

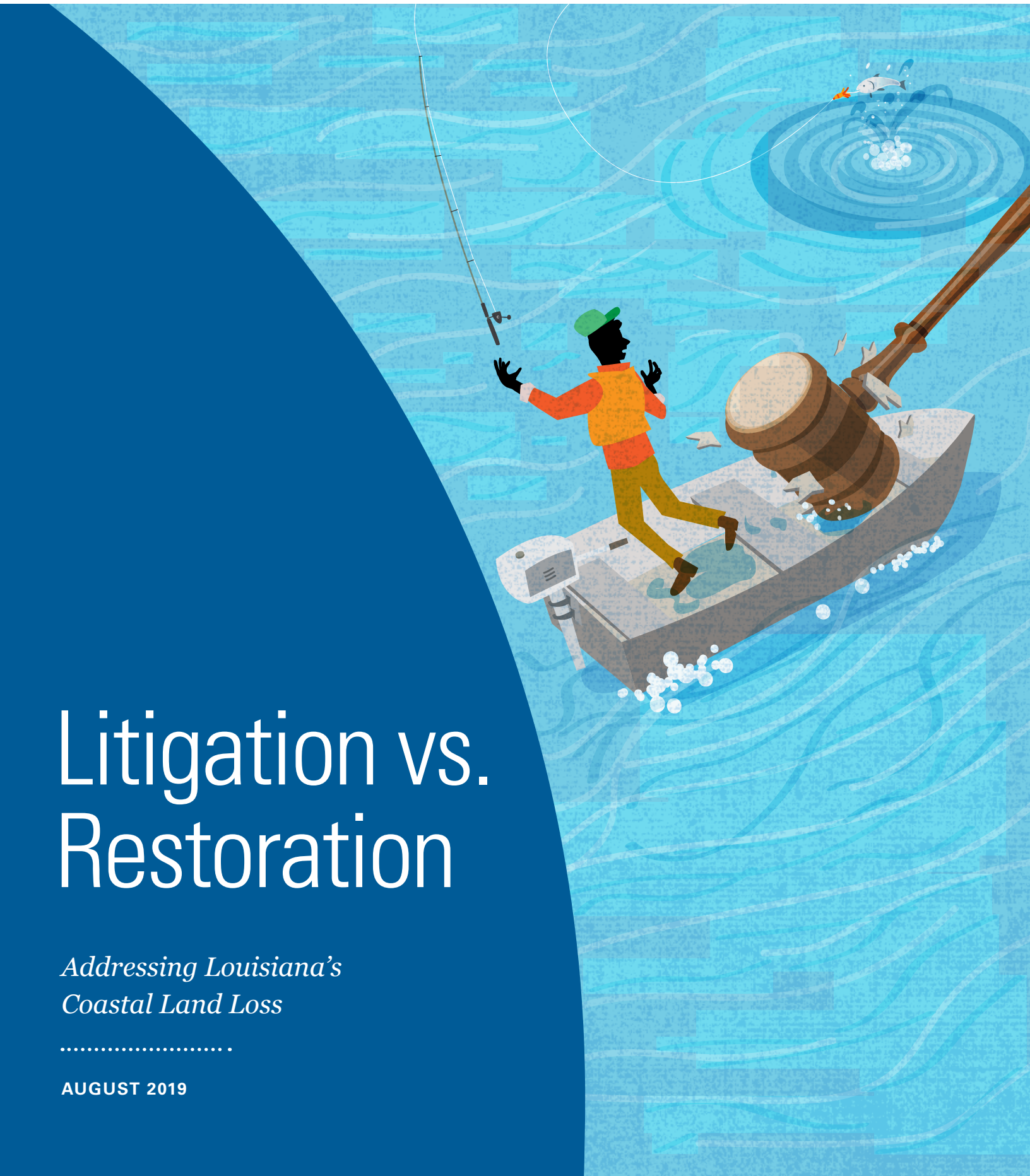


U.S. CHAMBER  
Institute for Legal Reform

# Litigation vs. Restoration

*Addressing Louisiana's  
Coastal Land Loss*

.....  
AUGUST 2019





**U.S. CHAMBER**  
**Institute for Legal Reform**

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# Executive Summary

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The oil and gas industry is a major economic and industrial driver for Louisiana. It employs nearly two million Louisianans<sup>1</sup> and contributes to state and local treasuries through direct and indirect tax programs.<sup>2</sup>

Direct taxes consist of those paid directly to state and local governments, such as corporate income and franchise taxes, sales taxes, severance taxes, royalties, rentals, bonuses, property taxes, and fees.<sup>3</sup> Indirect taxes consist of income taxes collected from the household earnings generated by the industry.<sup>4</sup>

In 2017, the oil and gas industry paid nearly \$688.7 million in state taxes and fees, despite a serious recession in the extraction sector. This accounted for 5.86 percent of total state taxes, licenses, and fees collected by Louisiana in fiscal year 2017.<sup>5</sup> The 2017 numbers, while still substantial, show a significant decrease from 2013. Just four years earlier, the industry paid \$1.5 billion in state taxes and fees, which accounted for approximately 15 percent of total state taxes, licenses, and fees collected by Louisiana that fiscal year.<sup>6</sup>

Over the course of time, the state, Louisiana landowners, and local governments have exerted contradictory pressures on the oil and gas industry. Early on, the industry was encouraged to expand drilling and exploration in the state. Then, after stimulating development that

transformed the state into one of the country's most significant providers of oil and gas, the state, landowners, and local governments turned around and engaged in widespread litigation against the industry, blaming it for damage to the land and coastal erosion. Yet at the same time, the state continues to encourage exploration and development through tax and other incentives.

This paper discusses the history of the oil and gas industry in Louisiana, the state's love-hate relationship with development, and the negative impact of litigation against the industry. Litigation against the industry does not encourage economic development, revenue to the state, or remediation and restoration. Instead, it leads to polarization and financial gain for only a few.

While the focus of this paper is on the economic impact of litigation and its chilling effect on cooperation to achieve common goals, the litigation itself also lacks merit, twisting a statutory scheme far beyond its intended purpose. For this reason, the first of the coastal suits was dismissed, and the remaining suits should suffer the same fate.

# Oil Production in Louisiana Over a Century

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In 1901, prospectors first discovered oil in commercial quantities in Louisiana.<sup>7</sup> Since then, the state has encouraged oil and gas exploration and development, transforming Louisiana into one of the leading producers of oil and gas in the country.<sup>8</sup>

Louisiana currently ranks among the top 10 states in both crude oil reserves and annual crude oil production, with its 17 oil refineries accounting for nearly one fifth of the nation's refining capacity. Louisiana now ranks as one of the top five natural gas producing states in the country, accounting for seven percent of the United States' total gas production holdings and about eight percent of the nation's gas reserves.<sup>9</sup> Beyond Louisiana itself, the state's refineries serve Texas, Mississippi, Illinois, and the eastern seaboard. The importance of Louisiana's energy industry to the state, and to the nation as a whole, cannot be overstated.

## The Boom

Exploration and production grew in Louisiana under the early encouragement of landowners, the courts, state and local governments and the legislature. Louisiana landowners encouraged oil and gas exploration and production on their property by leasing their mineral rights in exchange for mineral royalties. When the landowners thought that their oil and gas lessors were

not exploring and developing the land with enough vigor, some brought lawsuits to cancel mineral leases. Beginning in the 1920s and continuing through the middle of the century, a line of Louisiana Supreme Court cases instructed oil and gas developers to "either develop [the land] with reasonable diligence, or give up the lease."<sup>10</sup> This "use it or lose it" philosophy encouraged production and exploration.

In 1955, the court again encouraged production by clarifying that profit for both the lessor-landowner and lessee-developer was of utmost importance and the predicate for requiring development. According to the court, the landowner has a right to profit from production because mineral leases "are commutative and

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require a mutuality of rights and interest. Failure to recognize and apply this wholesome principle would lend countenance to unfair and unjust dealings.”<sup>11</sup>

In addition to using the courts to seek increased production, Louisiana landowners encouraged the industry to develop the land through the building of roads and canals and encouraged companies to leave the roads and canals intact even after oil and gas production on the property ceased. For example, once a canal was dredged, it would serve not only as access for the company to the well, but also for landowners and others who leased the property for other purposes, such as duck hunting, oyster farming, and fishing. Because the canals were useful to the landowners, backfilling of the canals (i.e., putting the dredge material back into the canal to close the canal) was often opposed. The Louisiana Supreme Court

recognized that landowners routinely consented to dredging canals and that it was not customary to fill them.<sup>12</sup> Indeed, the state attorney general advised the industry against backfilling.<sup>13</sup>

Oil and gas production continued to increase in Louisiana, both onshore and offshore, until production reached its peak between 1969 and 1970.<sup>14</sup> After production peaked, condensate and reserves began to decline.<sup>15</sup> In 1974, the state instituted new severance tax rates on crude oil based on the market value of a well's produced oil, whereas the former severance tax had been a flat rate based on the volume of oil produced that did not vary with changes in crude oil prices.<sup>16</sup> Since this change, the severance tax rate on crude oil in Louisiana has remained the same, with most wells taxed at 12.5 percent of the value of the oil as it leaves the ground;<sup>17</sup> “incapable wells” (i.e., wells unable to produce an average of more than 25 barrels per day during the entire month and producing at least 50 percent salt water per day) taxed at 6.250 percent; and “stripper wells” (i.e., wells producing an average of less than 10 barrels per day) taxed at 3.125 percent.<sup>18</sup>

## The Bust

Eventually, oil and gas development slowed. And as development slowed, so did Louisiana's mineral revenues.<sup>19</sup> In the 1980s, the price of petroleum plummeted, forcing thousands of state residents out of work and casting a “gloomy economic pall” for years to come. By the first quarter of 1986, the oil bust caused Louisiana's unemployment rate to hit 13.2 percent, the highest in the country.<sup>20</sup>



To encourage production, raise revenue for the state, and stimulate economic recovery, the state legislature created severance tax exemptions for eligible oil and gas companies.<sup>21</sup> In the 1990s, the Louisiana legislature enacted a major package of incentive legislation, which provided for the suspension of severance taxes for the re-entering of plugged wells, wells deeper than 15,000 feet, horizontal wells, and wildcat wells.<sup>22</sup>

More recently, the legislature passed a new incentive program, again hoping to reignite the slowing industry. In 2018, the Severance Tax Relief Program (STRP) was passed, effective July 1, 2018 through June 30, 2023. STRP allows the suspension or reduction of severance taxes due on new production in inactive and orphaned wells.<sup>23</sup> The goal of STRP is to incentivize the industry to find economic opportunity in these wells and bring them back into production.

Despite the various incentives and tax exemptions, oil and gas exploration and

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production has not reached the levels it had during the boom in the 1960s and 1970s.<sup>24</sup> One reason for the continued decline is Louisiana’s legal landscape, which has become increasingly hostile to industry. Research shows that between 2004 and 2012, legacy lawsuits led to a loss of approximately 1,200 wells, resulting in about \$6.8 billion in lost Louisiana drilling investments.<sup>25</sup>

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# History of the Coastal Land Loss Litigation

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The attacks on the oil and gas industry in Louisiana courts are unprecedented, in both number and variety.

## Legacy Lawsuits

The hostility against the industry first appeared with the rise of “legacy lawsuits.” In a legacy suit, the landowner typically sues every operator, lessee, and working interest owner who ever worked on or had an interest in a particular site. In these suits, the landowners claim that the oil and gas operations caused pollution and contamination of the property. Over time, a handful of plaintiff lawyers monopolized legacy lawsuits. As discussed later in the paper, while these lawyers profited from the suits, the damage awards were rarely used for remediation and restoration of the land.

“ [W]hile these lawyers profited from the suits, the damage awards were rarely used for remediation and restoration of the land.”

Recognizing that the purpose of many legacy lawsuits was not to repair environmental damages but to obtain a monetary award, the Louisiana legislature enacted Act 312 in 2006 to ensure that environmental damage from oilfield operations is actually remediated to a standard that protects the public interest, and to provide a procedure for the remediation of oilfield sites and exploration and production sites.<sup>26</sup> While the industry has vigorously defended these legacy lawsuits, or “Act 312 suits,” the suits have not decreased over time. Rather, they have multiplied. As of today, there have been 494 legacy suits reported to the Louisiana Department of Natural Resources. Fifteen of these suits were filed this year alone, with at least six filed by the same law firm.<sup>27</sup> That firm, Talbot, Carmouche & Marcello, along with the Veron, Bice, Palermo & Wilson and the Jones, Swanson, Huddell & Garrison firms, have filed a steady flow of suits against the industry.

## The Levee Board Case

In order to avoid the regulatory confines of Act 312, in July 2013, a political subdivision of the state—the Board of Commissioners of Southeast Louisiana Flood Protection Authority-East (the Levee Board)—brought a new type of lawsuit



against the oil and gas industry, alleging that these companies are responsible for coastal land loss.

The industry challenged the legal basis for the suit and won. Though ultimately unsuccessful, the Levee Board suit opened the floodgates of coastal erosion lawsuits by political subdivisions of the state targeting the energy industry.<sup>28</sup> Widespread litigation against the industry as a whole began with this suit, which resulted in high litigation costs for the industry but no positive impact for the state in terms of environmental restoration.

The Levee Board was created by the Louisiana legislature following Hurricane Katrina. The legislature tasked the Levee Board, and the boards of the other levee districts, with coordinating plans, projects, and procedures to protect the state's citizens from the threat of flooding in the event of future storms. In the lawsuit, the Levee Board sued 97 oil and gas companies involved in the exploration and production of oil reserves off the southern coast of the United States.

The Levee Board alleged that the companies' activities directly caused the loss and erosion of coastal lands under its jurisdiction, reducing the "buffer" of marshland that protects the levees from the ocean and increasing the storm surge risk.<sup>29</sup> It brought causes of action for negligence, strict liability for damages arising from dredging canals, interference with natural servitude of drain, public and private nuisance, and breach of contract as a third party beneficiary of certain permits and rights-of-way. The petition expressly limited these claims to those arising under Louisiana law, but acknowledged that they

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were subject to the regulatory framework under three federal Acts: the Rivers and Harbors Act of 1899, the Coastal Zone Management Act of 1972 (CZMA), and the Clean Water Act of 1972.<sup>30</sup>

In August 2013, Chevron U.S.A., Inc. removed the Levee Board suit to the United States District Court for the Eastern District of Louisiana on the grounds of federal question jurisdiction, federal enclave jurisdiction, and claims arising under general maritime law, the Outer Continental Shelf Lands Act (OCSLA), and the Class Action Fairness Act (CAFA). The Levee Board subsequently moved to remand the matter to state court. Judge Nannette Jolivette Brown denied the motion to remand, finding that the court had federal question jurisdiction over the claims under 28 U.S.C. § 1331 because the Board's claims raised a substantial question of federal law under the aforementioned acts.<sup>31</sup>

Defendants then moved to dismiss the suit for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The district court granted the motion, finding that the Levee Board failed to state any claims upon which relief could be granted,

primarily because the oil and gas defendants did not owe a legal duty to the Levee Board as required to state a viable negligence or strict liability claim. The court cited other less central reasons for dismissal, including that the defendants did not violate the Civil Code's concept of servitude of drain<sup>32</sup> and that the Levee Board is not a "neighbor" to any property owned by oil and gas defendants, which is a requirement of a nuisance claim.

Finally, the court found that the dredging permits issued by the federal government did not constitute "contracts" which defeated the Levee Board's breach of contract claim. As a result, the district court dismissed the case in its entirety. On March 3, 2017, the Fifth Circuit unanimously affirmed the district court's jurisdictional determination and its subsequent dismissal of the case.

## Parish and City Lawsuits

After the Levee Board suit was dismissed for failing to state a valid claim, a second wave of suits was crafted specifically to avoid federal jurisdiction. These suits, originally filed by several Louisiana parishes, mushroomed into 43 suits by six parishes and the City of New Orleans.

The parish and city lawsuits are similar to some of the legacy lawsuits brought by private landowners for damages, which pre-date the remediation requirement of Act 312. Like earlier legacy lawsuits, the parish and city suits target any oil and gas company that ever worked within an identified operational area. Unsurprisingly, the lawyers who monopolized the legacy lawsuit arena are largely the same as those who initiated this new wave of coastal litigation. Because this round of suits avoids Act 312, there is no requirement that the parishes or cities actually use any eventual award money for remediation. As evidenced by the history of earlier legacy lawsuits, this scheme incentivizes lawyers to bring these claims to obtain high payouts, with no real focus on restoration.

These parish and city suits present a clear threat to the future of the oil and gas industry in Louisiana. The industry claims that the suits are ill-founded, filed with little or no research to support factual allegations and suffering from many of the same legal deficiencies as the Levee Board suit. As the President of the Louisiana Mid-Continent Oil and Gas Association, Tyler Gray, recently recognized, "Unnecessary legal tactics threaten the community investment and cultural support the industry has provided for over a century, which they can now

*“ Like earlier legacy lawsuits, the parish and city suits target any oil and gas company that ever worked within an identified operational area. [...] This scheme incentivizes lawyers to bring these claims to obtain high payouts, with no real focus on restoration. ”*

*“ [T]he plaintiffs have attempted to artfully plead around any federal question to avoid federal jurisdiction, expressly disclaiming any claims other than state-law permit violations.”*

potentially lose, as they wait for several years, as other parishes in the state have, for this to work its way through the judicial process.”<sup>33</sup>

Plaquemines Parish was the first parish to file suit against the oil and gas industry, filing a total of 21 lawsuits suits in the 25th Judicial District Court for the Parish of Plaquemines on November 8, 2013. The citizens of Plaquemines Parish expressed disdain for the lawsuits, leading the Parish Council to vote to dismiss the suits, only to subsequently vote to maintain them.<sup>34</sup>

Three days after Plaquemines Parish sued the industry, the Parish of Jefferson followed with seven nearly identical lawsuits filed in the 24th Judicial District Court for the Parish of Jefferson. In 2016, Cameron Parish, Vermilion Parish, and St. Bernard Parish filed suit—Cameron Parish filed 11 individual lawsuits against oil and gas companies, while the district attorney of Vermilion Parish and St. Bernard Parish each filed single petitions covering many different oil and gas fields.

Since taking office in 2016, Louisiana Governor John Bel Edwards and Attorney General Jeff Landry have intervened in all of the pending coastal suits as third party plaintiffs on behalf of the state.<sup>35</sup> As a strong supporter of the coastal erosion litigation, Gov. Edwards has also

encouraged the remaining coastal parishes<sup>36</sup> to initiate similar lawsuits, suggesting that the state would sue if the parishes did not.<sup>37</sup> St. John the Baptist Parish obliged, filing suit in 2017. Though thirteen coastal parishes<sup>38</sup> have not yet filed suit as of July 2019, the City of New Orleans, the governing body for Orleans Parish, filed the first city lawsuit on March 29, 2019, six years after the initial parish lawsuits were filed.

The parish and city lawsuits all raise nearly identical claims against the oil and gas industry. However, unlike the general tort and contract claims at issue in the Levee Board suit, the parishes and the City of New Orleans took a different approach by alleging violations of Louisiana’s coastal management laws, namely the State and Local Resource Management Act of 1978 (SLCRMA),<sup>39</sup> and associated regulations located in the Louisiana Administrative Code. Under SLCRMA, certain uses of the coastal zone “which directly and significantly affect coastal waters and which are in need of coastal management” require a coastal use permit (CUP), and the uses must adhere to the terms and conditions of the CUP.<sup>40</sup>

The parishes alleged that the companies’ oil and gas operations were in violation of SLCRMA because they either failed to

obtain required coastal use permits or failed to abide by the terms of their CUPs. The parishes further contended that the companies failed to restore damage and clean up hazardous waste produced during operations, which, they asserted, caused damage to the land and waterbodies in the coastal zone.

The plaintiffs have attempted to artfully plead around any federal question to avoid federal jurisdiction. But defendants removed the parish lawsuits to federal court because the parishes' expert opinions "(1) implicate wartime and national emergency activities undertaken at the direction of federal officers; and (2) necessarily require resolution of substantial, disputed questions of federal law."<sup>41</sup>

In other words, the defendants argued that the parishes were primarily focused on activities that took place decades before SLCRMA was enacted, during a time in which federal standards, regulations, and laws would govern defendants' alleged activities. The parties designated a single Plaquemines Parish case pending in the U.S. District Court for the Eastern District of Louisiana and a single Cameron Parish case pending in the U.S. District Court for the Western District of Louisiana for full

briefing and oral argument on the remand motions. On May 28, 2019, the New Orleans-based federal trial court again granted Plaquemines Parish's motion to remand in one of the cases. Remand of the case has been stayed while this decision is on appeal.<sup>42</sup> All cases are effectively stayed in federal courts in the Eastern District and Western District of Louisiana pending the appeal.<sup>43</sup>

Additionally, while there has been some interpretation of the general administrative permitting process under SLCRMA, the parish lawsuits have been the only known lawsuits to enforce SLCRMA in the nearly four decades since its enactment. Considering the dearth of guidance on how to enforce SLCRMA in the litigation context, particularly as to the remedies available under the act, the parish suits have been relatively slow moving and none have progressed to final judgment.

## Private Landowner Lawsuits

The parish suits spawned a new variety of landowner suits, which seek to avoid the restrictions of Act 312. These private landowner suits assert tort claims against various oil and gas companies, mirroring the parishes' general allegations. This new

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variety of landowner suits comes at a time when Louisiana courts are already inundated with traditional land damage legacy lawsuits brought by private landowners against the oil and gas industry.

## Litigation Awards Not Used for Restoration

As discussed above, lawsuits seeking restoration of property are not new. Historically, litigants seeking restoration of their property were not required to use any damages awarded for the actual restoration of their property. This landowner windfall came to a head in 2003, in *Corbello v. Iowa Production*.<sup>44</sup> In *Corbello*, landowners sued a mineral lessee seeking damages for contamination to their property. The mineral lease in that case contained a provision requiring the lessee to “restore the land to its original condition.”<sup>45</sup> After trial, the jury awarded the landowners \$33 million to restore the surface of the property and to remediate potential contamination of the aquifer located beneath the surface. This amount was over 300 times the fair market value of the land.

On appeal, the Louisiana Supreme Court affirmed this award. While the majority of the award was for the remediation of the public aquifer located beneath the property, there was no requirement that the plaintiff had to use the damages awarded to actually remediate the property or the aquifer. Thus, after *Corbello*, there was “a perception that contaminated property was the equivalent of a winning lottery ticket for the landowner.”<sup>46</sup>

Recognizing the harm that could result to the public interest, the same year *Corbello*

“ Thus, after *Corbello*, there was ‘a perception that contaminated property was the equivalent of a winning lottery ticket for the landowner.’ ”

was decided, the legislature enacted La. Rev. Stat. § 30:2015.1, which set forth procedures for the remediation of usable groundwater. In 2006, the legislature extended a similar remediation procedure into other environmental media by enacting Act 312, La. Rev. Stat. § 30:29, which established a procedure to ensure the remediation of oilfield sites and exploration and production sites. After this enactment, once a litigant was awarded damages for the restoration of property to the applicable regulatory standards, those damages were deposited in the registry of the court to fund this restoration.<sup>47</sup>

Similar to legacy lawsuits, when the coastal erosion cases were filed, there was no clear mandate that any money or damages awarded be used to restore property.<sup>48</sup> Given the history of legacy suit awards, the Louisiana legislature acted quickly to try to fix this problem. In 2014, Act 544 was signed into law, which enacted La. Rev. Stat. § 49:214.36(O) to “provide for the uses of certain monies received by any state or local governmental entity.”<sup>49</sup> Now, Section 49:214.36(O) requires any damages awarded to a state or local government in



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an enforcement action under SLCRMA to “be used for integrated coastal protection, including coastal restoration, hurricane protection, and improving the resiliency of the coastal area.”<sup>50</sup>

The Coastal Protection and Restoration Authority (CPRA) is the agency that will likely direct how any damages awarded are used. CPRA itself is dedicated to the development, implementation, and enforcement of a comprehensive coastal protection and restoration Master Plan. The current Master Plan has a price tag of \$50 billion and a lifespan of 50 years.<sup>51</sup> But the statute does not provide for what type of activity the damages must be used, nor does it detail how much money will be paid for violations, when or how the damages will be disbursed, or who will perform the restoration. In legacy lawsuits, where there is a very detailed process as to what

restoration will be required and how the money will be spent, the process continues to be impeded by litigation and claims from the plaintiffs’ attorneys regarding access to the property, scope of the remediation, and attorneys’ fees.<sup>52</sup> It is likely that these problems will also appear in coastal erosion cases, despite the enactment of Act 544.

In spite of these and other well-meaning reforms, monetary damages awarded to plaintiffs in Louisiana are still rarely used for restoration and remediation,<sup>53</sup> and as many have suggested, the private attorneys hired by the parishes to represent them in the coastal erosion suits are likely to benefit the most from these lawsuits. While the parish attorneys argue their contracts do not guarantee them any specific percentage of a settlement, under SLCRMA, the prevailing party is entitled to recover attorneys’ fees in an amount set by the court. And, as these attorneys have previously argued, given the amounts sought in these cases, they stand to make a significant profit if the parties either reach a global settlement agreement or if the parishes prevail. Indeed, the plaintiffs’ lawyers have been awarded \$6.3 million in fees under another state environmental statute—the Groundwater Act<sup>54</sup>—and are currently arguing that they are entitled to at least \$24 million in attorneys’ fees in an Act 312 case.<sup>55</sup>

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# Workable Alternatives to Litigation

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The erosion of Louisiana's coastline is a serious concern, not only for Louisiana and its people, but also for the oil and gas industry that has operated within Louisiana's borders for over a century. However, the state and local governments' current approach of targeting the oil and gas industry with lawsuits has slowed progress of cooperative solutions.

Litigation has been ongoing for years and is nowhere close to resolution. The merits of the litigation are questionable, but even if the plaintiffs and their attorneys succeed in obtaining an award, there is no guarantee that money outside of the scope of Act 312 will be used to improve the state's coastline. At the same time, the litigation threatens the future of the oil and gas industry in Louisiana, which has been a key driver of economic growth in the state.

Louisiana needs to invest in alternative solutions that will remedy coastal erosion

now, rather than several years down the road after the damage has worsened. Increased funding towards remediation is a start. Louisiana currently receives funding under the Gulf of Mexico Energy Security Act of 2006 (GOMESA), which created revenue-sharing provisions for Alabama, Louisiana, Mississippi, and Texas and their coastal political subdivisions. Oil and gas companies generate this revenue through production in the Gulf. Under GOMESA, the state receives annual funding for coastal conservation, restoration, and hurricane protection. Such funding allows the state to

*“ Under GOMESA, the state receives annual funding for coastal conservation, restoration, and hurricane protection. Such funding allows the state to remediate coastal erosion now, without having to wait for litigation to resolve. ”*

*“ The state departments should be working together and collaborating with industry professionals to develop effective plans to restore the coastline, instead of initiating divisive litigation that halts progress towards remediation. ”*

remediate coastal erosion now, without having to wait for litigation to resolve. Over the next 15 years, the state expects to receive approximately \$3 billion in offshore revenue sharing through GOMESA.<sup>56</sup>

Additionally, rather than creating and deepening a divide with one of its longest-standing partners, Louisiana should foster that partnership by working with the oil and gas industry to restore the coast, not against the industry with lawsuits. Both the Department of Natural Resources and the oil and gas companies are staffed with scientists and specialists who care about the future of Louisiana’s coast and have the expertise to target the land loss issue.

Using this cache of knowledge, the industry is already engaged in multiple projects to restore the coast. For example, Ducks Unlimited teamed up with ConocoPhillips in 2018 to restore 1,200 acres of marshland.<sup>57</sup> Projects like these are even welcomed and provided for by the CPRA, which recognizes that a coordinated effort by all involved, including the industry, is needed to restore the coast.<sup>58</sup> The state departments should be working together and collaborating with industry professionals to develop effective plans to restore the coastline, instead of initiating divisive litigation that halts progress towards remediation.



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- 31 See *Grable & Sons Metal Products, Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 125 S.Ct. 2363, 2364, 162 L.Ed.2d 257 (2005).
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- 34 Cain Burdeau, *Louisiana Parish Drops Suits Against Oil and Gas Companies*, PITTSBURGH POST-GAZETTE (Nov. 13, 2015), <https://www.post-gazette.com/business/powersource/2015/11/13/Louisiana-parish-drops-suits-against-oil-and-gas-companies-1/stories/201511130227>.
- 35 LA. OFFICE OF THE GOVERNOR, *Edwards Files Motion to Intervene in 39 Coastal Lawsuits* (April 7, 2016), <http://gov.louisiana.gov/news/edwards-files-motion-to-intervene-in-39-coastal-lawsuits>.
- 36 While some of these “coastal” parishes do not have an actual coastline, they are included in the definition set forth by the legislature because they “are strongly influenced by each other, and in proximity to the shorelines, and uses of which have a direct and significant impact on coastal waters.” See La. Rev. Stat. § 49:214.23.
- 37 Jeff Adelson, *Gov. John Bel Edwards: State will sue oil and gas companies directly if parishes don't*, THEADVOCATE.COM (Sep. 21, 2016, 11:55 AM), [https://www.theadvocate.com/baton\\_rouge/news/environment/article\\_37c3d7bc-801c-11e6-8778-0bb43f7b2319.html](https://www.theadvocate.com/baton_rouge/news/environment/article_37c3d7bc-801c-11e6-8778-0bb43f7b2319.html).
- 38 The remaining coastal parishes are Ascension, Assumption, Calcasieu, Iberia, Lafourche, Livingston, St. Charles, St. James, St. Martin, St. Mary, St. Tammany, Tangipahoa, and Terrebonne Parish.

- 39 La. Rev. Stat. § 49:214.21, *et seq.*
- 40 La. Rev. Stat § 49:214:25.
- 41 *Parish of Plaquemines v. Riverwood Prod. Co.*, No. 18-5217, 2019 U.S. Dist. LEXIS 88503, \*8 (E.D. La. May 28, 2019).
- 42 *Parish of Plaquemines v. Riverwood Prod. Co.*, Docket No. 19-30492 (5th Cir.).
- 43 The parish suits (Plaquemines, Jefferson, St. Bernard, St. John the Baptist) subject to the jurisdiction of the New Orleans-based federal court are currently stayed. The Cameron and Vermilion cases, which are under the jurisdiction of the Lafayette-based federal court, are also inactive since the motion to remand has not yet been ruled upon by the district judge.
- 44 *Corbello v. Iowa Production*, 2002-0826, 850 So. 2d 686 (La. 1/25/03).
- 45 *Id.* at 700.
- 46 Loulan Pitre, Jr., “Legacy Litigation” and Act 312 of 2006, 20 TUL. ENVTL. L. J. 347, 348 (2007).
- 47 See La. Rev. Stat. § 30:29(c)(1).
- 48 See La. Rev. Stat. § 49:214.36 (2013).
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- 50 See La. Rev. Stat. § 49:214.36(O)(2).
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- 52 See, e.g. *State v. La. Land & Expl. Co.*, 17-830 (La. App. 3 Cir. 3/14/18), 241 So. 3d 1258; *State v. La. Land & Expl. Co.*, 18-890 (La. App. 3 Cir. 5/15/19), 2019 La. App. LEXIS 866.
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- 54 *Thomas v. A. Wilbert & Sons, LLC*, 2015-0928, p. 43 (La. App. 1 Cir. 2/10/17), 217 So. 3d 368, 402.
- 55 *State v. La. Land & Expl. Co.*, 17-755, p. 8 (La. App. 3 Cir. 12/20/17), 10 So. 3d 1038, 258 So. 3d 790, 796.
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# Notes

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