

Louisiana State Court Provides Guidance in the Recent Trend of Citizen Suits Under Environmental Statute

*Jane A. Jackson*¹
Kelly Hart Pitre
New Orleans, LA

I. Background

In 2013, three neighboring landowners in Avoyelles Parish, Louisiana filed a traditional legacy lawsuit complaining of alleged contamination on their separately-owned properties that they claimed was caused by historical oil and gas exploration and production activities. Multiple lawsuits have since been filed by those same landowners related to the same contamination first alleged in 2013. Two of these landowners were among the first in Louisiana to rely on a novel use of decades-old statute Louisiana Revised Statutes § 30:16 (“R.S. 30:16”) to seek remediation of that alleged historical contamination. Now, seven years after the original lawsuit was filed, courts are beginning to provide some valuable guidance about how claims under this statute may play out for historical oil and gas activities in Louisiana.

The original 2013 legacy lawsuit was filed jointly by Mr. Tureau, Mr. Guilbeau, and Ritchie Grocer Co. and was later severed into three separate lawsuits—one by each landowner. Mr. Tureau’s and Mr. Guilbeau’s cases were each dismissed on summary judgment based on the subsequent purchaser doctrine, which prevents a property owner from recovering for damage inflicted to his property *before* he purchased it absent an express assignment of the personal right of action from the person who owned the property at the time the damage was inflicted. *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); *see Eagle Pipe & Supply, Inc. v. Amerada Hess Corp.*, 2010-2267 (La. 10/25/11), 79 So. 3d 246, 256-57 (discussing the subsequent purchaser doctrine).

After their initial claims were dismissed, both Mr. Tureau and Mr. Guilbeau began pursuing remediation of their properties through lawsuits filed pursuant to R.S. 30:16, a citizen suit provision permitting an interested party to sue to prevent violation of Louisiana’s conservation laws. Under Louisiana Revised Statutes § 30:14 (“R.S. 30:14”), the Commissioner of Conservation of the Louisiana Department of Natural Resources, Office of Conservation

¹ Jane Jackson is a partner at Kelly Hart Pitre in New Orleans. Ms. Jackson focuses her practice on energy, environmental, and oil and gas litigation. She represents clients in a range of matters, including land damage lawsuits brought by landowners, land use cases, regulatory compliance, and contract disputes.

(“Commissioner”) is obligated to bring suit to restrain violations or threatened violations of the conservation laws or rules, regulations, or orders made thereunder. Under R.S. 30:16, if the Commissioner fails to sue as required under R.S. 30:14, any interested person adversely affected by the violation may provide written notice to the Commissioner of the actual or threatened violation and request that the Commissioner sue. La. Rev. Stat. § 30:16. If the Commissioner fails to sue within ten days, the interested party may file suit under R.S. 30:16 to prevent any or further violations.

Mr. Tureau and Mr. Guilbeau, along with other landowners using the same, new approach, sought to use R.S. 30:16 to address alleged historical oil and gas contamination where traditional legacy claims failed. They purported to sue on behalf of the State of Louisiana and generally claimed that oil and gas companies who operated on their property failed to remediate the property in violation of Statewide Order 29-B (43 La. Admin. Code Pt. XIX, § 101 *et seq*), which governs oilfield site pollution control and waste disposal. The landowners requested an injunction requiring remediation of their properties to regulatory standards.

Landowners’ recent reliance on R.S. 30:16 to address alleged regulatory violations resulting from historical operations, that in some cases ceased decades earlier, left current and former operators in Louisiana with many questions, including what type of pre-suit notice is required and who can bring the claims and when, but with little court authority to determine how the cases would unfold. In recent months, however, new decisions by a Louisiana district court in the *Tureau* and *Guilbeau* cases have answered some of these questions and provided some guidance on how these types of lawsuits may proceed.

II. New Rulings

Mr. Tureau’s and Mr. Guilbeau’s R.S. 30:16 lawsuits were both removed to federal court based on diversity jurisdiction. Both plaintiffs moved to remand the cases to state court, arguing that the State was a party and diversity of citizenship therefore did not exist. The Western District of Louisiana denied the remand motions in both cases, finding that the State was improperly made a party and had no real interest in the actions. *Louisiana ex rel. Tureau v. BEPCO, L.P.*, No. 1:18-cv-00973, 2018 WL 6843512, at *3-*4 (W.D. La. Oct. 15, 2018), *report and recommendation adopted*, 2019 WL 1384433 (W.D. La. Mar. 26, 2019); *Louisiana ex rel. Guilbeau v. BEPCO, L.P.*, No. 1:18-cv-00551, 2018 WL 4869389, at *2-*3 (W.D. La. June 18, 2018), *report and recommendation adopted*, 2019 WL 1372000 (W.D. La. Mar. 26, 2019).

Defendants then filed motions to dismiss in both cases, but the Western District abstained from further consideration of the cases under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). *Tureau v. BEPCO, L.P.*, No. 1:18-cv-00973, 2019 WL 3801654 (W.D. La. Aug. 12, 2019); *Guilbeau v. BEPCO, L.P.*, No. 1:18-cv-00551, 2019 WL 3801647 (W.D. La. Aug. 12, 2019). The court recognized the novel use of R.S. 30:16 and acknowledged that no Louisiana appellate court had yet addressed the threshold issue of whether the statute applies to wholly past violations. As stated in the opinion, such a decision could potentially “reanimate oil and gas legacy litigation” and largely undo limitations on legacy litigation put in place by the Louisiana

Supreme Court. *Tureau v. BEPCO, L.P.*, No. 1:18-cv-00973, 2019 WL 3801654 (W.D. La. Aug. 12, 2019). The court thus remanded both *Tureau* and *Guilbeau* to state court.

After the cases were remanded, the defendants filed exceptions to the petitions, which were heard in December 2019. The court's rulings on those exceptions answered some of the key questions raised by the new R.S. 30:16 lawsuits.

A. Pre-Suit Notice

In his pre-suit notice letter to the Commissioner, Mr. Tureau identified his property, provided an environmental assessment and an operator history identifying the alleged regulatory exceedances and the operations that occurred on his property, and asserted that contamination on the property exceeded regulatory standards under Statewide Order 29-B. But Mr. Tureau did not just sue the operators on his property; instead, he also joined as defendants the alleged successors to former operators on the neighboring tract owned by Ritchie Grocer Co., one of the three plaintiffs in the original 2013 legacy lawsuit (the "Off-Tract Defendants"). Mr. Tureau's pre-suit notice letter did not mention or reference either the Off-Tract Defendants or the Ritchie Grocer property.

The Off-Tract Defendants asserted the exceptions of no cause of action and prematurity on the grounds that Mr. Tureau failed to notify the Commissioner of any alleged violations by the Off-Tract Defendants and thus failed to provide the required pre-suit notice as to any R.S. 30:16 lawsuit against them. Mr. Tureau contended that his pre-suit notice was sufficient because the statute does not require an interested party to supply the Commissioner with a violator's identity. Further, Mr. Tureau noted that the Commissioner had received environmental assessment results in connection with each of the lawsuits severed from the original 2013 lawsuit, including the lawsuit related to the Ritchie Grocer tract. Thus, Mr. Tureau asserted the Commissioner should have known that the properties were related and that the Off-Tract Defendants' operations in the Ritchie Grocer tract caused contamination on Mr. Tureau's property.

The court rejected Mr. Tureau's arguments and granted the Off-Tract Defendants' exceptions, while permitting Mr. Tureau an opportunity to provide the Commissioner adequate notice of the Off-Tract Defendants' alleged violations and amend his petition. *State of La., ex rel. Tureau v. BEPCO, L.P.*, No. 661482, 19th JDC, East Baton Rouge Parish, Louisiana, Jan. 3, 2020 Judgment. While the court did not explain precisely what information is required for pre-suit notice under R.S. 30:16, this ruling indicates that in the context of a claim based on alleged regulatory violations stemming from historical operations, an interested party must at least identify or reference the operations or operators that allegedly caused the contamination or the property from which the alleged contamination is emanating.

B. Res Judicata

In the R.S. 30:16 lawsuits, both Mr. Tureau and Mr. Guilbeau named the same defendants who had been dismissed from the earlier lawsuits under the subsequent purchaser doctrine. Consequently, those defendants asserted the exception of res judicata. They argued the judgment dismissing the original lawsuits was valid and final, and it was conclusive between the same parties involved in the R.S. 30:16 lawsuit. Moreover, since the factual allegations in the R.S. 30:16 lawsuit were substantively identical to allegations in the 2013 lawsuits, there was no reason Mr. Tureau or Mr. Guilbeau could not have asserted their R.S. 30:16 claims in their initial lawsuit. Thus, defendants argued that res judicata barred the subsequent R.S. 30:16 claim against them.

The primary dispute with respect to res judicata was whether the R.S. 30:16 lawsuits involved the same parties. Mr. Tureau and Mr. Guilbeau both argued that res judicata did not apply because they were appearing in different capacities in their 30:16 suits. Specifically, they argued that they appeared in their original legacy cases in their individual capacities, while in their R.S. 30:16 suits, the landowners contended that they were asserting claims that belonged to the State and that the State was the real party in interest.

The court rejected the plaintiffs' arguments in both cases. *State of La., ex rel. Tureau v. BEPCO, L.P.*, No. 661482, 19th JDC, East Baton Rouge Parish, Louisiana, Jan. 13, 2020 Judgment; *Guilbeau v. BEPCO, L.P.*, No. 661526, 19th JDC, East Baton Rouge Parish, Louisiana, Jan. 15, 2020 Judgment. Accepting the defendants' positions that the parties in the original suit were the same as the parties in the R.S. 30:16 suit, the court in essence agreed with the federal court's previous findings that the State was not a party to the R.S. 30:16 and had no real interest in the actions. Mr. Tureau has appealed this ruling but, at least for now, the landowner strategy of waiting until after typical legacy claims fail to assert a R.S. 30:16 claim has some risk, given that such claim could and should be asserted at the same time as other claims related to the same contamination.

C. Prescription

In both *Tureau* and *Guilbeau*, the defendants who were parties in the prior legacy cases asserted the exception of prescription, arguing that R.S. 30:16 claims for alleged regulatory violations are subject to a one-year prescriptive period like tort actions. The defendants argued that, because the alleged violations complained of in the R.S. 30:16 lawsuits arise from the same contamination and operations that were the subject of the original 2013 lawsuit, the plaintiffs knew or should have known of the violations and damage by at least 2013, more than a year before the R.S. 30:16 lawsuits were filed.

The plaintiffs responded that the R.S. 30:16 claims were imprescriptible because they really belonged to the State. Plaintiffs noted that R.S. 30:14 requires the Commissioner to bring suit to restrain violations and argued that when a person in interest files suit under R.S. 30:16, he is actually doing so on behalf of the Commissioner by asserting a cause of action granted to the Commissioner. They further argued that if an interested party is successful and the court decides that injunctive relief should be granted, R.S. 30:16 requires that the Commissioner be made party

and substituted for the person who brought the suit and that the injunction be issued as if the Commissioner had at all times been the complaining party.

Once again, defendants succeeded on this exception. Although the court in *Tureau* denied the exception of prescription as moot after sustaining res judicata, the court in *Guilbeau* sustained the exception of prescription and dismissed Mr. Guilbeau's claims against the defendants who were involved in the prior legacy suit. *Guilbeau v. BEPCO, L.P.*, No. 661526, 19th JDC, East Baton Rouge Parish, Louisiana, Jan. 15, 2020 Judgment. The court did not issue reasons for judgment, but its decision to grant the exception means it rejected the argument that the claim is imprescriptible because it belongs to the State. Landowners' arguments that the State is the real party in interest has thus lost in multiple different contexts, *e.g.* for purposes of diversity jurisdiction, res judicata, and prescription. The *Guilbeau* court's ruling on prescription, which is being appealed, confirms again that waiting to file a R.S. 30:16 suit despite already having knowledge of contamination is a risky strategy that could prevent landowners from asserting the claim at all.

It would not be surprising to see landowners shift approaches to begin including R.S. 30:16 claims in their initial lawsuits along with other traditional legacy claims for alleged contamination related to historical exploration and production operations.