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LOUISIANA

Keith B. Hall[†]

I. LEGISLATION AMENDS LOUISIANA MINERAL CODE ARTICLE 212.21

Act No. 227 of the 2020 Regular Session of the Louisiana Legislature amends Louisiana Mineral Code article 212.21 (also known as Louisiana Revised Statutes 31:212.21).¹ In particular, Act No. 227 amends article 212.21 to clarify that the article does not apply to claims brought by unleased owners—that is, landowners² or mineral servitude³ owners whose mineral interests are not under lease.

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1. H.B. 227, 2020 Reg. Sess. (La. 2020).

2. H.B. 227, 2020 Reg. Sess. (La. 2020). In Louisiana, as in the rest of the United States, the general rule is that the landowner owns the right to use the land and its subsurface to explore for and produce oil and gas, and to own whatever oil and gas he or she produces, assuming that the landowner or a predecessor-in-interest has not granted that right to someone else. *See* LA. REV. STAT. 31:6.

3. Louisiana does not recognize the concept of a severed mineral estate. *See*

To understand this amendment and its significance, it is helpful to know a little about Mineral Code articles 212.21 through 212.23. These articles were enacted in a 1982 amendment to the Louisiana Mineral Code.⁴ The articles are patterned on Mineral Code articles 137 through 140—a portion of the original Mineral Code that governs claims by a mineral lessor who seeks relief from the lessee for a failure “to make timely or proper payment of royalties” due under the lease. The articles establish certain procedures as a prerequisite for lessors asserting a claim, such as providing written notice to the lessee and waiting at least thirty days after delivery of such notice before filing suit.⁵ In certain circumstances, articles 139 and 140 also authorize a court to enter a judgment including enhanced remedies that are greater than the royalties due, such as judgments requiring the payment of interest, attorney’s fees, and “damages” up to “double the amount of royalties due.”⁶

Articles 212.21 through 212.23 were enacted to establish a similar procedure and to authorize similar enhanced remedies for claims by “the owner of a mineral production payment or a royalty owner other than a mineral lessor . . . for the failure of a mineral lessee to make timely or proper payment of royalties or the production payment.” Article 212.21 requires that such a person “must give his obligor written notice of such failure as a prerequisite to a judicial demand for damages.” Article 212.22 provides that “[t]he obligor shall have thirty days after receipt of the required notice within which to pay the royalties or production payments due or to respond by stating in writing a reasonable cause for nonpayment.” Article 212.23 then specifies the consequences if the obligor does neither of these things. In some circumstances, the consequences require the obligor pay interest, attorney’s fees, and “damages double the amount due.”

Frost-Johnson Lumber Co. v. Salling’s Heirs, 91 So. 207, 245 (La. 1922); *Wemple v. Nabors Oil and Gas Co.*, 97 So. 666, 668–69 (La. 1923). However, a landowner may grant a mineral servitude in favor of another person. LA. REV. STAT. § 31:24 (1975). A mineral servitude, while it exists, is somewhat like a severed mineral estate. LA. REV. STAT. § 31:21 (1975) (“A mineral servitude is the right of enjoyment of land belonging to another for the purpose of exploring for and producing minerals and reducing them to possession and ownership.”). The major practical distinction between a severed mineral estate and a mineral servitude is that a severed mineral estate may constitute a permanent severance of mineral rights from land ownership, but a mineral servitude terminates if it is not used for any period of ten consecutive years. LA. REV. STAT. § 31:27 (1975). (“A mineral servitude is extinguished by . . . prescription resulting from nonuse for ten years . . .”).

4. Acts 1982, No. 249, § 1, LA. REV. STAT. §§ 31:212.21–23 (1982).

5. LA. REV. STAT. § 31:137 (1975).

6. See LA. REV. STAT. §§ 31:139–140 (1975).

Sometimes parties dispute whether a landowner or mineral servitude owner whose interest in minerals in a compulsory drilling unit is unleased can utilize these statutes. The statutes, as noted above, apply in favor of “the owner of a mineral production payment or a royalty owner other than a mineral lessor.” A landowner or mineral servitude owner would not seem to qualify as “a royalty owner other than a mineral lessor.” The word “royalty” is used in three main ways. First, under oil and gas leases, the mineral lessor is owed a lessor’s royalty,⁷ but a landowner or mineral servitude owner whose interest is not leased would not be entitled to a lessor’s royalty under an oil and gas lease. Second, Mineral Code article 80 defines “mineral royalty” as a right that is carved out of a landowner’s or mineral servitude owner’s interest in minerals in favor of some *other person*.⁸ Third, persons in the oil and gas industry sometimes establish an “overriding royalty,” which is an interest that is carved out of the mineral lessee’s interest.⁹ Obviously, if no lease covers the landowner’s or mineral servitude owner’s interest, there will not be a mineral lessee from whose working interest an overriding royalty can be carved.

That left only the possibility that a landowner or mineral servitude owner could be the owner of a “mineral production payment.” The Mineral Code does not define “mineral production payment,” but “production payment” is commonly used in the oil and gas industry to refer to a person’s right to receive a fraction of the value of production, free of costs, with the interest carved out of the lessee’s interest.¹⁰ Used this way, the term “production payment” has a meaning similar to “overriding royalty.” However, once an overriding royalty is established, it typically lasts for the life of the lease, but a “production payment” often terminates automatically once the owner of it has recovered a specified amount of money.¹¹

There is a strong argument that this was the appropriate meaning of “production payment” for purposes of article 212.21.¹² If such a meaning is applied for purposes of Mineral Code article 212.1, the

7. See LA. REV. STAT. § 31:213 (1983).

8. See LA. REV. STAT. § 31:80 (1975).

9. See, e.g., *id.* § 31:126 cmt. (referring to overriding royalties as being carved out of the “working interest,” which is the lessee’s right to conduct operations under a lease).

10. See, e.g., PATRICK H. MARTIN & BRUCE M. KRAMER, WILLIAMS & MEYERS MANUAL OF OIL AND GAS TERMS 1396 (17th ed. 2018)1 (definition of “production payment”).

11. *Id.* at 1233, 1396 (definition of “overriding royalty”).

12. See LA. CIV. CODE art. 11 (1988) (“Words of art and technical terms must be given their technical meaning when the law involves a technical matter.”).

owner of an unleased interest would not be the owner of a mineral production payment. Two federal courts interpreted the statute this way, holding that unleased owners were not entitled to use Mineral Code article 212.21.¹³ Act No. 227 revises Mineral Code article 212.21 to codify the holdings of these federal cases that articles 212.21 through 212.23 do not apply to an unleased landowner's or mineral servitude owner's right to a share of unit production. The pre-amendment language of article 212.21 states:

If the owner of a mineral production payment or a royalty owner other than a mineral lessor seeks relief for the failure of a mineral lessee to make timely or proper payment of royalties or the production payment, he must give his obligor written notice of such failure as a prerequisite to a judicial demand for damages.

The amendment removed “mineral” from the phrase “mineral production payment” and added the phrase “created out of a mineral lessee's interest” as follows:

If the owner of a ~~mineral~~ production payment *created out of a mineral lessee's interest* or a royalty owner other than a mineral lessor seeks relief for the failure of a mineral lessee to make timely or proper payment of royalties or the production payment, he must give his obligor written notice of such failure as a prerequisite to a judicial demand for damages.¹⁴

The change is significant because “production payment” is commonly understood as being an interest carved out of the lessee's interest. Further, the addition of the phrase “created out of a mineral lessee's interest” expressly provides for this meaning and therefore precludes article 212.21's application to an unleased owner's right to a share of unit production.

13. *Adams v. Chesapeake Operating Co.*, 561 Fed. Appx. 322, 326 (5th Cir. 2014); *J&L Family, L.L.C. v. BHP Billiton Petroleum Props.*, 293 F. Supp. 3d 615, 620 (W.D. La. 2018).

14. H.B. 227, Reg. Sess. (La. 2020).

II. LOUISIANA'S OFFICE OF CONSERVATION SIGNIFICANTLY IMPROVES MANAGEMENT OF ACTIVE & ORPHAN WELLS¹⁵

In 2014, the Louisiana Legislative Auditor (the “Auditor”) issued a report on the management of active and orphan wells¹⁶ by Louisiana’s Office of Conservation (“Conservation”).¹⁷ The Auditor concluded that: (1) Conservation was not conducting a sufficient number of inspections of wells; (2) there were too many wells for which Conservation did not require financial assurance (security to ensure wells are properly plugged and abandoned at the end of the wells’ lives); (3) when financial assurance was required, that the amount often was too low; and (4) Conservation lacked an effective program for dealing with operators’ failures to comply with regulations.¹⁸ The Auditor made twenty-one recommendations.¹⁹

In March 2020, the Auditor released a follow-up report that examined Conservation’s progress toward complying with the recommendations the Auditor made in 2014.²⁰ The Auditor found that Conservation had fully or partially implemented all twenty-one recommendations.²¹ For example, the fraction of wells that Conservation requires financial assurance increased from 25% to 66.3% of wells, and Conservation increased the amount of financial assurance required.²² Conservation improved its inspection process and developed procedures that specify when the agency should issue compliance orders and impose penalties for active wells that fail

15. See generally LA. STAT. ANN. § 30:4 (2018) (explaining that the Office of Conservation regulates oil and gas activities in Louisiana); see *infra* note 20, at 6.

16. See LA. DEPT. NAT. RES., *Glossary of Terms*, <http://www.sonris.com/documents/FinalLouisianaDNRGlossaryofTerm.pdf> [<https://perma.cc/Z5DU-XZQW>], (defining “orphan wells” as “[w]ells which have no continued useful purpose for the exploration, production, or development of oil and gas and which have been declared to be an orphaned oilfield site under R.S. 30:91,” with this designation being declared pursuant to 30:91 when non financially responsible party with liability for the well can be found).

17. Daryl G. Purpera, *Oil and Gas Regulation and Orphaned Wells: Office of Conservation – Dept. of Nat. Res.*, LA. LEGIS. AUDITOR (May 28, 2014) [hereinafter “2014 Report”], [https://www.lla.la.gov/PublicReports.nsf/D6A0EBE279B83B9F86257CE700506EAD/\\$FILE/000010BC.pdf](https://www.lla.la.gov/PublicReports.nsf/D6A0EBE279B83B9F86257CE700506EAD/$FILE/000010BC.pdf) [<https://perma.cc/8A4Y-4ES6>].

18. *Id.* at 2.

19. *Id.* at 6–28.

20. Daryl G. Purpera, *Progress Report: Regulation of Oil and Gas Wells and Management of Orphaned Wells: Office of Conservation – Dept. of Nat. Res.*, LA. LEGIS. AUDITOR (Mar. 11, 2020) [hereinafter “2020 Report”], [http://app.lla.state.la.us/PublicReports.nsf/0/C9D7297FEA93568D86258528006BA4F8/\\$FILE/0001FA2E.pdf](http://app.lla.state.la.us/PublicReports.nsf/0/C9D7297FEA93568D86258528006BA4F8/$FILE/0001FA2E.pdf) [<https://perma.cc/T7BQ-H6WG>].

21. *Id.* at 1.

22. *Id.* at 2.

inspection. The procedures also specify when Conservation should conduct a re-inspection.²³ Further, Conservation amended its regulations to ensure that operators schedule the plugging and abandonment of inactive wells that have no future utility, rather than delaying the plugging and abandonment by stating the wells have future utility.²⁴

However, the Auditor found that the Conservation's management of wells should be improved further. For example, although the Conservation increased the amount of financial assurance required, that amount was still below the typical cost to plug and abandon a well.²⁵ The Auditor found that, in 2019, the average cost to plug and abandon an onshore well less than 3,000 feet deep was about \$4.76 per foot but that the required financial assurance was only \$2 per foot.²⁶ The average cost to plug and abandon deeper, onshore wells was approximately \$35.84 per foot but that the required financial assurance was \$4 per foot.²⁷ In addition, the Auditor found that the Conservation was not conducting enough re-inspections.²⁸

III. APPELLATE COURT AFFIRMS JUDGMENT REGARDING WHETHER DRILLING WAS PERFORMED IN GOOD FAITH

In June 1996, Thomas Blount sold land to Cannisnia Plantation, LLC ("Cannisnia"), reserving a mineral servitude for one-half of all the oil and gas produced from the land.²⁹ Mr. Blount later transferred the servitude to Blount Farms, LLC, which transferred it to Blount Company. Blount Company eventually transferred the servitude back to Blount Farms.³⁰ This Article will refer to Mr. Blount, his father, Blount Farms, and Blount Company collectively as "the Blounts."

The Blounts apparently had no previous oil and gas experience, but they wanted to drill their own well. They hired an experienced geologist who developed a plan to drill a well through multiple potentially productive formations. The Blounts also consulted with other geologists, hired a drilling contractor, and obtained a permit to drill. They spudded the Cannisnia-Blount No. 1 well in March 2006

23. *Id.*

24. *Id.* at 3.

25. *Id.* at 2.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Cannisnia Plantation, LLC v. Cecil Blount Farms, LLC*, 293 So. 3d 157, 160 (La. Ct. App. 2020).

30. *Id.*

and reached its total depth in April 2006. (In certain places in the opinion, the court erroneously refers to drilling or other operations occurring in “2016,” but the context of the reference indicates that the events occurred in 2006.) They logged the well and collected a core sample. The well was a dry hole, and the Blounts plugged it.

Several years later, in early November 2014, Cannisnia sent notice to the Blounts, demanding (pursuant to Mineral Code article 206) that the Blounts furnish a recordable instrument stating that their servitude had terminated. The Blounts did not do so. In December 2014, Cannisnia filed suit seeking a declaratory judgment that the servitude had terminated, plus attorney fees and damages for the Blounts’ failure to acknowledge that the servitude had terminated. The Blounts answered and filed a reconventional demand in which they sought a declaratory judgment that the servitude had not terminated.

Under Louisiana law, nonuse extinguishes a mineral servitude.³¹ Prescription of nonuse is interrupted by “good faith” drilling.³² For drilling to be in “good faith” for purposes of Mineral Code article 29, the drilling “must be . . . commenced with reasonable expectation of discovering and producing minerals in paying quantities at a particular point or depth,” and the drilling must be “continued at the site chosen to that point or depth.”³³ When a landowner contends that a mineral servitude has terminated, the owner of the servitude has the burden of proving that there was an interruption of prescription.³⁴

At trial, four of the geologists with whom the Blounts had consulted gave testimony, stating that they believed there had been a reasonable expectation that the Blounts would find hydrocarbons in paying quantities at the depth they drilled.³⁵ The evidence shows that the Blounts incurred about \$160,000 in drilling expenses.³⁶ The trial court entered judgment, holding that the servitude had not terminated.³⁷ Cannisnia appealed.³⁸

The Louisiana Second Circuit noted that prior Louisiana court decisions considered numerous factors in determining whether drilling was done in “good faith.” The court stated:

31. LA. REV. STAT. § 31:27(1); *see also Cannisnia*, 293 So. 3d at 170.

32. LA. REV. STAT. § 31:29; *see also Cannisnia*, 293 So. 3d at 170.

33. *Id.*

34. *Cannisnia*, 293 So. 3d at 168 (citing *Smith v. Andrews*, 215 So. 3d 868 (La. Ct. App. 2017)).

35. *Id.* at 167.

36. *Id.* at 167, 172.

37. *Id.* at 167.

38. *Id.*

Some of these factors include the geology of the drilling site and surrounding area based upon prior wells and seismic data; the expertise and experience of the geologists, petroleum engineers, and oil men making the recommendations and decisions; the depth of review of the available geology; the timing of the lease and its terms; the expenses incurred in the operation; the permit applications; the various types of testing performed; the analysis of formations encountered during drilling; the keeping of well logs; the time put into drilling; the depth drilled; and the size of pipes used. This nonexclusive list, along with the credibility assessment of testimony given at trial, is to be weighed by the trial court in making the good faith determination.³⁹

The Second Circuit affirmed the trial court's judgment.⁴⁰ The appellate court noted that the trial court's written reasons included a reference to Cannisnia not proving their case, but the appellate court concluded that this did not require reversal. It was not clear that the trial court had really placed the burden of proof on Cannisnia.⁴¹ Further, when parties appeal, they appeal judgments, not the reasons for judgment, and here the record contained sufficient evidence to justify affirming the lower court's judgment.⁴² In affirming the lower court's judgment, the appellate court rejected suggestions that the Blounts' sole reason for drilling the well was to interrupt prescription.⁴³

In his dissent, Judge Thompson expressed his opinion that the record did not contain sufficient evidence to show that the Blounts satisfied Louisiana's objective standard for good faith, which requires a reasonable expectation of finding hydrocarbons in paying quantities, not merely a subjective belief that a well will produce hydrocarbons.⁴⁴

39. *Id.* at 171 (citing *Indigo Minerals, LLC v. Pardee Minerals, LLC*, 37 So. 3d 1122, 1131 (La. Ct. App. 2010)).

40. *Id.* at 172.

41. *Id.* at 168.

42. *Id.* at 172.

43. *Id.* ("If the Blounts' sole concern was the interruption of prescription, they could have drilled a shallower well and spent less time and money drilling.")

44. *Id.* at 172-73.

IV. LIENS INVALID UNDER LOUISIANA OIL WELL LIEN ACT

PADCO Energy Services, LLC and PADCO Pressure Control, LLC (collectively, “PADCO”) were companies that built “flowback units,” which are used at well sites during flowback—when hydraulic fracturing fluids are returning from the well bore.⁴⁵ PADCO’s primary business was to rent these units to companies that worked on well completions.⁴⁶ Case Energy Services, LLC (“Case”) sold piping and gauges to PADCO.⁴⁷ Case delivered these items to PADCO’s place of business, and PADCO incorporated these items into the flowback units.⁴⁸

A dispute arose between PADCO and Case. Case filed suit in state court, alleging that PADCO did not pay the full price for the use of certain flowback units. Case also filed twenty-five liens in Louisiana pursuant to the Louisiana Oil Well Lien Act (“LOWLA”).⁴⁹ In addition, Case filed ten liens in Texas based on a Texas statute. Each of the PADCO entities later entered bankruptcy, and Case’s state court action was stayed. PADCO filed adversary proceedings in the bankruptcies, seeking judgments that Case’s liens were invalid. PADCO sought summary judgment.

Under LOWLA, certain persons are entitled to a lien. These include “contractors,” with “contractor” defined as a person who contracts to perform “operations.”⁵⁰ In turn, “operations” are defined to include various types of work performed “on a well site.”⁵¹ The court concluded that Case could not qualify as a “contractor” because it had not contracted to perform work at a well site.

Persons who deliver movables to a well site can be entitled to a lien, but Case did not deliver its equipment to a well site. Case delivered the items to PADCO’s place of business.

In addition, under LOWLA, a person who sells movables to an “operator” or “contractor” is entitled to a lien to secure payment of the purchase price for the movables, provided the movables are incorporated into the well, incorporated into a facility located on the well site, consumed in operations, or consumed by a person

45. *In re* PADCO Energy Services, LLC v. Case Energy Services, LLC, 610 B.R. 96, 106 (Bankr. W.D. La. 2019).

46. *Id.*

47. *Id.* at 105.

48. *Id.*

49. The Louisiana Oil Well Lien Act is found at LA. STAT. ANN. §§ 9:4861–9:4873 (2007).

50. LA. STAT. ANN. §§ 9:4861–9:4862 (2007).

51. *Id.* § 9:4861.

performing work at the well site.⁵² Here, it was not clear that Case had sold movables to an “operator” or “contractor” when it sold items to PADCO. An “operator” is defined to mean a *lessee* who contracts with the claimant. PADCO was not a lessee and therefore was not an operator.

The court then considered whether PADCO was a contractor.⁵³ To be a “contractor” under LOWLA, a company must enter a contract to perform work at a well site. PADCO’s main business was simply renting equipment for use at a well site, not performing work at well sites. If PADCO did not contract to perform work at the well site, it would not be a contractor, and Case would not have a valid lien based on selling movables to a contractor. But Case managed to raise a genuine issue of fact regarding whether PADCO had agreed to perform work at the well site, so the court could not grant summary judgment based on PADCO not qualifying as a contractor.

However, for Case’s liens to be valid under LOWLA based on a sale of movables to a contractor, the movables must have been incorporated into the well, incorporated into a facility located on the well site, consumed in operations, or consumed by a person performing work on the well site. The court concluded that Case’s liens did not satisfy this requirement. The piping and gauges sold by Case were not consumed. Further, they were not incorporated into the well. The movables sold by Case were incorporated into the flowback units that were temporarily placed on the lease tract, but the court concluded that this is not what was meant by Louisiana Revised Statutes 9:4861’s reference to a “facility located on the well site.” Therefore, PADCO was entitled to summary judgment because the twenty-five liens that Case filed in Louisiana were invalid.⁵⁴

The court stated that there was an additional, independent basis for summary judgment in favor of PADCO regarding Case’s Louisiana liens. In particular, the liens did not fairly apprise third persons of the nature of the liens because: (1) each lien stated that PADCO owed Case more than \$1.2 million, but that amount was actually the *total* amount allegedly owed to Case (the individual liens each secured a much lower amount); and (2) the liens did not describe the work done by Case. The court stated that these deficiencies made these liens invalid.

52. *Id.* § 9:4862(A).

53. *PADCO Energy Services*, 610 B.R. at 106–07.

54. *Id.* at 114.

V. WELL COST REPORTING STATUTE

B.A. Kelly Land Company, LLC (“Kelly”) was an owner of unleased land in two compulsory drilling and production units.⁵⁵ Aethon Energy became operator of the units in 2016.⁵⁶ By then, numerous wells had reached payout.⁵⁷ As an unleased owner, Kelly was entitled to its pro rata share of each well’s monthly revenue after payout, subject to a deduction of Kelly’s pro rata share of ongoing operating costs.⁵⁸ Kelly sent multiple requests for information, and Aethon sent reports to Kelly. Kelly complained that the reports did not contain all the information Kelly was entitled to receive, but Aethon did not correct the problem.⁵⁹ In September 2018, Kelly filed suit against Aethon based on Louisiana Revised Statutes 30:103.1 and 103.2.⁶⁰

Revised Statute 30:103.1 provides that, when a compulsory drilling unit includes any land “upon which the operator or producer has no valid oil, gas, or mineral lease,” the owners of mineral interests in those lands have a right to receive specified types of information regarding costs and revenues from a unit well, though the statute has been interpreted so that the mineral interest owner’s right to receive the information does not arise until the owner requests such information.⁶¹ Revised Statute 30:103.2 provides that, if an operator fails to comply with 30:103.1, and the operator does not correct that failure within ninety days after a mineral interest owner notifies the operator of the failure, the operator loses their right to charge that for the owner’s share of certain drilling costs.

Kelly alleged that Aethon’s reports failed to include the information required under Louisiana Revised Statutes 30:103.1 and that, pursuant to Revised Statute 30:103.2, the penalty for this failure was that Aethon forfeited its right to collect Kelly’s pro rata share of the wells’ operating costs.⁶² The court disagreed, concluding that Kelly’s

55. B.A. Kelly Land Co., LLC v. Aethon Energy Operating LLC, No. 5:18-CV-01243, 2019 WL 5021267, at *1 (W.D. La. Oct. 9, 2019).

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at *1–2.

60. *Id.* at *2.

61. *Id.* at *3 (citing *Adams v. Chesapeake Operating, Inc.*, 561 F. App’x 322, 325 (5th Cir. 2014)).

62. *Id.* at *2.

correspondence was not sufficiently detailed to trigger liability under the statute.⁶³

VI. DUTY TO CORRECT INACCURATE PRODUCTION REPORTS

Statoil USA E&P, Inc. held an oil and gas lease on the Outer Continental Shelf.⁶⁴ In August 2010, the Office of Natural Resources Revenue (“ONRR”) found “significant volume variances” when comparing natural gas production information reported by Statoil to information supplied by gas-plant operators.⁶⁵ ONRR sent an order to Statoil instructing the company to correct its reports within thirty days.⁶⁶ Statoil did not comply.⁶⁷

ONRR contacted Statoil regarding the variances again in January 2011 and May 2011.⁶⁸ Statoil acknowledged that its prior reports were inaccurate, but it failed to correct them.⁶⁹ In August 2011, ONRR threatened to impose penalties for a “knowing or willful failure to maintain accurate information.” Statoil still failed to correct its reports.⁷⁰

In February 2012, ONRR sent a notice of civil penalty to Statoil.⁷¹ ONRR relied on 30 U.S.C. § 17119(d), which authorizes the imposition of a penalty against any person who “knowingly or willfully prepares, maintains, or submits false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information.”⁷² ONRR stated that the penalty was imposed for a “knowing and willful maintenance of incorrect information on gas sales volumes reported.”⁷³

Statoil challenged the penalty, arguing to an administrative law judge that the company had not “maintained” inaccurate reports because the reports were stored in ONRR’s online database.⁷⁴ Thus, ONRR had “maintained” the data; Statoil had not. The administrative

63. *Id.* at *7.

64. *Statoil USA E&P, Inc. v. U.S. Dep’t of Interior*, 801 F. Appx. 232, 235 (5th Cir. 2020).

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*; 30 U.S.C. § 17119(d)(1) (2012).

73. *Statoil USA E&P, Inc.*, 801 F. App’x at 235.

74. *Id.*

law judge rejected that argument.⁷⁵ Statoil appealed to the Department of Interior's Board of Land Appeals, but the Board affirmed.⁷⁶ Statoil appealed to the United States District Court for the Southern District of Texas, but the district court affirmed.⁷⁷ Statoil then appealed to the United States Fifth Circuit.⁷⁸

The Fifth Circuit also rejected Statoil's arguments and affirmed. The court noted that, in the Webster's Third New International Dictionary, one meaning of "maintain" is "to keep in a state of repair, efficiency, or validity."⁷⁹ The court concluded that for purposes of 30 U.S.C. § 1719(d), a lessee must correct reports that they know are false, inaccurate, or misleading to avoid liability for maintaining inaccurate records.⁸⁰ The court stated that it makes little sense to interpret § 1719(d)'s sanctions for maintaining inaccurate records as applying only when a company has physical possession of the inaccurate information.⁸¹ Indeed, the Fifth Circuit stated, "In the context of an online, record-keeping system, a distinction based on physical possession makes even less sense."⁸²

VII. UNITED STATES FIFTH CIRCUIT AFFIRMS REMAND IN COASTAL LAND LOSS LITIGATION

Several coastal parishes filed forty-two lawsuits in various Louisiana state courts against numerous oil and gas companies, alleging that the companies' activities contributed to coastal land loss.⁸³ The defendants removed the lawsuits to federal courts based on several legal theories, but the federal district courts remanded each case.⁸⁴ Later, after the plaintiffs submitted an expert report that referred to certain oil and gas activities in the coastal regions during World War II, the defendants removed the cases again, relying on the "federal officer" removal statute.⁸⁵ The statute authorizes removal by any federal officer who is sued for actions that the defendant took as a

75. *Id.*

76. *Id.*

77. *Id.* at 233, 235.

78. *Id.*

79. *Id.* at 236.

80. *Id.*

81. *Id.* at 236–37.

82. *Id.*

83. *See* *Par. of Plaquemines v. Chevron USA, Inc.*, 969 F.3d 502, 506 (5th Cir. 2020).

84. *Id.*

85. *Id.* (The federal officer removal statute is found at 28 U.S.C. § 1442).

federal officer.⁸⁶ It also allows private defendants to remove a case if they are sued for acts they took under direction of a federal officer.⁸⁷ The defendants argued that they were working under the direction of the federal Petroleum Administration for War during World War II.⁸⁸

The United States District Courts for the Eastern and Western Districts of Louisiana disagreed and remanded.⁸⁹ The district courts acknowledged that private individuals can use federal office removal when they are sued for actions taken under the direction of federal officers, but the courts stated that the mere fact that a defendant's activities are subject to federal regulation is not sufficient.⁹⁰ The courts reasoned that the defendants' activities were not under sufficient control and direction of a federal officer for the defendants to be entitled to use federal officer removal.⁹¹

Further, if a defendant does not remove the case within thirty days of the first paper that showed the case could be removed, the defendant forfeits their right to remove.⁹² The defendants' second removal of some of the coastal land loss cases occurred within thirty days of the plaintiffs submitting the expert report, but it was more than thirty days since the plaintiffs had filed their original petitions.⁹³ The plaintiffs apparently argued that, even if the expert report provided additional details, it was obvious from the plaintiffs' original petitions that their claims were based on activities that occurred over a period that included World War II. Thus, the plaintiffs argued that the thirty-day deadline ran from the date the original petition was served, not from the time the expert report was submitted, and therefore a removal based on the federal officer removal statute was not timely. The

86. 28 U.S.C. § 1442 (2012).

87. *See* Par. of Cameron v. Auster Oil & Gas Inc., 420 F. Supp. 3d 532, 540 (W.D. La. 2019), *aff'd*, 969 F.3d 502 (5th Cir. 2020).

88. Par. of Plaquemines v. Chevron USA, Inc., 969 F.3d 502, 506 (5th Cir. 2020).

89. *Id.* (The actions were filed in state courts in several parishes, some of which are in the Eastern District and some of which are in the Western District).

90. Par. of Cameron v. Auster Oil & Gas Inc., 420 F. Supp. 3d 532, 540–42 (W.D. La. 2019), *aff'd*, 969 F.3d 502 (5th Cir. 2020); Par. of Plaquemines v. Chevron USA, Inc., 2019 WL 2271118, at *9 (E.D. La.), *aff'd*, 969 F.3d 502 (5th Cir. 2020).

91. Par. of Cameron v. Auster Oil & Gas Inc., 420 F. Supp. 3d 532, 546 (W.D. La. 2019), *aff'd*, 969 F.3d 502 (5th Cir. 2020); Par. of Plaquemines v. Chevron USA, Inc., 2019 WL 2271118, at *17 (E.D. La.), *aff'd*, 969 F.3d 502 (5th Cir. 2020).

92. 28 U.S.C. § 1446(b)(3) (2012); Par. of Plaquemines v. Chevron USA, Inc., 969 F.3d 502, 506 (5th Cir. 2020).

93. Par. of Plaquemines v. Chevron USA, Inc., 969 F.3d 502, 507 (5th Cir. 2020).

Western District rejected that argument,⁹⁴ but the Eastern District agreed with the defendants that the removal based on the federal officer removal statute was not timely.⁹⁵

Certain defendants appealed the district courts' remand orders to the United States Fifth Circuit.⁹⁶ After a case is removed from state to federal court, a federal district court order remanding the case is generally not appealable.⁹⁷ But when a case is removed based on federal officer removal, a remand order is appealable.⁹⁸ The defendants in the coastal land loss case appealed the district court's second remand to the United States Fifth Circuit, but the appellate court affirmed.⁹⁹ The Fifth Circuit concluded that the thirty-day deadline to remove ran from the date the original petition was served, not from the time the expert report was submitted.¹⁰⁰ Therefore, the defendants' second removal was not timely.¹⁰¹

94. Par. of Cameron v. Auster Oil & Gas Inc., 420 F. Supp. 3d 532, 539 (W.D. La. 2019), *aff'd*, 969 F.3d 502 (5th Cir. 2020).

95. Par. of Plaquemines v. Chevron USA, Inc., 2019 WL 2271118, at *7 (E.D. La.), *aff'd*, 969 F.3d 502 (5th Cir. 2020).

96. Par. of Plaquemines v. Chevron USA, Inc., 969 F.3d 502, 504 (5th Cir. 2020).

97. *Id.* at 506.

98. *Id.*

99. *Id.* at 506–7.

100. *Id.*

101. *Id.* at 507.