Texas A&M Journal of Property Law

Volume 7
Number 3 *Oil & Gas Survey*

Article 1

5-12-2021

Alabama

Brandt Hill
BHill@maynardcooper.com

Ted Holt
tholt@maynardcooper.com

ALABAMA

Brandt Hill[†] *& Ted Holt*[††]

I. INTRODUCTION

Between October 2019 and September 2020, there were no noteworthy appellate decisions interpreting Alabama law directly relevant to oil and gas companies or operations. Similarly, there are no statutory amendments or administrative decisions impacting oil and gas companies operating in the state. However, the Alabama Supreme Court and the Eleventh Circuit Court of Appeals each issued an

DOI: https://doi.org/10.37419/JPL.V7.I3.1

[†]Brandt P. Hill is also a litigation attorney at Maynard Cooper & Gale in Birmingham. Much of Mr. Hill's litigation practice involves representing clients in interstate disputes over water rights in the southeastern United States.
[††]Edward M. "Ted" Holt is an attorney at Maynard Cooper & Gale, P.C. in Birmingham, Alabama. Mr. Holt's primary practice areas are insurance and financial services litigation, and energy and natural resources. He focuses on a variety of disputes including sales practices, breach of contract and fiduciary duty, and bad faith claims involving both individual and class actions. A significant portion of his energy litigation practice is devoted to coal-bed-methane litigation. He also works on behalf of energy clients in defending personal injury, fraud, contract, and commercial disputes. In addition, he advises clients regarding joint operating agreements, mineral leases, surface use agreements, and related operational agreements

opinion addressing jurisdiction and procedural issues that are relevant to operators in Alabama. We discuss those opinions below.

II. STATE COURTS

Several Alabama water and sewer boards (the "Boards") filed suit against Georgia-based carpet and chemical manufacturers (the "Companies") alleging they dumped toxic chemicals from their plants into rivers that flowed downstream and eventually contaminated water sources in Alabama.[1]

All of the Companies were Georgia corporations that did not have business in Alabama, and each plant was located in Georgia near the Conasauga River.[2] The Conasauga River feeds into the Coosa River, which begins in northwest Georgia and flows across the border into Alabama.[3] The Boards claimed that the Companies sent their wastewater to a third party, Dalton Utilities, who ineffectively treated the wastewater and then discharged it into the Conasauga River.[4]

After the Boards brought suit in Alabama state court, the Companies moved to dismiss for lack of personal jurisdiction.[5] They argued that the Boards had "not alleged any conduct that actually occurred in Alabama" and that releasing water from the Companies' Georgia plants did not establish that they "purposefully directed" their activities into Alabama, the forum state.[6] The trial court denied their motion, reasoning that "the actions of an entity that result in harmful substances being placed into a water source can result in harm downstream in a foreign jurisdiction, and it is reasonable for the entity causing those substances to be placed into the water to expect that their downstream harm could cause them to be hauled into court in that foreign jurisdiction."[7] The Companies then petitioned for a writ of mandamus to the Alabama Supreme Court.[8]

The Alabama Supreme Court noted that the issues presented were novel. "This Court has not been presented with a factual scenario in which out-of-state defendants are alleged to have caused environmental pollution in another state but where the consequences

1. *Ex parte Aladdin Mfg. Corp*., No. 1170864, 2019 WL 6974629, at *1 (Ala. Dec. 20, 2019) (the chemical at issue is known as "PFC").
2. *Id.* at *5–7.
3. *Id.* at *9.
4. *Id.* at *2–4.
5. *Id.* at *1, *3–4.
6. *Id.* at *3, *10.
7. *Id.* at *3.
8. *Id.* at *1.

of those acts have caused harm in Alabama. As a result, this Court has no established precedent or an approach for evaluating this unique situation."[9]

The Court began its analysis by referencing well-established personal jurisdiction principles. Alabama's long-arm statute "extends to the limits of due process,"[10] the Court explained, and due process requires that before a court exercise personal jurisdiction over a defendant, it must be shown that "the defendant has 'minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'"[11] To exercise specific personal jurisdiction over a defendant, "(1) the defendant must have 'purposefully availed' itself of the benefits and privileges of the forum state or 'purposefully directed' activity toward the forum state . . . and (2) there must be a relationship among the defendant, the forum, and the litigation."[12] Ultimately, "[t]he issue of personal jurisdiction stands or falls on the unique facts of [each] case."[13]

The Court first addressed the Companies' argument that "because they sent their industrial wastewater to Dalton Utilities," an independent third party, they could not be considered to have "purposefully availed themselves of the privilege of conducting activities within Alabama or to have undertaken any purposeful conduct aimed at Alabama."[14] The Companies argued that Dalton Utilities' failure to adequately treat their wastewater was an "intervening cause that br[oke] the chain of causation."[15] But the Court rejected this defense, finding that the Boards had sufficiently alleged that "the intervening cause was foreseeable."[16]

The Court then considered the Companies' argument that even if it was "foreseeable" that Dalton Utilities would not adequately treat their wastewater and that the chemicals would make their way into Alabama, the "purposeful-availment" requirement would still not be satisfied.[17] "Foreseeability alone," the Companies asserted, "has never

9. *Id.* at *10.
10. *Id.* at *14 (quoting *Leithead v. Banyan Corp.*, 926 So. 2d 1025, 1030 (Ala. 2005)).
11. *Id.* at *8 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).
12. *Id.* at *25.
13. *Id.* at *26 (quoting *Ex parte Phil Owens Used Cars, Inc.*, 4 So. 3d 418, 423 (Ala. 2008)).
14. *Id.* at *28.
15. *Id.* at *29.
16. *Id.* at *29–30.
17. *Id.* at *30.

been a sufficient benchmark for personal jurisdiction."[18] On this point the Court agreed. A "foreseeability alone" approach "would start us on a slippery slope."[19] Nevertheless, in ultimately finding the trial court had jurisdiction over the Companies, the Court appeared to base its decision on the Companies' knowledge that the chemicals would travel into Alabama and cause harm there.[20]

The Court distinguished the cases, cited by the Companies, that have held "foreseeability alone" is insufficient to establish personal jurisdiction over a defendant. Those cases typically involved the manufacture and sale of a product in a foreign jurisdiction that eventually made its way into the forum state without any activity by the manufacturer in the forum state.[21] In those circumstances, the manufacturer had no "suit-related nexus with the forum state," so specific jurisdiction "can[not] attach."[22] But in this case, the Companies were alleged to have a much closer connection to Alabama, and the underlying lawsuit "ar[o]se out of" the Companies' activities directed towards Alabama.[23]

According to the Court, "by virtue of knowingly discharging PFC-containing chemicals in their industrial wastewater, knowing they were ineffectively treated by Dalton Utilities, and knowing that the PFCs would end up in the Coosa River, which flows into Alabama, the . . . defendants . . . purposefully directed their actions at Alabama. Such alleged conduct on the part of the remaining defendants in relation to Alabama is not random, fortuitous, or attenuated . . . regardless of the distance the chemicals traveled to reach the sites in Alabama where the injuries occurred."[24] After "reiterat[ing] that foreseeability alone is insufficient to confer specific personal jurisdiction," the Court observed that "pursuant to the allegations" in the Boards' complaint, the Companies "knowingly and directly aimed tortious actions at Alabama."[25]

The Court then concluded with a brief assessment of whether exercising jurisdiction over the Companies "complies with traditional

18. *Id.*
19. *Id.*
20. *Id.* at *42.
21. *Id.* at *11–12.
22. *Id.* at *32.
23. *Id.* at *36, 45–46 (quoting *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 472 (1985)).
24. *Id.* at *15 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 486 (1985)).
25. *Id.*

notices of fair play and substantial justice."[26] According to the Court, "[t]here is no demonstrable burden" to the Companies from having to litigate in the Alabama trial court, just seventy and ninety miles away from where the Companies were located in Georgia. Moreover, the "alleged injury occur[ed] in Alabama," and Alabama had a "significant and manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.[27]Accordingly, the Court denied the Companies' petition.[28]

III. FEDERAL COURTS

Two hundred and thirty people who previously worked at a foundry outside Birmingham alleged they were harmed by exposure to toxic substances released and formed at the foundry.[29] Because the foundry went out of business, the workers sued the companies that manufactured, sold, supplied, and distributed the products they believed caused the harm.[30] Those products included "specialized shell core sand," "chemical resins, binders, setting catalysts, and chemically treated foundry sand pre-mix products," as well as "trimethylamine liquid or gas" and a "release agent" that were used for "molding, coring, casting, finishing, or other foundry processes."[31] While all 230 workers alleged they were harmed by one or more of these products, not all of the workers were employed at the foundry at the same time, and they did not all work the same jobs.[32]

The workers filed suit in Alabama state court seeking relief under Alabama state law. All of their claims stemmed from the allegation that the "normal and foreseeable" use of the products caused the "release and formation of hazardous and carcinogenic chemical substances" that harmed the workers.[33]

One of the companies removed the case to federal court on the basis that the workers' allegations gave rise to federal jurisdiction under the Class Action Fairness Act of 2005 ("CAFA").[34] Specifically, the company asserted that federal jurisdiction existed because the case

26. *Id.* (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).
27. *Id.* at *15–16 (quoting *Ex parte DBI, Inc.*, 23 So. 3d 635, 656 (Ala. 2009)).
28. *Id.* at *16.
29. Spencer v. Specialty Foundry Prod. Inc., 953 F.3d 735, 737 (11th Cir. 2020).
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.* at 738.
34. *Id.*; *see also* Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4. CAFA is codified in scattered sections of 28 U.S.C.

qualified as a "mass action," which is statutorily defined by CAFA as any action seeking more than $5,000,000 in monetary relief with more than 100 minimally diverse plaintiffs whose claims involve common questions of law or fact.[35] The workers then moved to remand the case back to Alabama state court,[36] arguing that an exception to CAFA jurisdiction existed.[37] Invoking what is known as the "local event exception" to CAFA, the workers argued that the case was not a "mass action" because "all of the claims . . . arise from an event or occurrence in the [s]tate in which the action was filed," and this event or occurrence "resulted in injuries in that [s]tate or in [s]tates contiguous to that [s]tate."[38] The United States District Court for the Northern District of Alabama agreed with the workers and granted their motion to remand.[39] The companies then appealed that ruling to the United States Court of Appeals for the Eleventh Circuit.[40]

"This appeal turns on the meaning of the local event exception, in particular the phrase 'an event or occurrence,'" the Eleventh Circuit observed at the outset.[41] "If the allegations in the complaint constitute an 'event or occurrence,'" then "the [d]istrict [c]ourt was correct in remanding the case back to state court."[42] The workers argued that "event or occurrence" did not require a "one-time event" or a "discre[te] moment in time," such that the underlying harm they claimed to have suffered, spread out over a number of years, was a "continuing tort" that satisfied the "event or occurrence" definition.[43] Meanwhile, the companies claimed that "an event or occurrence" meant "a single focused event," such that the workers' alleged harm was "too disparate and disconnected."[44]

The Eleventh Circuit's analysis "beg[a]n with the text of the statute."[45] Because CAFA did not define "event or occurrence," the court considered the ordinary meaning of those terms and interpretations offered by other courts.[46] It concluded that the phrase "event or occurrence" was "broad enough to include a single solitary

35. *Spencer*, 953 F.3d at 738 (citing 28 U.S.C. § 1332(d)(2), (11)(B)(i)).
36. *Id.*
37. *Id.*
38. *Id.* (citing 28 U.S.C. § 1332(d)(11)(B)(ii)(I)).
39. *Id.*
40. *Id.* at 739.
41. *Id.*
42. *Id.*
43. *Id.*
44. *Id.* at 740.
45. *Id.*
46. *Id.* at 740–43.

happening that occurs in a single moment of time and (in some cases at least) a continuing set or related circumstances," or "series of connected events occurring over a longer period of time," that "culminates in [a] harm-causing event or occurrence."[47] Thus, the Eleventh Circuit ultimately adopted neither the workers' nor the companies' interpretation, instead choosing a definition somewhere in the middle.

With this definition of "event or occurrence" in mind, the Eleventh Circuit turned to the facts before it and concluded that the allegations in the workers' complaint did not demonstrate that their case fell within the "local event exception."[48] That was so for three reasons.

First, there was a "large number of defendants that acted separately to generate the alleged harm."[49] This fact was "not dispositive," the Eleventh Circuit noted, but nonetheless important because "the [p]laintiffs allege the [d]efendants' products were used in different ways and caused different harms."[50] "[T]he acts that led to the harm-causing event or occurrence must be 'collective' and 'related.'"[51] Second, the workers' complaint did not allege "a single culminating event that caused their harm."[52] Instead, "their complaint alleges a string of events over time and later-resulting harm."[53] There was no "culminating harm-causing event" distinguishing the instant case from other cases that the workers relied on.[54] Third, the workers did not sufficiently allege "how the [d]efendants' conduct came together to create one event or occurrence."[55] While "the foundry was open for decades," the Eleventh Circuit found that the workers "d[id] not say when the [d]efendants committed the alleged torts or how and when [they] were harmed."[56]

47. *Id.* at 740–42.
48. *Id.* at 744.
49. *Id.* at 743.
50. *Id.*
51. *Id.* (quoting *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.*, 760 F.3d 405, 413 (5th Cir. 2014)).
52. *Id.*
53. *Id.*
54. *Id.* (citing *Abraham v. St. Croix Renaissance Grp., L.L.L.P.*, 719 F.3d at 279-80; *Rainbow Gun Club*, 760 F.3d at 407, 413 (single well failed); *Adams v. Int'l Paper Co.*, No. 1:17-CV-105, 2017 WL 1828908, at *7 (S.D. Ala. May 5, 2017) (one defendant's release of toxic pollutants by a defendant followed by another defendant's actions exacerbating the release of those same pollutants)).
55. *Id.* at 744.
56. *Id.*

Accordingly, the Eleventh Circuit vacated the district court's grant of the workers' motion to remand and remanded the case back to the district court for further proceedings consistent with its opinion.[57]

57. *Id.*