



# New York State Bar Association

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**TO:** County Coordinators, Coaches, Attorney Advisors and Judges  
**DATE:** December 20, 2013  
**RE:** Mock Trial Case 2014 Correction Memo TWO

The following are corrections made to the 2014 case. The corrected documents are attached and state that they are the “EDITED VERSION FOR FINAL USE 12/20/13.” A completely updated case will be available online through the website. These are minor edits that shore up the timeline of two of the witnesses. Also the fracking diagram is now credited with authorship, and the spelling error regarding the town name is corrected.

## **TOMLEY**

The year Tomley received his/her BS degree has been changed from 1973 to 1977.

## **MARSHALL**

Marshall’s age has been changed to 58. The year s/he got his/her BS degree has been changed from 1983 to 1987. The year s/he got his/her master's in biology has been changed from 1985 to 1992 and the Ph.D. from 1990 to 1997.

See attached for changes to the fracking diagram. A 12/20 was put on the diagram to indicate that it is the most recent version of the diagram to be used. It is NOT to be considered the date the diagram was created or for any use in the trial or for any lines of questioning regarding this piece of evidence.

## Affidavit of Mitchell Tomley

1. My name is Mitchell Tomley. I reside in Jim Thorpe, Pennsylvania. I am the Chief Executive Officer of Penn HydraGas, Inc., a public company that is traded over the counter. Our company headquarters are located in eastern Pennsylvania. I am 57 years old. I obtained a bachelor's degree in physics and mechanical engineering from SUNY Stony Brook in 1977. I also hold an MBA from Wharton School of the University of Pennsylvania and have served as an adjunct faculty member there since 1998. I teach aspiring executives how to develop and assess techniques to comply with governmental regulations while maintaining the highest possible profitability. In addition, I worked on Wall Street for a division of a hedge fund specializing in oil and gas futures. I was quite successful and, not bragging, I made a ton of money.
2. I left the hedge fund in 2004 and in 2005 I bought a small fracking operation from a Mr. Larkin called Natural Shalegas. The company was renamed Penn HydraGas, Inc., and we significantly expanded the natural gas drilling operations.
3. Our company designs and operates high-volume horizontal hydraulic fracturing systems (HVHHF). Basically, HVHHF, also known by (much to my dismay) the silly term "fracking," is simply a drilling method used to extract natural gas or oil from rock by breaking, or fracturing, the rock by use of a pressurized liquid, also known as a drilling fluid. The process itself has been around since 1947, and the first commercially successful applications were in 1949, shortly after World War II.
4. We started a project in Northern Pennsylvania, about five miles from the Village of Molivar in New York, in early May 2012. On February 15, 2013, my company and I were indicted on one count of violating the Federal Safe Drinking Water Act. The claim is that somehow I personally, and Penn HydraGas, polluted the aquifer servicing the Moliver public water system. Apparently some farmer named Mickie McDonald lost three hogs and a cow in September 2012. Also, his/her spouse and daughter developed some maladies. Anyway, it is my understanding that s/he uses well water for his/her plants and animals.
5. My attorneys tell me that the U.S. Justice Department had dropped this case, having concluded after a cursory review that it would be a waste of scarce resources to prosecute a case where there was no direct proof that we had contaminated anything. However, the District Attorney of Mayberry County, probably because of pressure from McDonald and the so-called "environmentalists," sought and obtained the indictment against us. Our lawyers told us not to worry about it; an indictment means nothing. One famous New York judge even said a zealous prosecutor could indict a ham sandwich.
6. The good District Attorney Mortimer Snerd had to step aside when he remembered that his wife had invested heavily in Penn HydraGas stock. The State Attorney General was appointed by the governor to take over the prosecution. The AG should come to the same conclusion as the Justice Department and drop this nonsense case.

7. The HVHHF business has become quite profitable in recent years, due to technological advances, and, I must admit, the willingness of governmental and non-governmental organizations to cooperate with us. What's in it for them? HVHHF creates jobs. We also pay a lot of money to lease property from people whose property values have declined, in some areas quite drastically. We are doing our part to reduce this nation's dependency on foreign sources of oil, which can only help our national security. Bottom line is that we provide a lot of money, especially to people in distressed economies, many of whom can't afford to keep their property and can't sell it, while at the same time helping our nation take charge of our energy needs.
8. I wish that people would learn a little about the process before they jump to conclusions that our company intends to pollute the world, kill animals, and poison the water supply. I get very annoyed by the protesters at our headquarters and some of our sites, and I am especially offended by their juvenile double-entendre slogans and puns. In fact, I once commented to one of our vice presidents, "We don't care if a few farm animals croak. Fracking is the future and we are frackin' it up." I was joking, of course.
9. Sure there is an environmental impact, but everything has benefits and risks. The mixture that we inject into the well bore, and the contents of the storage ponds, if not properly monitored and contained, can seep into aquifers providing drinking water. But, drilling is carefully monitored, and we are subject to numerous federal, state and local regulations wherever we do business. We hire people to make sure we comply with the law in as fiscally responsible a way as we can.
10. We spent years of engineering time and millions of R&D money developing our proprietary drilling fluid, and our formula is a trade secret that is covered by numerous patents. The formula itself is never revealed to anyone except government regulators.
11. It would be a lot cheaper to use diesel fluid in Penn HydraGas' drilling process. Our former vice president of operations, Billie Jo Simpleton, simply wouldn't approve diesel fluid for use in our operations under any circumstances. That was a frustration for me since I bought the company in 2005. I was not unhappy to see Simpleton move on to other ventures. But Simpleton certainly wasn't the only obstacle: the EPA permit to use diesel fluid is quite costly, just to discourage drillers from using it.
12. Larry Lyonheart, our current Vice President of Operations, is solely responsible for manufacturing the drilling fluid. He used to report to me on a regular basis. Unfortunately, he was involved in a serious motor vehicle accident and is in a coma. He is not likely to recover.
13. Like Simpleton, Larry is a scientist without much business sense. We had many animated discussions about the drilling fluid, and we frequently and respectfully disagreed with each other. As CEO, the final decisions, though, are mine. I have seen the email that was supposed to be deleted, and I confirm that yes, I did send it to Larry when I was on vacation in September 2011. The email was a reply to an email Larry had sent companywide. Apparently, Bobbie Jones' personal email address was still in the company's group email address. I accidentally selected REPLY-ALL, which would explain how Jones got a copy of the email.

14. It's true that I wanted Larry to give further consideration to using diesel fluid. Our company's board of directors authorizes big bonuses to employees who bring projects in under budget or with higher profitability. I am always in communication with our top people to enhance the bottom line, usually by confidential email.
15. I have heard that companies use diesel fluid without obtaining the permit because diesel fluid is cheap and easy to use in the drilling process. But, our lawyers tell me that the prosecutor has not discovered any direct proof that Penn HydraGas ever used diesel fluid. I acknowledge that EPA inspectors found several unopened drums containing diesel fluid in our warehouse nine months ago. These drums were ordered by mistake. We just have not gotten around to returning the diesel fluid to the distributor.
16. The techniques we use at the project near Molivar are typical. First, we created a well bore, basically a deep vertical hole. Then we line the well bore with a cement casing, which protects the equipment and our workers. Cement is quick, easy, and cheap.
17. Penn HydraGas uses our patented proprietary mixture of water, sand and chemicals, which is lowered into the well bore and injected at high pressure horizontally, to create small fractures (typically less than 1mm, or about as wide as your pinky finger), along which fluids such as gas may migrate to the well. We then reduce the hydraulic pressure by moving the mixture to storage ponds.
18. Since our equipment and employees are regularly in and out of the well bore, we usually notice cracks in the cement casing pretty quickly, and if they need repairs, we are able to do them promptly. That's only good business. It's in our best interests to detect leaks quickly, because our proprietary mixture is expensive, and we don't want a competitor to have access to a sample and reverse-engineer it.
19. On June 4, 2012, my people reported a leak in the casing at the project near Molivar. In accordance with Penn HydraGas' policies and best practices protocol, I ordered the field supervisor to prepare a diagram of the project for company files, showing the breach before it was repaired. I'm pretty sure, but not certain, that it was caught very early on, and that there probably wasn't a leakage of any significant amount. If I remember correctly, the leak was found and fixed in about three days.
20. One of the prosecution's witnesses is Mickie McDonald. Yes, the same farmer who is suing our company in a civil lawsuit for \$10 million in damages. S/he claims damages for four dead animals, and has alleged that his/her spouse has headaches and their daughter has asthma because of contaminated water. Headaches and asthma? Probably two of the top ten conditions in the entire country. Really?! Even if McDonald isn't making the whole thing up, there is no way s/he can prove our company caused the animals' death or any illnesses. The drilling operation is simply too far away in my opinion to have any effect on any water system servicing the McDonalds – public or private. Anyway, my attorneys have filed a summary judgment motion seeking dismissal of the civil case. I expect a favorable decision on the motion after this silly criminal case is over.
21. All kinds of things can migrate through rock and into aquifers – acid rain, fertilizers, chemical spills, even storm water runoff from asphalt highways. It's pretty easy to point at us, but the fact is we can't be blamed for everything! Not that government and certain greedy people haven't tried!

22. What McDonald probably didn't tell the EPA was that s/he has used chemical fertilizers, probably for years, which can leach into the aquifers. McDonald probably also failed to mention a large leak from the farm's diesel tank. McDonald used some cleanup company called Larry, Moe and Curley Quick Response Recovery to clean up the mess. I'm told the company went out of business. Diesel fuel can also leach into the aquifer. The chemical fertilizer usage and the diesel fuel leak are the logical explanations for any problems with Molivar's water quality.
23. Bobbie Jones worked at our company and the predecessor company for 25 years as a chemical engineer. You shouldn't believe anything s/he has to say. Jones showed up late for work on numerous occasions, was found sleeping on the job several times, and refused to work overtime when important projects needed to be completed. What a disaster. Jones had every excuse in the book and then some: medication, caring for an elderly parent, you name it. Finally we had enough and fired him/her in December 2010.
24. Besides that, Bobbie Jones knows nothing about our drilling procedures. S/he was never at our drilling sites. His/her job was to work at our lab next to our central office testing samples of natural gas brought to him/her for trace detection levels of impurities. Natural gas trace impurities include hydrogen, nitrogen, carbon monoxide, carbon dioxide, oxygen, mercury, water and other components. The fact that Jones got "employee of the month" awards several times means nothing. In 2003, s/he got it from his/her good friend Mr. Larkin and before I bought the company from Larkin. S/he got it again in 2006, a year after I took over, before we really knew what type of worker s/he really was. S/he was never happy that Mr. Larkin sold the company.
25. Jones claimed the firing was because s/he was amassing information to be a "whistleblower." Ridiculous. Jones wasn't at work enough, or awake enough, to do his/her own job, much less take on the extra project of assembling information against us except for leaking a confidential email. Jones tried to collect unemployment, but the Pennsylvania Department of Labor ruled that we were right and that the firing was justified. That's probably why Jones didn't try to appeal the labor department's decision.
26. I guess Jones is still angry about the firing and the labor department decision. Bobbie Jones has been a thorn in our side since June 2010 when s/he became a member of the Pennsylvania chapter of the so-called "environmental" group SAFFE, whose sole mission is to stop HVVHF completely. I would not be surprised if Bobbie Jones is asleep at the switch at his/her new job with the Village of Molivar as a water quality engineer, and is sleeping through the village's problems, trying to pin them on us!

Dated: Jim Thorpe, Pennsylvania  
October 31, 2013

*Mitchell Tomley*

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Mitchell Tomley

### Affidavit of Shawn Marshall

1. My name is Shawn Marshall and I am 58 years old. I divide my time between homes in London, New York, which is about 30 miles northeast of the Village of Molivar, and Washington, D.C.
2. I received my B.S. in geology from Northern South Dakota College in 1987. Thereafter, I attended University of Nexus, an online institution, where I received a master's of science in biology in 1992 and a Ph.D. in ecology and environment in 1997. I put up my credentials against any of those other Ph.D.'s who went to the over-priced and fancy-named brick and mortar schools.
3. I currently work as a Geologist for the Natural Gas Institute (NGI) which is a lobbying organization. The NGI is funded by membership dues paid by individuals and companies in the natural gas industry, like drillers and suppliers. Penn HydraGas, Inc., is a dues paying member of NGI and we have considered asking Mitchell Tomley to join our board of directors. S/he is probably too busy now running the company and protecting the company from baseless charges.
4. I disagree with the EPA and other purported "scientists" who believe that the use of diesel fluids harms the environment. I haven't seen any credible evidence to support the theory that fracking has caused any harm.
5. In my opinion, fracking is completely safe and causes no harm to the soil or the ground water supply; there is research to support my view. The federal government did a study that showed that fracking does not contaminate the drinking water supply. The Associated Press reported on the study in a July 18, 2013, article titled, "DOE study: Fracking chemicals didn't taint water." The study monitored the drilling sites for a year and found that drilling fluids remained about a mile away from drinking water supplies.
6. The environmental extremist groups like SAFFE ignore the science showing conclusively that fracking is safe and that natural gas exploration is beneficial to our economic prosperity. In fact, rather than be harmful to society, fracking could lead to a reduction in the country's dependency on foreign oil supplies. This natural gas can create electricity and heat, income from tax revenues and new jobs. SAFFE is only concerned about distorting the truth and raising money from the gullible public.
7. Even if some of the chemicals used in fracking, like diesel fluids, are not healthy for plant and animal life, they are kept away from the human water supply. Indeed, fracking allows the industry to access natural gas, which is an environmentally-friendly, clean-burning fuel, in places where conventional drilling may not work.
8. Fracking is safe and beneficial to the economy, but I always encourage NGI Institute members to obtain the proper permits before using diesel fluids. Anyway, it is probably

just government over-regulation to restrict the use of diesel fluids in drilling operations. These wells are typically miles away from aquifers and other water supplies. I don't know exactly how far away the Penn HydraGas' well was from the Molivar aquifer, but I would be surprised if the drilling operation had any effect on the village's water supply. These people like SAFFE and its environmental cohorts are just making stuff up! Anyway, I heard that there was a large diesel fuel leak on the McDonald farm and the company that supposedly did the cleanup work went out of business. If anything, the diesel fuel leak and the sloppy cleanup work were probably the cause of the contamination to McDonald's well water and the Molivar water supply.

9. I am familiar with the allegations in *People v. Penn HydraGas, Inc., et al.* I am also familiar with one of the prosecution's witnesses, Dr. Ryan Toolittle. I was interviewed about fracking in Dr. Toolittle's documentary, *Gas Country*. I told Dr. Toolittle, in plain terms, that I support fracking. I did not appreciate that Dr. Toolittle's editing made me appear so extreme, nor did I appreciate that Dr. Toolittle disputed my credentials, showing his/her juvenile wit by saying in the film that I was "just full of 'natural' gas." Accordingly, I declined to appear in *Gas Country II*. I will not help Dr. Toolittle gain more money and publicity via his/her baseless anti-fracking documentaries. S/he seems far more concerned with selling a story than science.
10. Now, I am aware that there was a breach in the cement casing of one of Penn HydraGas' wells near Molivar. I admit that a crack can present a problem and allow drilling fluid to escape into the surrounding environment. Although the breach was very close to the Molivar drinking water resources, I am told the crack was discovered early and the leak was minimal. But, no one really knows for sure, even Dr. Toolittle. Toolittle owns a lab that tests drinking water systems, but the lab is not fully certified. So, you can't trust any test results from that quack. Anyway, I just hope Penn HydraGas and my good friend Mitchell Tomley were not using diesel fluid without a permit.

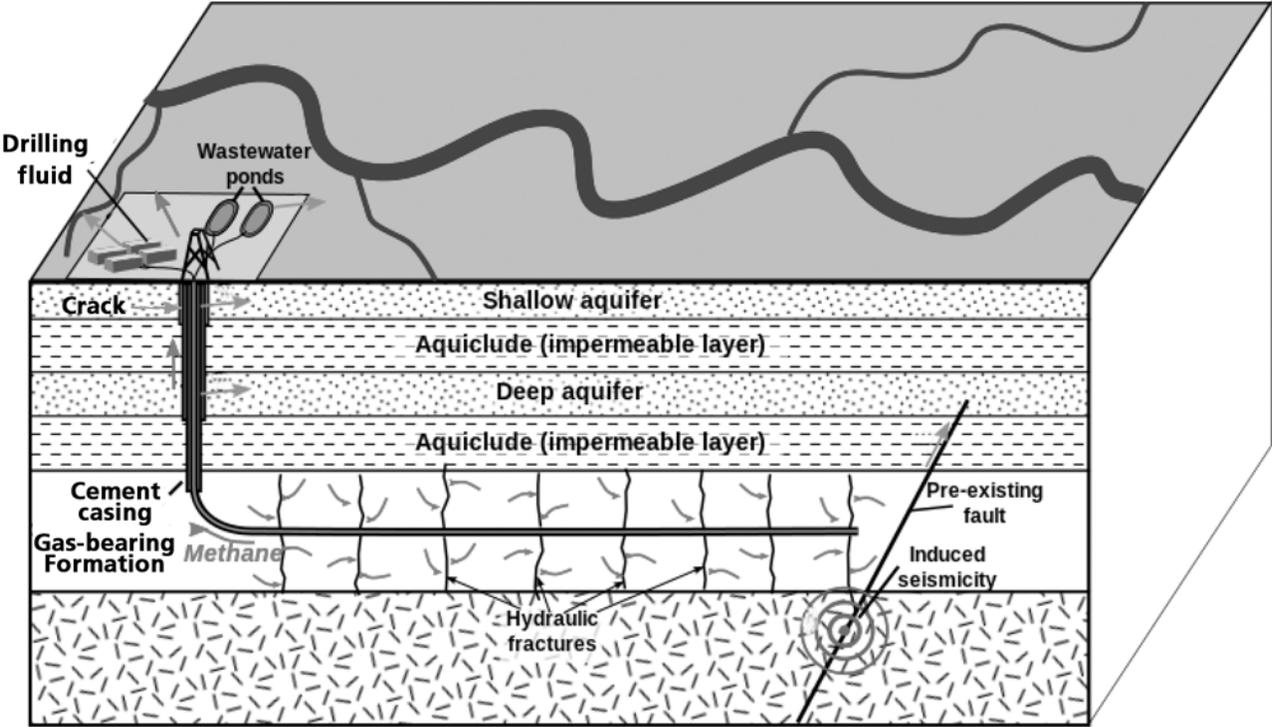
To the best of my knowledge, the above is true.

Dated: London, New York  
November 13, 2013

Shawn Marshall, B.S., M.S., Ph.D.

Shawn Marshall, B.S., M.S., Ph.D.

# Penn HydraGas Drilling Operation near Molivar, NY



Prepared by: Vincent Taylor, Field Supervisor, Penn HydraGas, Inc