

LITIGATION UPDATE

GAIL WURTZLER, DAVIS GRAHAM & STUBBS LLP

HYDRAULIC FRACTURING LITIGATION

ASFE Fall Conference – October 27, 2012

MEMBER

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THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS



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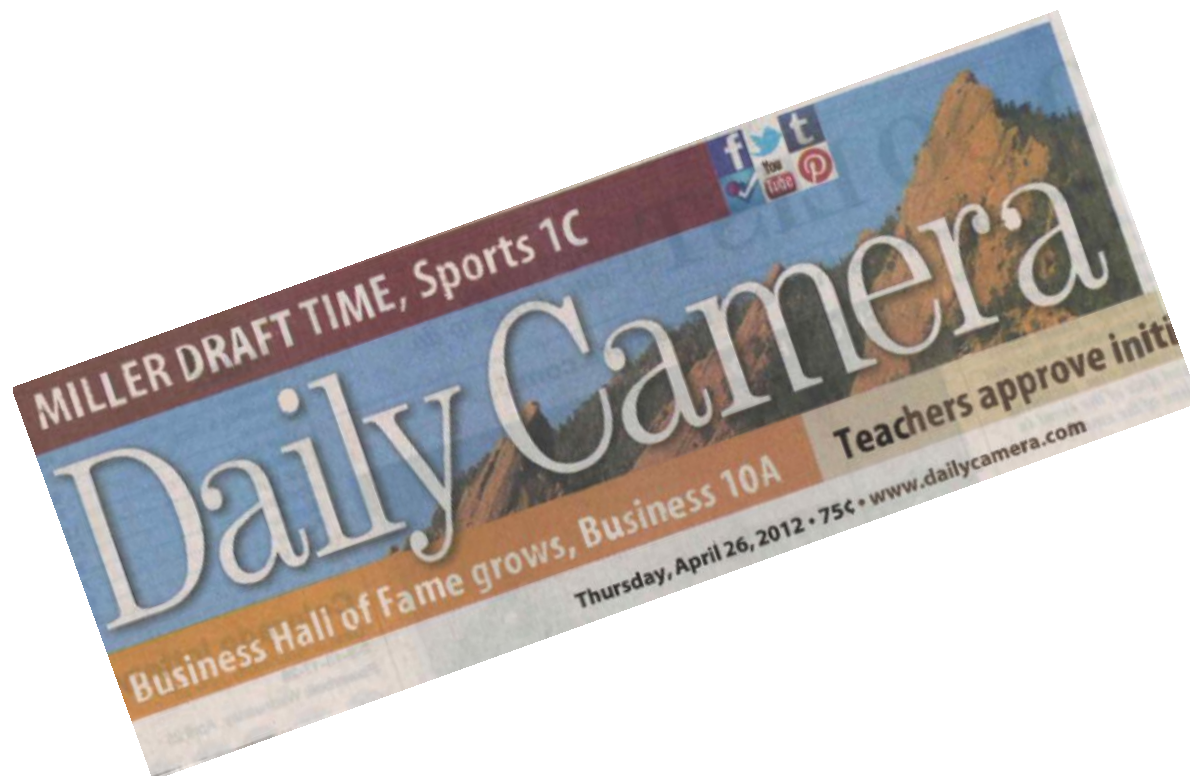


CIVIL TORT AND CONTRACT LITIGATION



GASLAND





NATURAL GAS DRILLING IN COLORADO



KNOW YOUR RIGHTS
 Air Pollution • Water Contamination
 Property Damages • Possible Health Effects
 Join attorneys Marc J. Bern and Corey T. Zurbuch
 along with representatives of
 Napoli Bern Ripka Shkolnik & Associates and
 Frasca Joiner Goodman & Greenstein PC
 to learn more about your legal options.

Thursday May 3, 2012

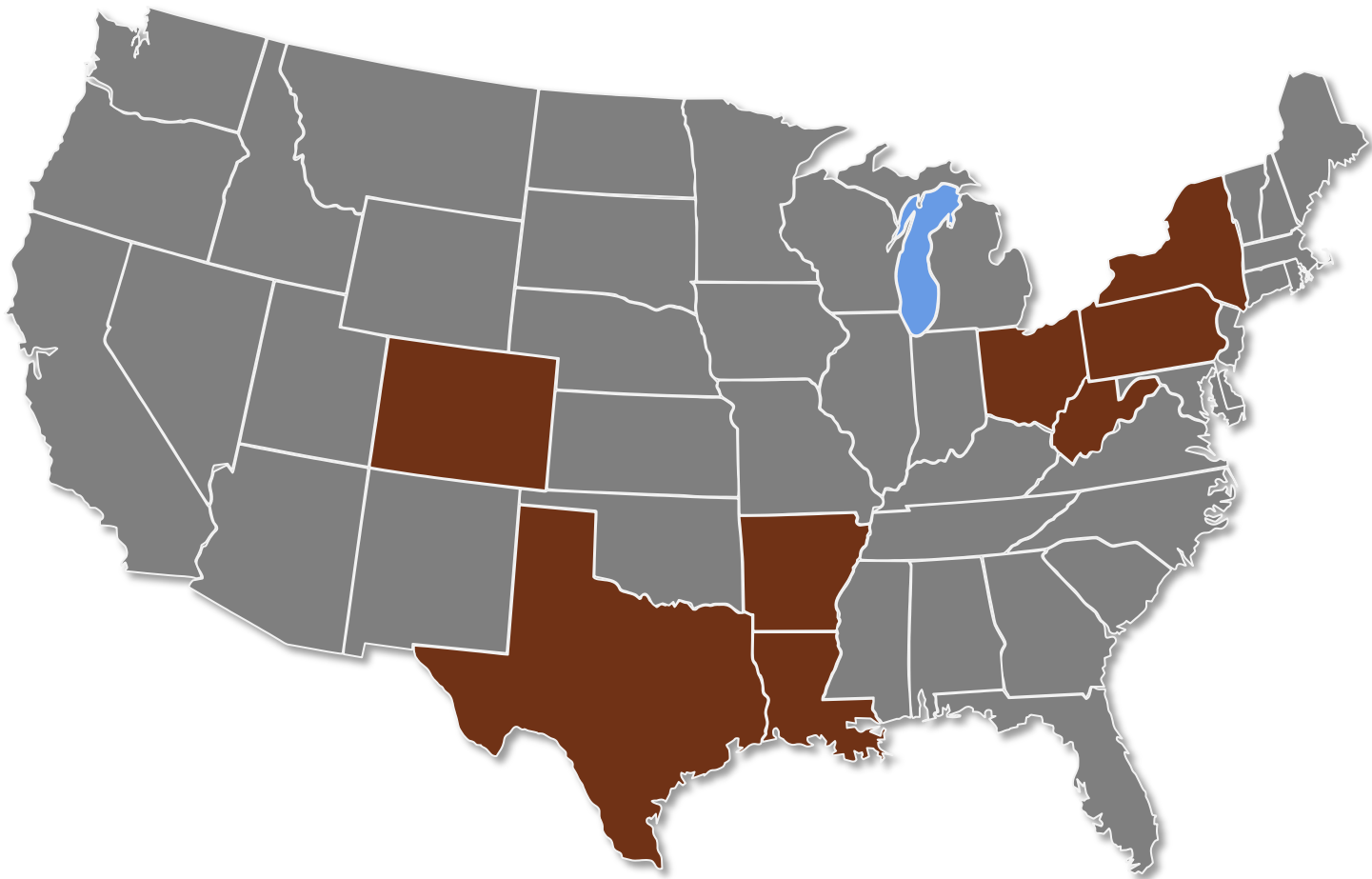
3:00 – 4:30 P.M. The Plaza Hotel, 1900 Ken Pratt Blvd., Longmont, CO 80501	6:30 – 8:00 P.M. Louisville Recreation Center, 900 West Via Appia, Louisville, CO 80027
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20+ CASES PENDING IN EIGHT STATES



ALLEGED PROBLEMS

- Water – ground and surface water contamination
 - Spills/leaks
 - Consequence of operations
- Soil contamination (spills/leaks)
- Air emissions
- Seismic
- Health impacts
- Noise and other disturbances



- Tort
 - Trespass
 - Nuisance
 - Negligence/negligence per se
 - Strict liability/abnormally dangerous activity
 - Fraud/concealment
 - Medical monitoring
- Contract
- Equitable relief



- Personal injury damages
 - Actual
 - “Fear of”/increased risk of illness
 - Emotional distress
- Property damages
- Medical monitoring
- Punitive damages
- Injunctions

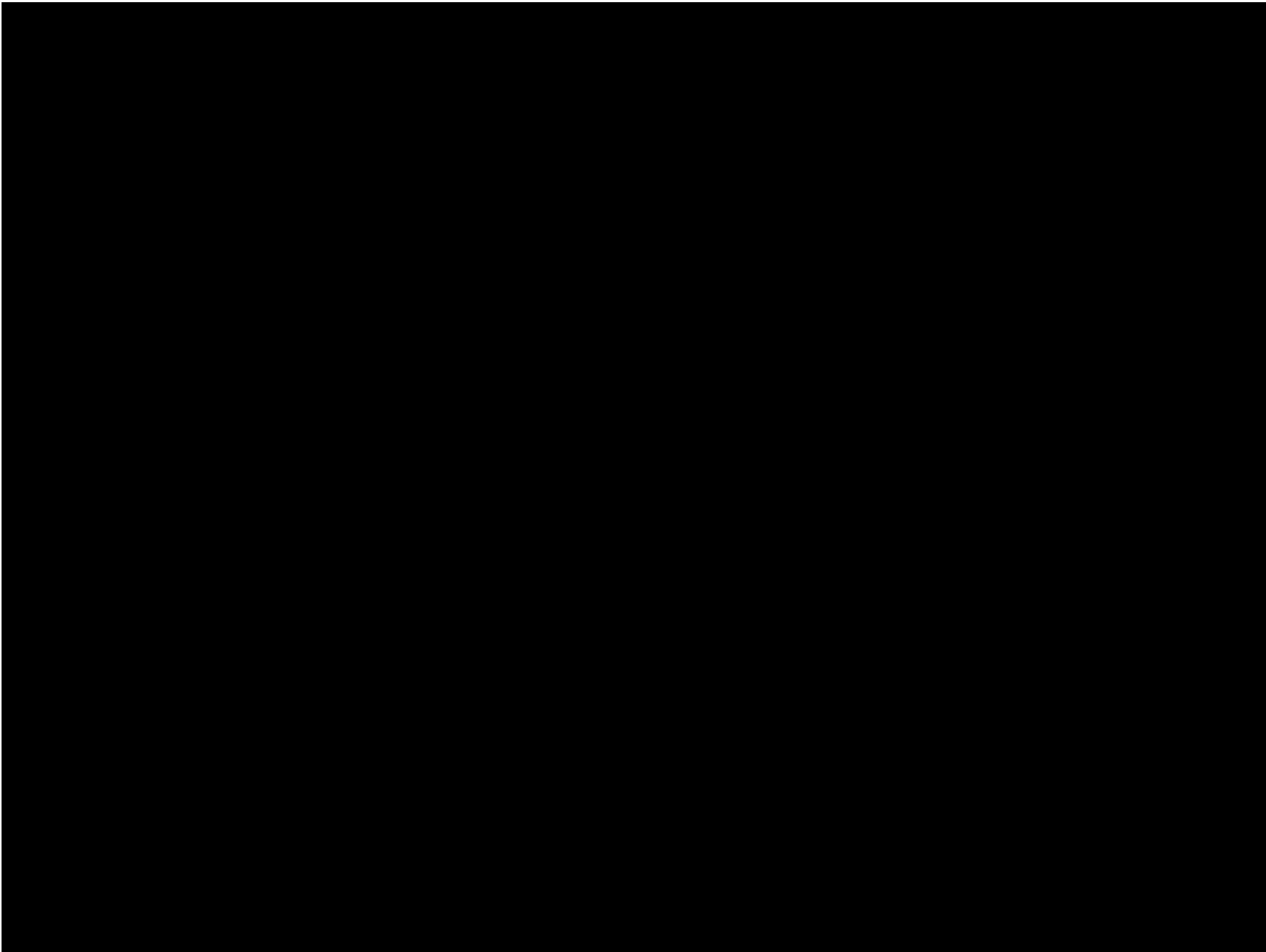


PROVING CAUSATION

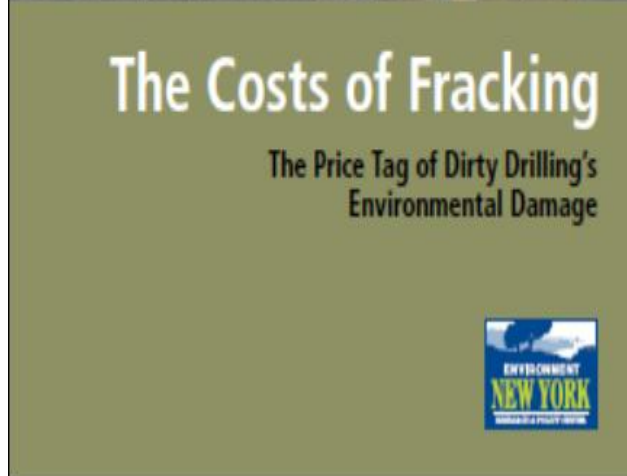
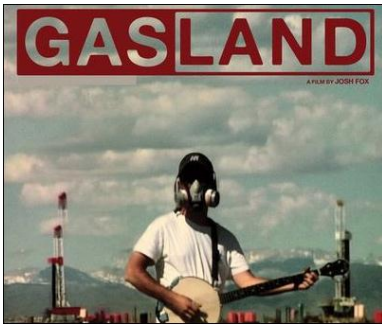


V.





FRACKING AND CAUSATION



PROVING CAUSATION



v.

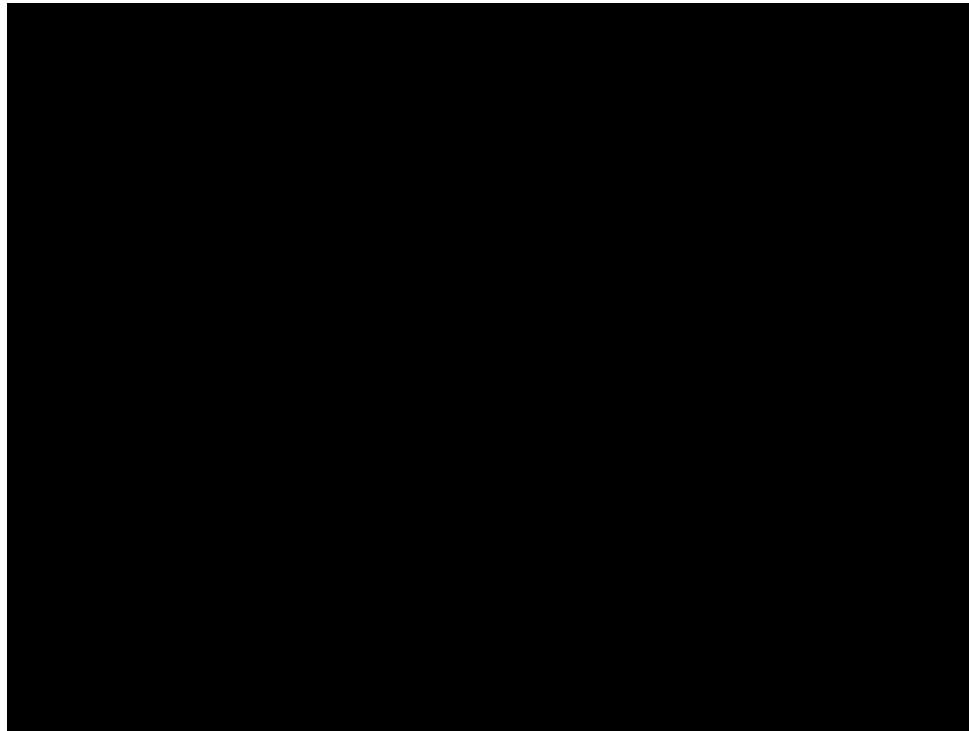


- DEFENDANT'S CONDUCT – Was defendant's conduct the cause of the chemical release to the environment?
- GENERAL CAUSATION – Can this chemical cause this condition?
- SPECIFIC CAUSATION – Did this chemical cause this particular plaintiff's condition?



PRINCIPLES OF CAUSATION – DEFENDANT'S CONDUCT

- Question – Was defendant's conduct the cause of the emission/contamination?

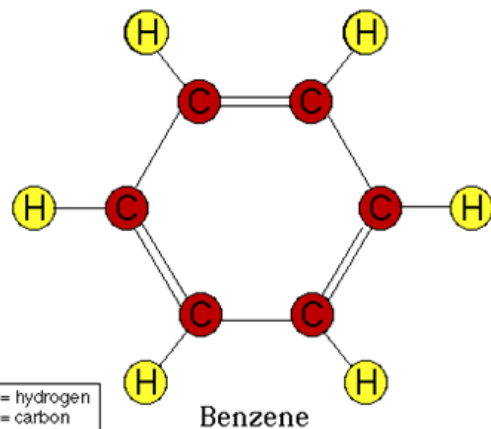


PRINCIPLES OF CAUSATION – DEFENDANT'S CONDUCT

- Identify defendant's conduct – emission of particular pollutants



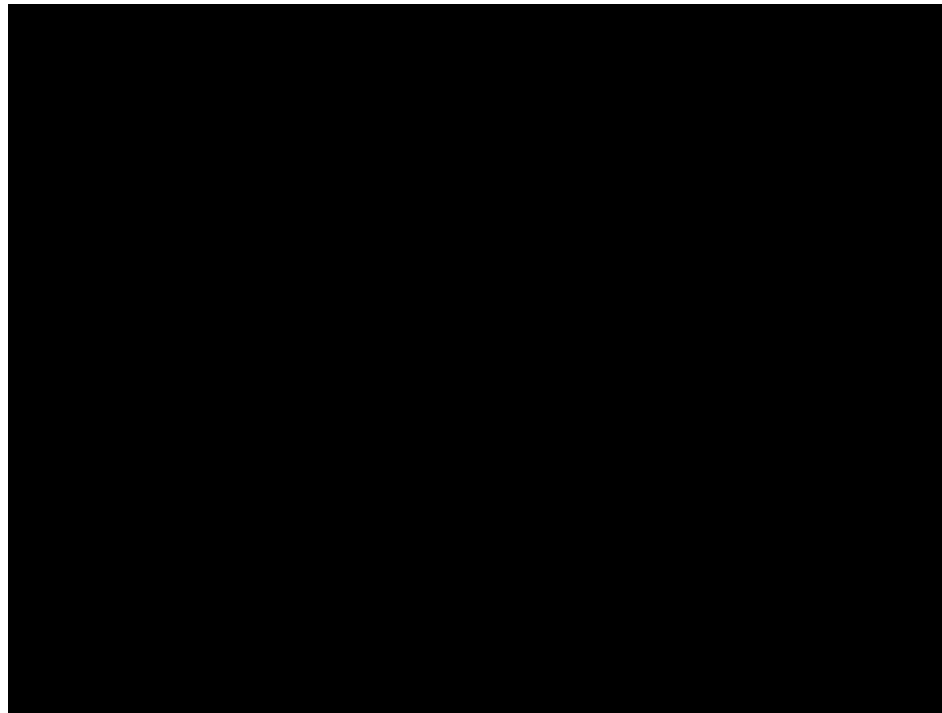
Question – Can this chemical cause the particular harm alleged?



Cause Leukemia,
nervous system
disorders, etc.

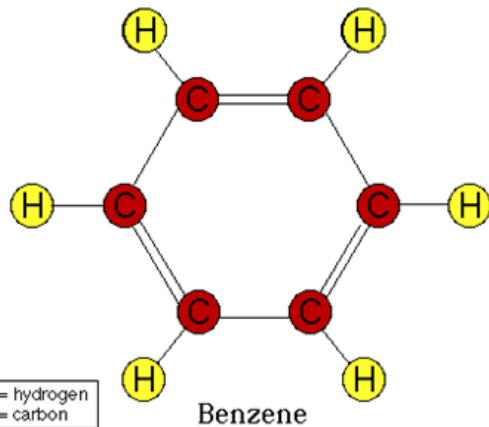


Question – Can this chemical cause the particular harm alleged?



PRINCIPLES OF CAUSATION – GENERAL CAUSATION

To establish causation – Disease is more probable among those exposed than those who were not exposed



Cause Leukemia,
nervous system
disorders, etc.



PRINCIPLES OF CAUSATION – GENERAL CAUSATION AND LEVELS OF PROOF

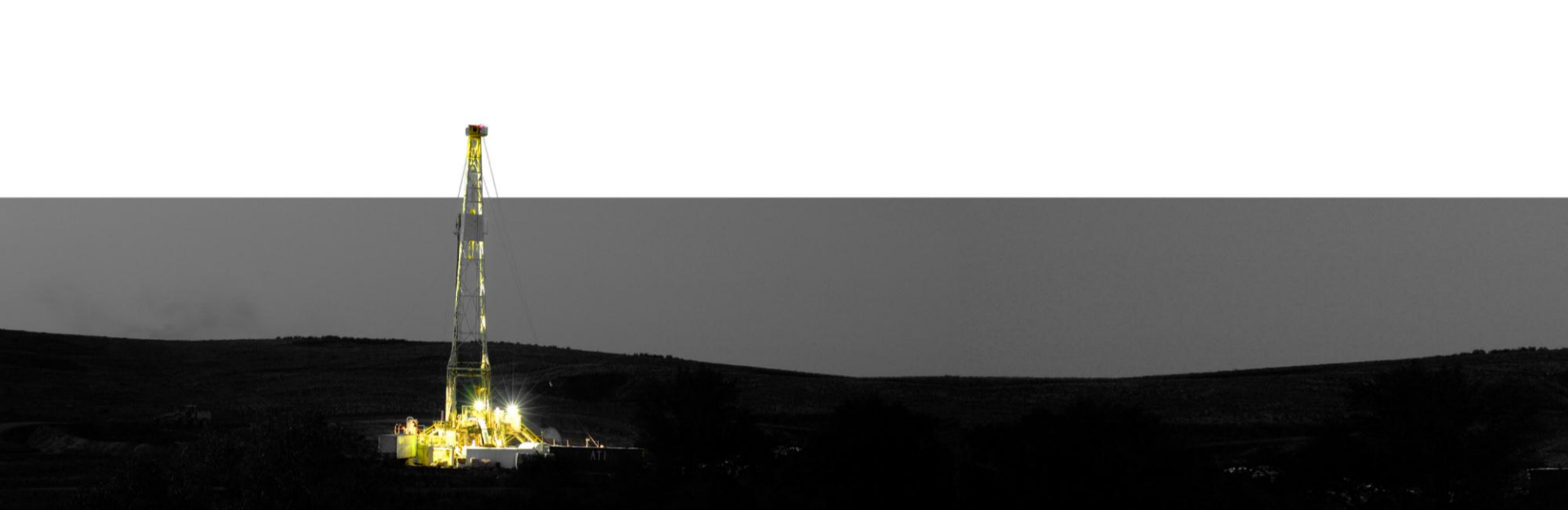
- Clinical or randomized trials
- Observational or cohort studies
- Case-control studies
- Case reports
- Animal studies
- In vitro studies

STATISTICS

PRINCIPLES OF CAUSATION – SPECIFIC CAUSATION AND DIFFERENTIAL DIAGNOSIS

- Exposure – dose and duration
- Other exposures
- Medical conditions
- Habits
- Unknown

**DIFFERENTIAL
DIAGNOSIS**



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