

Fifth Circuit Affirms Remand Orders in Louisiana Coastal Zone Lawsuits

Kelly Ransom
Kelly Hart Pitre

On August 10, 2020, the U.S. Court of Appeals for the Fifth Circuit affirmed the orders of the Louisiana federal district courts remanding forty-two lawsuits filed on behalf of numerous Louisiana Parishes against various oil and gas companies (“CZMA Cases”).¹ The parishes, as well as the Louisiana Department of Natural Resources and the Louisiana Attorney General, both of which intervened in each of the forty-two cases on behalf of the State of Louisiana, are asserting claims under the Louisiana State and Local Coastal Resources Management Act of 1978.

The defendants’ first removal of the CZMA Cases to federal court was unsuccessful, and the cases were remanded in 2015. The plaintiff and intervenors later served an expert report in *Parish of Plaquemines v. Rozel Operating Company, et al.*, one of the CZMA Cases, that addressed the defendants’ activities during World War II.² According to the defendants, this report, known as the “*Rozel Report*,” made clear for the first time that the plaintiffs’ claims are based, at least in part, on the defendants’ wartime activities conducted pursuant to the authority of the Petroleum Administration for War, a federal wartime agency.

Based on the wartime operations and activities addressed in the *Rozel Report*, the defendants removed the CZMA Cases again in May 2018 but did so this time under the federal officer removal statute, 28 U.S.C. § 1442, as well as on the basis of federal question jurisdiction. The defendants argued that the second removal was timely under § 28 U.S.C. 1446(b)(3), which allows removal within thirty days after the defendant receives “an amended pleading, motion, order, or other paper from which it may first be ascertained that the case is one which is or has become removable.”

The plaintiffs promptly moved to remand the CZMA Cases, arguing that the second removal was untimely and also challenging the factual basis for federal jurisdiction. The remand motions were granted in 2019. Though remand orders are typically not appealable, there is an exception allowing for appellate review of such orders relating to federal officer jurisdiction. Thus, the defendants appealed the orders granting the motions to remand to the Fifth Circuit, and the district courts’ remand orders were stayed.

The Fifth Circuit held that the second removals were too late. The Court succinctly set forth the issue by stating that the “parties agree that the companies’ second notice of removal is untimely unless it was not evident on the face of the complaints that the case included claims arising during World War II.” With little to no fanfare, the Fifth Circuit concluded:

The *Rozel Report* simply repeated information from a 1980 Louisiana Coastal Resources Program Final Environmental Impact Statement (FEIS) that the Parishes filed with the court before the companies’ first removal attempt in 2013.

¹ *Parish of Plaquemines, et al. v. Chevron USA, Inc., et al.*, No. 19-30492 (5th Cir. August 10, 2020) consolidated with *Parish of Cameron, et al. v. BP America Production Co., et al.*, No. 19-30829 (5th Cir. Aug. 10, 2020).

² The April 30, 2018 expert report included a certification that it represented the Louisiana Department of Natural Resources’ position in all forty-two cases.

The FEIS discusses many of the specific wells involved in this litigation by referring to their unique serial numbers. And those serial numbers refer to wells the companies drilled before or during World War II.

The Fifth Circuit held that the *Rozel* Report was not a “paper from which it may first be ascertained that the case is one which is or has become removable.” The removals were therefore untimely, and the district courts’ remand orders were affirmed.