



WARREN DRILLING Co. V. ACE AMERICAN INSURANCE Co.

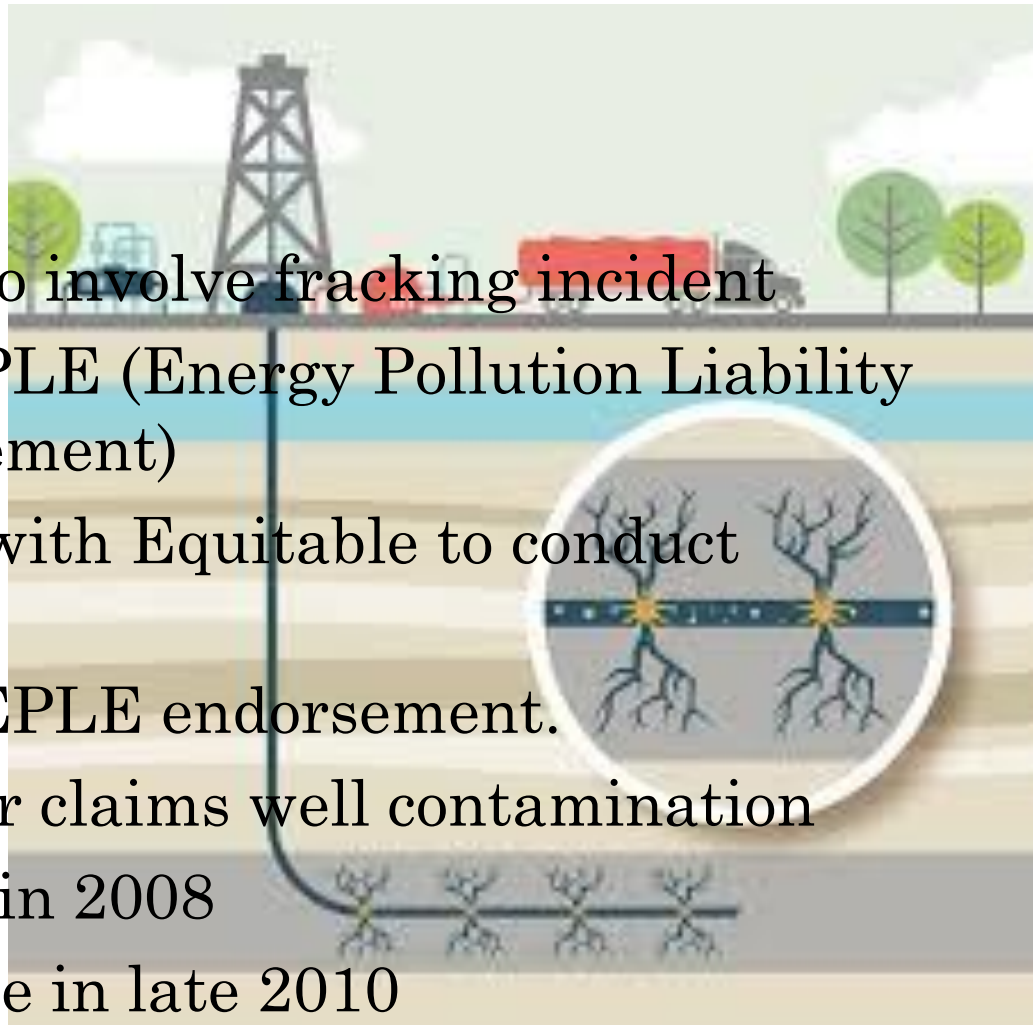
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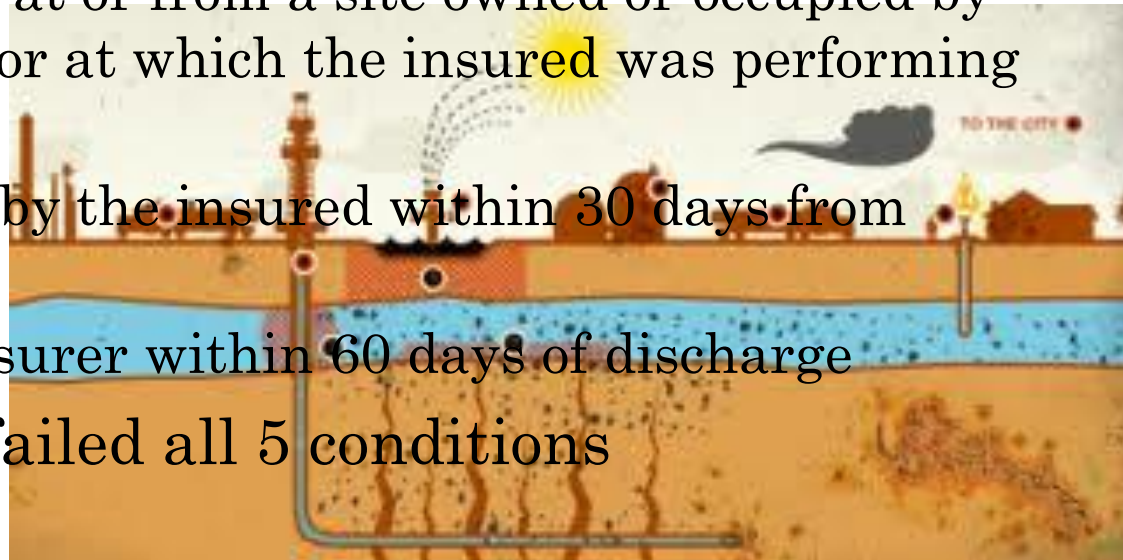
THE FACTS

- One of first cases to involve fracking incident
- Insight into the EPLE (Energy Pollution Liability Extension Endorsement)
- Warren contracts with Equitable to conduct drilling operations
- Its policy include EPLE endorsement.
- Nearby homeowner claims well contamination
- Equitable notified in 2008
- Warrant gets notice in late 2010



COVERAGE ISSUES

- ACE denies coverage citing pollution exclusion
- EPLE reinstates coverage only when discharge of pollutants:
 - Was unexpected and unintended
 - Commenced abruptly and instantaneously
 - Commenced at or from a site owned or occupied by the insured or at which the insured was performing services
 - Was known by the insured within 30 days from discharge
 - Report to insurer within 60 days of discharge
- ACE argues failed all 5 conditions



ISSUES

1. Do fracking fluids constitute a pollutant such that the pollution exclusion is applicable?
 - The fluid is safe to drink)
 - Therefore not pollutant
2. What is unexpected about intentionally pumping fracking fluid into the ground?
 - Courts generally hold that it is the discharge of pollutants, not the harm to the person or property, that must be expected or intended.
 - Fracking involves intentional discharge of fluid
 - But does not expect or intend the fluid to escape into homeowner's water
 - Perhaps argue that discharge was at an unintended angle thus causing the contamination



ISSUES

3. How quickly must an insured report a fracking incident?
 - Date of discharge has not been interpreted
 - Insured can therefore argue that discharge is not the date of the injection of the fluid, but the date it escaped into the well water and became a pollutant
 - Until that happened sufficiently often to become a pollutant, there was no actionable damage



- ACE and Warren settled their dispute but the case indeed outlines the issues one can envision

