

CAUSE NO. 13-05-00118-CVK

MICHAEL A. CERNY and	§	IN THE DISTRICT COURT
MYRA L. CERNY, INDIVIDUALLY	§	
and as NEXT FRIENDS of	§	
CAMERON A. CERNY, A CHILD	§	
	§	
VS.	§	<u>218TH</u> JUDICIAL DISTRICT
	§	
MARATHON OIL CORPORATION,	§	
MARATHON OIL EF LLC, and	§	
PLAINS EXPLORATION & PRODUCING	§	
COMPANY	§	KARNES COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

NOW COME MICHAEL A. CERNY and MYRA L. CERNY, Individually and as Next Friends of CAMERON A. CERNY, a Child, the plaintiffs, and files this Original Petition complaining against MARATHON OIL CORPORATION, MARATHON OIL EF LLC, and PLAINS EXPLORATION & PRODUCING COMPANY. As such, the plaintiffs would respectfully show the court the following:

I.

Michael A. Cerny and Myra L. Cerny are individuals residing at 5001 FM 99, Karnes City, Karnes County, Texas 78118. They are also the parents of Cameron A. Cerny, a minor child who resides with them at their residence.

Marathon Oil Corporation ("Marathon") is a foreign corporation operating and existing under the laws of the State of Texas. It may be served with citation via Certified Mail, Return Receipt Requested on its Registered Agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas TX 75201.

Marathon Oil EF LLC ("Marathon EF") is a foreign corporation operating and existing under the laws of the State of Texas. It may be served with citation via Certified Mail, Return Receipt Requested on its Registered Agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas TX 75201.

Plains Exploration & Producing Company, ("Plains") is a corporation operating and existing under the laws of the State of Texas. It may be served with citation via Certified Mail, Return Receipt Requested on its Registered Agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas TX 75201.

II.

This case shall proceed under Discovery Level III. The plaintiffs seek entry of a Docket Control Order to govern the timelines associated with the different aspects of this case.

III.

Venue is proper in Karnes County, Texas, as all of the events associated with this cause of action occurred in Karnes County, Texas, and the real estate made the basis of this suit is located in Karnes County, Texas.

IV.

FACTUAL BACKGROUND

The plaintiffs moved from the city life in the San Antonio area to their current residence in the rural countryside within Karnes County, Texas approximately ten years ago. At the time, the area was quiet and peaceful, the air was clean, and the residents enjoyed their privacy. Bike rides, long walks and life at a slow pace were the norm. The plaintiffs' property consists of a one acre tract of land with an older home sitting on a pier and beam foundation. The property was free from defects and the home, while older, was structurally sound.

With the arrival of the technology to capture hydrocarbons in shale formations, came an influx of oilfield activity into Karnes County, Texas. Production operations, including drilling, completions, workovers, testing, processing, and other oilfield activities, brought hectic and bustling traffic through the area where the plaintiffs reside. Heavy equipment created new roads along with lots of dust and noise. Laundry hung out to dry by the plaintiffs was covered in dust, as was everything else on their property. The constant traffic, dust, strong odors, and noise radically altered the lifestyle previously enjoyed by the plaintiffs and made the enjoyment of their outdoor activities impossible. In early 2012, the plaintiffs found their property completely surrounded by wells and facilities owned by either Marathon, Marathon EF, or Plains.

With the numerous well sites and production facilities within a short distance from the plaintiffs' property, the oilfield operations began having a direct impact on the plaintiffs' home and acreage. In 2012, sinkholes began forming in the ground on the plaintiffs' property, which the plaintiffs would attempt to fill in with dirt. The sinkholes remain to this day and they continue to grow. Furthermore, when an oil well was fractured as either a new completion or a workover to stimulate production, the pier and beam foundation of the plaintiffs' home would shift, causing damage to the structure of the home. An estimate to repair the foundation was made by a foundation company, but after speaking with the foundation person the plaintiffs concluded that spending the money to repair the problem was going to be short-lived since another 'frac' job would again damage the foundation so that it would again be in need of repair. Today, numerous cracks can be found in the ceiling and on the walls of the plaintiffs' home, and the foundation is in need of repair.

In 2012, the plaintiffs also began noticing that they were each beginning to experience health problems. The symptoms included daily headaches (often migraine), rashes, chest pain, bone pain, strange nerve sensations, high blood pressure, irregular heartbeats, nausea, irritation of the eyes, nose and throat, bronchitis, pain in the liver area, numbness in the extremities, and difficulty breathing. The child began to experience frequent nosebleeds. These problems began to manifest themselves in difficulty sleeping, depression, irritability, anxiety, frustration and anger. Even the family pet was put down after getting constant rashes and ultimately developing a large tumor.

Testing from the Texas Commission on Environmental Quality ("TCEQ") as well as private industry testing has proven that noxious chemicals have been found on the plaintiffs' property. A TCEQ report dated January 24, 2013 found violations for the emission levels of certain noxious chemicals at the Sugarhorn Central Facility owned by Marathon and/or Marathon EF. The chemicals found to be contaminating the area included high amounts of Benzene, C9+, Ethane, Ethyl Benzene, Heptanes, Hexanes, Hydrogen Sulfide, i-butane, i-pentane, Methane, n-butane, n-pentane, Octanes, Propane, Toluene, and Xylenes. In its pursuit of oil and gas, the defendants have continuously released strong odors and noxious chemicals into the environment, including the plaintiffs' property, causing injury and harm to the plaintiffs' property and to their persons.

V. CAUSES OF ACTION

PRIVATE NUISANCE

The defendants have created a Private Nuisance as to the plaintiffs in that the plaintiffs have a private interest in their real estate described above and located in Karnes County, Texas, and the defendants interfered with or invaded the plaintiffs' interest by conduct that was negligent, intentional and unreasonable, or abnormal and out of place in its surroundings. The defendants' conduct resulted in a condition that substantially interfered with the plaintiffs' private use and enjoyment of the land, and the nuisance has caused injury to both the plaintiffs' land and to their persons.

NEGLIGENCE and NEGLIGENCE PER SE

The defendants, through the actions and omissions of its employees, agents, or representatives, are guilty of Negligence and Negligence Per Se due to the following actions and omissions:

1. By failing to conduct its oilfield operations in a manner which would not pollute the plaintiffs' property;
2. By emitting noxious chemicals into the environment surrounding the plaintiffs' property violation of state and federal law;
3. By failing to conduct its operations in a manner which would not damage the plaintiffs' home and acreage;
4. By allowing noxious odors and harmful chemical compounds onto the plaintiffs' property;
5. By failing to take corrective action after being notified of its excessive emissions to halt any further pollution by the harmful chemical compounds.

The actions and omissions listed above, whether taken singularly or in the aggregate, are the proximate cause and/or producing cause of damages to the plaintiffs. The plaintiffs are a member of the group the state and federal laws are designed to protect.

VI. DAMAGES

The damages sought are within the jurisdictional limits of this court and the plaintiffs seek monetary relief over \$1,000,000.

The plaintiffs seek damages for the cost of abatement of the nuisance.

The plaintiffs have suffered both temporary and permanent damages due to the actions and omissions of the defendants as outlined above.

Temporary Damages

The plaintiffs seek remediation damages to repair all the damages to the structure of their home, as the technology exists to repair the home so that it is once again level, and its ceiling, roof and walls are solid and without cracks.

The plaintiffs seek damages to compensate them for actual economic or pecuniary loss. These include (a) reasonable and necessary medical expenses incurred in the past for treatment due to the defendants' conduct; (b) reasonable and necessary medical expenses are likely to be incurred in the future due to defendants' conduct; (c) the lost wages for time missed from work.

The plaintiffs seek recovery for other recognized damages, including (a) physical pain and suffering incurred in the past; (b) physical pain and suffering reasonably likely to be incurred in the future; (c) mental pain or anguish incurred in the past; (d) mental pain or anguish reasonably likely to occur in the future; (e) disfigurement; (f) inconvenience, annoyance, and discomfort incurred in the past; (g) inconvenience, annoyance, and discomfort likely to be incurred in the future; and (h) loss of enjoyment of life.

Permanent Damages

The plaintiffs seek damages for the permanent problems associated with their acreage. These include the formation of sinkholes on their property, chemical pollution of their property,

intrusion and pollution of their property by noxious odors, dead trees and/or dead limbs and foliage on certain trees, and dead animals being found on their property.

The plaintiffs seek punitive damages to be assessed against the defendants for the conduct listed above.

The plaintiff also seeks prejudgment and postjudgment interest at the maximum rate allowed by law.


The plaintiffs request that the defendants be held JOINTLY and SEVERALLY LIABLE for the damages to the plaintiffs.

VII.

WHEREFORE, the plaintiffs request that they have Judgment against the defendants for the conduct previously outlined; the plaintiffs further request that damages be assessed against the said defendants pursuant to the Damages section outlined above, including prejudgment and postjudgment interest at the maximum rate allowed by law; and that the defendants be required to pay for all costs of court associated with this suit.

Respectfully Submitted,

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By: 
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OF THE DISTRICT CLERK
MAY 23 2013
AT 10:00 AM
DENISE RODRIGUEZ
KARNES COUNTY DISTRICT CLERK