



Court Issues Ruling Limiting Access to Federal Courts in Coastal Restoration Lawsuits

On December 1, 2014, Judge Zainey of the Eastern District of Louisiana issued an Order returning a case involving numerous oil and gas companies back to state court. The Parish of Plaquemines originally filed suit in Louisiana state court on its behalf and on behalf of the State of Louisiana. The Parish sued nineteen (19) oil and gas companies, alleging that oil and gas exploration, production and transportation operations were conducted in violation of Louisiana state law, including the State and Local Coastal Resources Management Act of 1978, La. R.S. §§49:214.21, *et seq.* (commonly referred to as “the CZM laws”). The Parish sought damages including restoration and remediation costs.

The defendants utilized a procedural rule under federal law and removed the lawsuit to the Eastern District of Louisiana federal court. The defendants offered a number of theories for federal court jurisdiction, including the application of the Outer Continental Shelf Lands Act (“OCSLA”) and general maritime law to the Parish’s claims. The defendants also argued that the Parish’s claims had been improperly joined together because there was no “community of interest” between the defendants, as the lawsuit involved over 1000 permits and 207 square miles of land.

In a 53-page ruling, though, the federal court remanded the action back to state court. First, the court noted that Louisiana law permits the Parish to sue on behalf of the State in limited circumstances, such as when seeking recovery under the CZM laws. The court also noted that the remedy sought by the Parish was consistent against all defendants. Perhaps more importantly, though, in finding that a common interest existed, the court’s ruling focused on the fact that the lawsuit implicated the same geographical fields and subsurface reservoirs.

In rejecting the application of OCSLA, the court found that all the activities complained of occurred in Plaquemines Parish, not the Outer Continental Shelf (“OCS”). The defendants argued that the activities that caused the alleged injury to the Parish were the drilling, production and transportation activities that actually occurred on the OCS, and not the pipeline construction and other activities that occurred in Plaquemines Parish. The court found that activities that caused the alleged injury occurred in state waters and were subject to Louisiana’s permitting scheme, exclusive of OCSLA application. The court also rejected the application of general maritime law, finding that the recent amendment to the federal removal statute, 28 U.S.C. §1441, did not permit removal to federal court under general maritime law. This holding is consistent with other Eastern District of Louisiana cases, which have rejected attempts by defendants to remove general maritime lawsuits to federal court under the recent removal statute amendment. Finally, the court found that the lands involved were not considered a “federal enclave,” which would permit the application of federal jurisdiction.

While the court’s ruling potentially exposes oil and gas companies to more lawsuits in Louisiana state courts for remediation and restoration costs, the court did note that proving causation would be difficult for the Parish because of the number of defendants, permits and activities involved.

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

Ford P. Wogan

Jones Walker LLP

201 St. Charles Ave

New Orleans, LA 70170-5100

504.582.8164 tel

504.589.8164 fax

fwogan@joneswalker.com

www.joneswalker.com

*This e*lert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your own situation and any specific legal questions you may have.*