



**FORM 2
(RULE 3-3 (1))**

Court File No. S-1610460

Vancouver Registry

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In the Supreme Court of British Columbia

Between

WADE SIMLIK and VICKY SIMLIK

Plaintiffs

and

ENCANA CORPORATION

Defendant

RESPONSE TO CIVIL CLAIM

Filed by: **ENCANA CORPORATION**

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 4, 5, 6 and 8 of Part 1 of the Notice of Civil Claim (the "**Claim**") are admitted.
2. The facts alleged in paragraphs 7, 9, and 10 through 19 of Part 1 of the Claim are denied.
3. The facts alleged in paragraphs 1, 2 and 3 of Part 1 of the Claim are outside the knowledge of the Defendant, Encana Corporation ("**Encana**").
4. Capitalized terms in this Response to Civil Claim have the same meanings given to them in the Claim unless otherwise defined herein.

Division 2 – Defendant's Version of Facts

Encana Corporation

1. Encana is incorporated pursuant to the *Canada Business Corporations Act*, with its head office in Calgary, Alberta. Encana is engaged in exploration and production of oil, natural gas, and natural gas liquids throughout North America.
2. Encana operates several wellsites for oil and gas extraction in northeast British Columbia with a focus on the Montney formation.
3. The extraction of natural gas through hydraulic fracturing involves two main steps: drilling and completions. After a well is drilled, the completion process begins which includes stimulating and fracturing the well and installing equipment to facilitate the flow of natural gas out of the well.
4. Hydraulic fracturing is a controlled operation that pumps a mixture of fluids into the wellbore to the target formation at a high pressure. As the mixture is forced through perforations in the wellbore into the surrounding rock, the pressure causes the rock to fracture, allowing the gas to flow through the wellbore to the surface.

The Subject Wellsites

5. The Plaintiffs' allegations relate to certain wellsites operated by Encana including those at the following surface locations within five kilometers from the Lands (collectively, the "**Subject Wellsites**"):

13-26-79-17	4-26-79-17	15-22-79-17
14-25-79-17	11-35-79-17	06-02-80-17
06-19-79-16	13-18-79-16	06-18-79-16
12-35-79-17	14-18-79-16	16-12-079-17
13-12-079-17	08-02-80-17	04-02-080-17

6. With respect to the Proposed Wellsite described at paragraph 11 of Part 1 of the Claim, Encana received approval from the British Columbia Oil and Gas Commission

("BCOGC") on or about November 10, 2016 to construct and operate the Proposed Wellsite located at 14-30-79-16. The Proposed Wellsite is a Subject Wellsite.

7. At all material times, Encana complied with or exceeded the requirements of all relevant laws, directives and regulations, and the accepted and established industry practice, with respect to exploration, drilling, stimulation, hydraulic fracturing, and production operations in and around the Lands, including with respect to the Subject Wellsites. The Subject Wellsites, and all associated operations, were authorized by the BCOGC and all other applicable government entities (the "**Authorizations**"). The Plaintiffs did not advance any challenge subsequent to the issuance of the Authorizations.
8. Further, and in response to paragraph 6 of Part 1 of the Claim, Encana complied with or exceeded the requirements of all relevant laws, directives and regulations regarding notification and consultation with respect to the Subject Wellsites.

Fracking Operations at the Subject Wellsites

9. In response to paragraph 9 of Part 1 of the Claim, Encana denies that it has conducted Fracking, or any other drilling or completion operations, at the Subject Wellsites at any time after November 9, 2014, with the exception of the Subject Wellsite described as 08-02-80-17 (the "**08-02 Site**").
10. The 08-02 Site consists of six wells that were drilled between August 20 and December 11, 2014 and completed between December 17, 2014 and February 12, 2015. No Fracking was undertaken at the 08-02 Site other than between December 17, 2014 and February 12, 2015.

Encana Denies the Alleged Nuisance

11. In response to paragraphs 14 to 18 of Part 1 of the Claim, Encana denies that it has caused or contributed to any nuisance as alleged, or at all. In particular, Encana denies that any Fracking Disturbances have occurred on or near the Lands, including at the 08-02 Site, as alleged in the Claim, or at all. The Plaintiffs have failed or refused to provide particulars of the alleged Fracking Disturbances, including the dates and times that each of the alleged Fracking Disturbances occurred.

12. In the alternative, if Fracking Disturbances have occurred on or near the Lands, which is denied, they were not caused or contributed to by Encana. No operations that were conducted at the Subject Wellsites, including the 08-02 Site, could have resulted in the alleged Fracking Disturbances, including any earthquake-like or seismic activity, as alleged, or at all.
13. In specific response to paragraph 14(b) of Part 1 of the Claim, Encana denies that any earthquake-like or seismic activity has occurred on or near the Lands that could have caused the alleged injury, loss or damages described in the Claim, including, but not limited to, that described in paragraphs 15, 16 and 19 of Part 1 of the Claim (the "**Alleged Damages**"). In the alternative, if such earthquake-like or seismic activity has occurred on or near the Lands, which is denied, it was not caused or contributed to by Encana.

Encana Denies the Alleged Damages

14. In response to the whole of the Claim, particularly, but not limited to, paragraphs 15, 16 and 19 of Part 1, Encana denies that the Plaintiffs have suffered any injury, loss or damages as alleged, or at all.
15. In the alternative, if the Plaintiffs have suffered any injury, loss or damages, which is denied, such injury, loss or damages were not caused or contributed to by Encana. To the contrary, the damages claimed by the Plaintiffs were caused or contributed to by natural causes occurring on the Lands that are unrelated to, and not impacted by, Fracking.
16. Further, and in the alternative, if the Plaintiffs have suffered any injury, loss or damages, which is denied, then the Alleged Damages are exaggerated, excessive, indirect, unreasonable, and/or remote.
17. In the further alternative, if the Plaintiffs have suffered any injury, loss or damages that were caused by Encana, which is denied, the Plaintiffs failed to take reasonable steps to mitigate same.
18. To the extent that the Plaintiffs suffered any personal injury, including as alleged in paragraphs 16(b) and 16(g) of Part 1 of the Claim, which is denied, then any such injuries

or problems are the result of the pre-existing medical, psychological, or other conditions of the Plaintiffs.

19. Further, and in the alternative, if the Plaintiffs have suffered any injury, loss or damages that were caused by Encana, which is denied, the Plaintiffs knew, or ought to have known, by November 9, 2014, at the latest, that:
 - (a) the Alleged Damages had occurred;
 - (b) the Alleged Damages were caused by or contributed to by the Fracking Disturbances;
 - (c) the Fracking Disturbances were allegedly caused or contributed to by Encana; and
 - (d) having regard to the nature of the Alleged Damages, a court proceeding would be an appropriate means to seek to remedy them.

Division 3 – Additional Facts

1. Encana does not plead any facts in addition to those set out above.

Part 2: RESPONSE TO RELIEF SOUGHT

1. Encana opposes the granting of any of the relief sought in Part 2 of the Claim.

Part 3: LEGAL BASIS

1. Encana denies that it caused or permitted a nuisance on the Lands, as alleged or at all. Specifically, Encana has neither substantially nor unreasonably interfered with the Plaintiffs' use or enjoyment of the Lands.
2. In the alternative, if Encana has substantially and unreasonably interfered with the Plaintiffs' use or enjoyment of the Lands, which is denied, such interference was reasonable and an inevitable consequence of Encana exercising its authority to construct and operate the Subject Wellsites pursuant to the Authorizations, which were granted by the BCOGC pursuant to the *Oil and Gas Activities Act*, SBC 2008, c 36 and the regulations thereunder. At all material times, Encana constructed and operated the Subject Wellsites in compliance with or exceeding:

- (a) the requirements of all Authorizations and all relevant laws, directives and regulations, including all requirements pursuant to the *Oil and Gas Activities Act* and the regulations thereunder; and
 - (b) the accepted and established industry practice.
3. Further, the Plaintiffs' Claim is barred by operation of the *Limitation Act*, SBC 2012, c 13, as amended. Alternatively, the Plaintiffs' Claim for Alleged Damages that were sustained before November 9, 2014 is barred by operation of the *Limitation Act*.
 4. Further, and in the alternative, as the Plaintiffs did not challenge the issuance of the Authorizations, the Claim constitutes a collateral attack on the Authorizations, or alternatively, an abuse of process, and should be struck in its entirety.
 5. Further, and in the alternative, the Plaintiffs are not entitled to any damages for the reasons set out above at paragraphs 14 to 19 of Division 2 of Part 1 of this Response to Civil Claim.
 6. Encana pleads and relies on the provisions of the *Negligence Act*, RSBC 1996, c 333, and amendments thereto.

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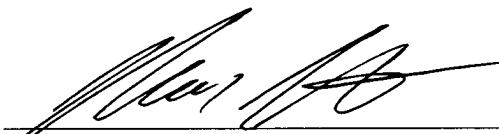
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Date: January 31, 2017

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Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.