

Louisiana Appellate Courts Weigh In On R.S. 30:16 Citizen Suits

Jane A. Jackson
Kelly Hart Pitre

Over the past several years, Louisiana landowners have adopted a new approach to address alleged property contamination arising from oil and gas operations—filing citizen suits under La. Rev. Stat. § 30:16 (“R.S. 30:16”). That statute allows individuals to sue to restrain violations of conservation regulations if the Commissioner of Conservation of the Louisiana Department of Natural Resources (“Commissioner”) fails to do so. In these cases, the landowners allege that contamination on their property exceeds regulatory standards, and they seek remediation of the property and recovery of private attorney and expert fees from the oil and gas defendants who have operated on the property. Louisiana appellate courts are now confronting novel issues in two neighboring landowners’ R.S. 30:16 cases, the *Tureau* case and the *Guilbeau* case.

The *Tureau* and *Guilbeau* cases both relate to a 2013 traditional legacy lawsuit jointly filed by Mr. Tureau and Mr. Guilbeau in which they alleged contamination on their separately-owned properties resulting from historical oil and gas exploration and production activities. That legacy lawsuit was later severed into separate cases, and Mr. Tureau’s and Mr. Guilbeau’s cases were each dismissed on summary judgment. *Tureau v. 2-H Inc.*, No. 1:13-cv-2969, 2016 WL 4499413 (W.D. La. Aug. 23, 2016), *appeal dismissed sub nom. Tureau v. Hess Corp.*, No. 16-30970, 2017 WL 5952262 (5th Cir. July 19, 2017); *Tureau v. 2-H Inc.*, No. 1:13-cv-2969, 2016 WL 4500755 (W.D. La. Aug. 23, 2016), *appeal dismissed sub nom. Tureau v. Hess Corp.*, No. 16-30970, 2017 WL 5952262 (5th Cir. July 19, 2017); *Guilbeau v. 2 H, Inc.*, No. 14-2867, 2016 WL 4507634 (W.D. La. Aug. 22, 2016), *appeal dismissed sub nom. Guilbeau v. Hess Corp.*, 854 F.3d 310 (5th Cir. 2017).

After their legacy lawsuits were dismissed, Mr. Tureau and Mr. Guilbeau each filed a citizen suit under R.S. 30:16. The plaintiffs purported to sue on behalf of the State of Louisiana and generally claimed that former operators, including the same defendants named in their original lawsuits, contaminated and failed to remediate their properties in violation of Louisiana Statewide Order 29-B, which governs pollution control and waste disposal for oilfield sites. They sought injunctions requiring remediation of their properties to regulatory standards, as well as expert and attorney fees and costs.

In each case, the plaintiffs were faced with exceptions of res judicata and prescription filed by the defendants. The defendants who had obtained summary judgment in the original legacy lawsuits argued that res judicata barred the R.S. 30:16 lawsuits because the judgments dismissing the earlier lawsuits were final, valid, and conclusive judgments disposing of claims between the same parties and involving the same underlying facts, operations, and contamination. In support of the exceptions of prescription, the defendants argued that the plaintiffs’ claims under R.S. 30:16, which itself does not contain a prescriptive period, are akin to property damage claims and thus subject to the Louisiana Civil Code’s one-year prescriptive period applicable to delictual actions. Because the R.S. 30:16 suits were filed well over a year after the original lawsuit was filed in 2013 and thus over a year after the plaintiffs became aware

of the damage giving rise to their claims, the defendants argued that the citizen suits were time-barred.

The trial courts in both *Tureau* and *Guilbeau* sustained the exceptions of prescription and res judicata and dismissed the R.S. 30:16 claims. Both Mr. Tureau and Mr. Guilbeau appealed the various district court judgments to the Louisiana First Circuit Court of Appeal, where the R.S. 30:16 res judicata and prescription issues were heard by three different panels that included eleven of the twelve First Circuit judges.

Louisiana First Circuit Appeals

Prescription - The Louisiana First Circuit first decided the prescription issue in *Tureau* and reversed the trial court's ruling that a one-year prescriptive period applies to a R.S. 30:16 claim. *State ex rel. Tureau v. BEPCO, L.P.*, No. 2021-0800, 2021 WL 1997489, (La. App. 1 Cir. 5/19/21), --- So. 3d ---. The First Circuit relied on Louisiana Supreme Court dicta and concluded that the R.S. 30:16 action is not a delictual action for damage to property because the plaintiff is seeking an injunction rather than "damages." Instead, the First Circuit concluded that actions brought under R.S. 30:16 are "administrative enforcement suits." The court did not analyze or determine which prescriptive period does in fact apply to R.S. 30:16 actions or hold that R.S. 30:16 actions are imprescriptible as argued by Mr. Tureau.

Addressing the identical prescription issue in the *Guilbeau* case months later, the First Circuit found itself constrained to follow the court's decision in *Tureau* and therefore also reversed the district court's judgment sustaining the exception of prescription. *State ex rel. Guilbeau v. BEPCO, L.P.*, No. 2020-0429, 2021 WL 4260674, at *4 (La. App. 1 Cir. 9/20/21), -- So. 3d ---. Louisiana First Circuit Court of Appeal Judge Guidry wrote separately, however, to note that while the court was bound to follow the decision in *Tureau*, he believed *Tureau* was wrongly decided. *Id.* at *6 (Guidry, J.). After explaining that the nature of the duty breached typically determines the applicable prescriptive period, Judge Guidry wrote that the landowner's R.S. 30:16 claim was based on damage to property and thus delictual in nature. He therefore concluded that the R.S. 30:16 action was subject to a one-year prescriptive period and was prescribed. *Id.*

The defendant's request for rehearing *en banc* in *Guilbeau* is pending. And, on October 19, 2021, the Louisiana Supreme Court agreed to review the First Circuit's decision in *Tureau*, paving the way for what may be a definitive answer on what prescriptive period applies to R.S. 30:16 claims.

Res Judicata - The primary dispute before the Louisiana First Circuit with respect to res judicata was whether the R.S. 30:16 lawsuits involve the same parties appearing in the same capacity as the original legacy lawsuit. The First Circuit first ruled in the *Guilbeau* case and reversed the trial court judgment sustaining the res judicata exception. The court noted that R.S. 30:16 requires that the Commissioner be substituted as a party if the trial court finds that injunctive relief should be granted and found that in his R.S. 30:16 lawsuit Mr. Guilbeau is seeking relief to which only the Commissioner is entitled and is therefore representing the rights of the Commissioner. Conversely, in his original legacy lawsuit, Mr. Guilbeau asserted property damage claims on his own behalf and sought damages to recover damages he claimed were owed

to him. Thus, the court concluded that there was no identity of parties in the legacy lawsuit and the R.S. 30:16 suit because Mr. Guilbeau was appearing in a different capacity in his R.S. 30:16 lawsuit than in the original legacy lawsuit where he asserted claims on his own behalf.

Less than three weeks after the *Guilbeau* decision, a different panel of Louisiana First Circuit judges issued a 3-2 decision in *Tureau* likewise reversing the trial court judgment sustaining the exception of res judicata based on the court's prior *Guilbeau* decision. Despite this, three judges on the five-judge panel agreed that, at least at this stage, the plaintiff is appearing in the same capacity in his R.S. 30:16 lawsuit as he appeared in his original legacy lawsuit. The two dissenting judges found, as the U.S. Fifth Circuit did in the recent *Grace Ranch L.L.C. v. BP America Production Co.* decision, that a plaintiff asserting a claim under R.S. 30:16 does so in his own name and not on behalf of the Commissioner. The dissent noted that they would have affirmed the judgment sustaining res judicata because Mr. Tureau is seeking an injunction and remediation of his own property as well as attorney fees and costs, all of which would inure to Mr. Tureau. The third judge wrote a concurring opinion agreeing with the dissent that at this stage of the proceedings, Mr. Tureau is indeed seeking relief on his own behalf. But the concurring judge ultimately agreed to reverse the trial court's ruling for a procedural reason, finding that because R.S. 30:16 leaves open the possibility that the Commissioner may be substituted as a party after trial, the ruling on res judicata should be reserved until that time. In addition, the concurring judge suggested that defendants should have an opportunity to urge res judicata as to the plaintiff's claim for attorney fees and costs if that request existed at the time of the original lawsuit.

In both the *Guilbeau* case and the *Tureau* case, the defendants filed requests for rehearing *en banc* with respect to the res judicata rulings. The rehearing request in *Tureau* was denied on November 4, 2021, and the request in *Guilbeau* remains pending.