

Overturning 8 Years of “Palpable Error,” The Louisiana Supreme Court Limits Damages Available to Landowners in Oilfield Legacy Litigation

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On June 30, 2021, the Louisiana Supreme Court issued an opinion redefining the nature of available damages and the “actual, statutorily permitted role of the jury in Act 312 remediation lawsuits.” The “*LL&E I*” decision finds that Act 312 charges the court, not the jury, to determine the funding needed to remediate property to government standards. If (and only if) an express contractual provision requires greater remediation than government standards, a jury may consider and award such “excess remediation” damages. *State of Louisiana v. Louisiana Land and Exploration Co.*, 2020-00685 (La. 6/30/2021); — So. 3d — (“*LL&E I*”).

Background of Legacy Litigation and *LL&E I*

In the landmark oilfield remediation case *Corbello v. Iowa Production*, landowners sued oil and gas companies for breach of a mineral lease. 850 So.2d 686 (La. 2/25/03). A provision in the contract stated that, when the lease ended, the property would be restored to its pre-lease condition. The landowners prevailed at trial on their breach of contract claim—and on their argument that it would cost tens of millions of dollars to restore the property. However, there was no mechanism to ensure that a penny of the \$33 million awarded in *Corbello* would be spent on clean-up. Tackling this problem, the Louisiana Legislature in 2006 enacted La. R.S. 30:29, known as Act 312. “The legislature’s intent in passing Act 312 was to ensure that funds awarded for remediation of contaminated property would indeed be spent to remediate the property and bring the land up to current environmental standards.” *LL&E II*, at *2.

The interplay between Act 312 and private land-damage lawsuits has been in a state of constant evolution. In 2013, the decision in *State of Louisiana v. Louisiana Land and Exploration Co.*, 12-0884 (La. 1/30/13); 110 So. 3d 1038 (“*LL&E I*”) marked a key development. *LL&E I* held that even without a *Corbello*-like express contractual provision, defendants who operated unreasonably accrued an *implied* obligation under the Mineral Code to restore property above and beyond regulatory environmental standards. And, *LL&E I* determined that these “excess remediation damages” were awards landowners could keep for themselves under Act 312.

In the aftermath of *LL&E I*, juries were often tasked to answer multiple questions: How much money was needed to fund remediation of the land to government standards? Were landowners entitled to “excess remediation”? If so, how much would it cost to restore property to the higher standard? The lure of that financial “delta”—the cost difference between attaining government standards and some standard in excess of that—was an engine that has shaped legacy litigation in the ensuing years.

The *LL&E II* Decision

After the *LL&E I* decision, the case went to trial in 2015. The jury awarded \$3.5 million to remediate the land in compliance with government standards pursuant to Act 312. Additionally, the jury awarded \$1.5 million on the landowners’ strict liability claim. It denied all other causes

of action. The landowner moved for a new trial, arguing that the jury verdict was inconsistent in awarding damages for remediation and strict liability, but not on the contract actions. The trial court denied the motion. On appeal, the Third Circuit found that the verdict was inconsistent and remanded for a new trial.

The Supreme Court disagreed: the verdict was consistent, “when viewed in light of the improper jury instructions given to them.” *LL&E II*, *8-9. The Court expressed appreciation for the jury’s difficult position: the jury was essentially told to find the defendant liable for remediation damages and to find the amount of damages necessary to remediate the land; then they were properly instructed on the various private causes of action. “This was all done in light of this Court’s 2013 La. Land & Expl I. decision, which we now see with clarity, was made in error.” *Id.*, *9.

The error was *LL&E I*’s holding that in cases without an express contractual restoration provision, “excess remediation damages were allowed under Act 312.” *Id.* The consequences of this “misguided decision” were that (1) juries decided the amount of damages necessary to remediate land to government standards; and (2) juries could award landowners damages in excess of actual costs to remediate the land without a contractual basis. Looking afresh to the “clear and unambiguous” language of Act 312, the Court reached the following conclusions:

- (1) outside of an express contractual provision, Act 312 does not allow for remediation damages in excess of those required to fund the court adopted remediation plan;
- (2) the plan is left to the sole judgment of the trial court itself, not the jury; and therefore,
- (3) Act 312 provides no intent for the jury to decide the amount of remediation damages that meet Act 312 compliance. Act 312 only allows the jury to award excess remediation damages when an express contractual provision providing for such an award exist. Outside of any express contractual provision being present, it is an error to have the jury consider any damages related to Act 312 remediation of the property. The jury’s sole role is to consider liability and damages for private causes of action, as well as for contractual causes of action where an express provision allows for remediation and damages in excess of governmental standards.

Id., *12. The Court reversed and vacated the judgment for remediation damages, “finding there is not, and never was, statutory support for the award. Rather, specific performance of remediation, *i.e.* the cost of actual clean-up, is appropriate.” *Id.*, *13.

As of the date of this writing, a Motion for Rehearing has not been ruled upon. The implications of *LL&E II* undoubtedly will be the subject of much activity across Louisiana’s legacy docket.