



Legacy Lawsuits and SR84

PLANO Executive Night Seminar
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History of Legacy Lawsuits

- Landowners could sue for remediation damages, but there was no duty to clean the land.
- Louisiana lands were rarely cleaned and defendants avoided additional remediation costs because of issue preclusion.

Corbello (2003)

- Landowners recovered substantial damages for remediation and water contamination, but were not required to remediate the property.
- Value of the land was not taken into consideration.
- The Louisiana Supreme Court recognized the negative public policy, stating: “A need for a comprehensive body of legislation wherein the state would oversee the problem in oilfield waste sites.”
 - Resulted in creation of Act 312 and La. R.S. 30:29 in 2006.

Act 312 (2006)

- Act 312 is a procedural change that created a post trial hearing at the Department of Natural Resources to determine the “Most Feasible Plan” for remediation.
- Based on RS 30:29(b) standards.
- DNR helps with the creation of the plan, but the court decides which remediation plan to adopt.
- The money necessary to fund the remediation plan is deposited into the registry of the court.

Act 754 (2012)

- Representative Neil Abramson
 - Allows defendants to use Act 312 procedures before trial through a limited admission of liability.
 - Allows for the creation of Environmental Management Orders to control the inspections and testing on the remediation sites.

Act 779 (2012)

- Senator Robert Adley
 - Limits the time period to formulate evidence for discovery
 - Requires a preliminary hearing to assess damage and liability
 - Allows plaintiffs to interrupt prescription after giving notice about environmental testing
 - Prohibits discovery of DNR and agency work until after a final plan is submitted to the court.
 - Allows a waiver of contractual indemnity rights regarding punitive damages for any defendant that admits responsibility for the remediation.

Act 795 (2012)

- Requires 30-day notice before entrance to property for drilling activities, unless surface owner has a contract with the operator or a delay would result in the loss of the mineral lease.
- Notice requirement does not apply to inspections, surveys, or additional wells on existing drill pads.

Vermillion Parish School Board (2012)

- Issue:
 - Whether a landowner, in absence of an express contractual provision, may recover remediation damages in excess of, or in addition to, those required to fund the remediation plan
- Act 312 is procedural and defines a process; it does not define the remedies available to the landowner.
- Allowed recovery in excess of cost of approved remediation plan, and in absence of a contractual provision providing for damages to restore the property to its pre-lease condition

Other Jurisdictions

- Require plaintiffs to frame damages and remediation claims within already existing causes of action, such as tort negligence, damage to real property, or abatement of nuisance.
- Damage awards are based on the market value of the land or its rental value.
- Louisiana allows private claims to be determined independently.

Texas

- Texas does not require remediation of damaged oilfield sites without an explicit clause creating an express or implied duty to remediate. Environmental damage must be present.
- Damages are sorted as temporary or permanent and then based on diminished market value of the land.
- Landowner must file suit as soon as damage is discovered and is only entitled to compensation based on what he can specifically prove. Prevents damage from accruing.
- Special damages require a defendant to act in a willful, wanton, or malicious manner in complete disregard of landowner's rights. The defendant's acts must be marked by fraud, malice, or oppression; or the defendant must be grossly negligent.

Mississippi

- Plaintiffs seeking restoration of land must first exhaust administrative remedies through the MS Oil and Gas Board. Miss. Code Ann. § 53-1-17
- Courts – Agency better to enforce environmental statutes; private suits do not guarantee the land will be cleaned
- Injury is classified by whether the pollution is permanent, temporary, or if a watercourse is damaged
- The measure of damage considers the impairment of the owner's comfortable enjoyment of the property, together with special damages, if proved.



SR84 and the Mineral Law Legacy Dispute Committee

- Urges and requests the Mineral Law Institute to study the feasibility and constitutionality of utilizing alternative dispute resolutions as a means of resolving “legacy” disputes.
- Composed of individuals experienced in representing both plaintiffs and defendants, as well as individuals experienced in alternative dispute resolution.



Committee Members

- Sen. Bret Allain
- Keith Hall
- Paul Adkins
- George Arceneaux
- Daniel Balhoff
- Bernard Boudreaux
- Robert Cables
- Taylor Darden
- David Ellison
- Victor Gregoire
- Kevin Huddell
- Colleen Jarott
- Michael Lyons
- Victor Marcello
- Loulan Pitre
- Michael Veron

Settlement Framework

- Path to settlement that address regulatory clean up of the damaged property
 - Stays RS 30:29(b) proceedings until completion of ADR
- Requires a mandatory mediation that can lead to binding arbitration
- If the parties agree, they enter into binding arbitration to settle liquidated damages and any current crop damages that are independently proven
- If the parties do not agree, they can end the mediation and the lawsuit will continue along traditional paths

Mandatory, Nonbinding Mediation

- Draft proposal for mandatory, nonbinding mediation:
 - If a settlement is not reached, parties are free to pursue, or to continue to pursue, litigation
 - Structured to protect claimants from running of liberative prescription during mediation
 - Structured to protect defendants rights, if any, to remove the case from state court
- Encourages parties to meet and talk
- Allows quick settlement for parties that only want their land remediated

Voluntary, Binding Arbitration

- Draft proposal for voluntary, binding arbitration:
 - Requires consent of all parties after property at issue, environmental consultants, and a feasible remediation plan are agreed to by all parties
 - Arbitration also covers private damages
 - Parties waive right to litigation
 - Follows general rules regarding arbitration

Committee Tentative Consensus

- Proposal for mandatory, nonbinding mediation
- Proposal for voluntary, binding arbitration
- Allocation of cleanup costs to the responsible party
- Mandatory cooperation with environmental testing prior to litigation
- Protection of claimant from liberative prescription
 - Interruption or Extension – Act 88 of 2013
- Protection of defendant's right of removal to Fed. court
- Protecting clean water supplies while negating incentivizing speedy resolutions and cleanups

Current Legacy Lawsuits

- Levee Board Lawsuit
 - Southeast Louisiana Flood Protection Authority
- Parish Lawsuits
 - Jefferson Parish
 - Plaquemine Parish



General Questions