

Citizen-Suit Theory Tested in Western District of Louisiana

[Colleen C. Jarrott](#), Attorney, New Orleans
cjarrott@bakerdonelson.com, 504.566.8664

A federal judge in Monroe, Louisiana recently held that a "legacy" lawsuit for alleged contamination of oil and gas property could proceed under a citizen-suit theory despite defendants' motions to dismiss because plaintiffs characterized defendants' operations as an "ongoing" violation of various environmental conservation statutes and regulations.

In the case of *Watson v. Arkoma Development*, plaintiffs alleged that defendants were liable for oilfield contamination that resulted from past operations dating back to the 1920s in Tensas Parish, Louisiana. Plaintiffs asserted several legal theories, including a citizen-suit claim pursuant to Louisiana Revised Statute 30:16 (R.S. 30:16).

Defendants moved to dismiss several of the claims, including the citizen-suit claim. They argued that R.S. 30:16 citizen suits can only be used to prevent ongoing or threatened future violation of the conservation statutes and regulations, not to remedy past violations. Because the conduct that allegedly caused contamination was past conduct, defendants argued that plaintiffs could not rely on R.S. 30:16. In response, plaintiffs contended that defendants' failure to remediate the property was an ongoing violation. Magistrate Judge Karen L. Hayes recommended denying the motions to dismiss with respect to the citizen-suit claim, concluding that plaintiffs were alleging an ongoing violation. Thus, she reasoned, she did not need to decide whether R.S. 30:16 can be used to remedy past violations.

Magistrate Judge Hayes recommended granting the motions to dismiss with respect to the following claims: a "Good Samaritan Doctrine" claim based on Restatement (Second) of Torts Section 324A; continuing tort; a Civil Code article 2688 obligation to notify plaintiffs that the leased property needed repairs; unjust enrichment; Act 312 (because it is procedural only, not an additional source of liability); land loss and subsidence; and fraud. She recommended denying the motions to dismiss with respect to: (1) an ultrahazardous activities doctrine claim under a prior version of Civil Code article 667; (2) *garde* liability under Civil Code articles 2317 and 2322; (3) unauthorized disposal of salt water; and (4) breach of express lease terms. She also recommended that plaintiffs' claims for breach of "Lease #3" be dismissed because plaintiffs had not given defendants notice of the alleged breach and an opportunity to cure, which are prerequisites to filing suit under the terms of that mineral lease.

Ultimately, the district court entered a judgment consistent with the recommendation of Magistrate Karen L. Hayes on November 15, 2018.