technology and legal and scientific consensus to be able to fairly and accurately pinpoint liability, there can be no arbitrary liability placed in a state that relies on the industry so heavily. Though the Oklahoma Corporation Commission has shown an admirable commitment to regulating activity that might induce seismic activity, it is a campaign that will have to continue and evolve as science and technology do.

Cases like *Meier v. Chesapeake Operating* provide for an interesting cross-section of oil and gas law principles, contract, tort, and insurance law. The way the case was presented and framed for the court did not allow them much leeway in developing new landscape law for the oil and gas industry but still imposes important implications. It will be enthralling to see how other courts within the state handle induced seismicity issues going forward.