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## Drilling Ban Lifted: Feds Accused of “Manipulating” Court Jurisdiction

**Nicholas Lund, J.D.**

In October, a Louisiana district court denied the State of Louisiana’s request to remand its lawsuit against BP to state court. Following the Deepwater Horizon oil spill, Louisiana filed suit against BP for violations of Louisiana state laws, particularly for harms to Louisiana wildlife as a result of the oil spill. Louisiana originally filed suit in state court, but BP later filed a motion to move the case to federal court. Louisiana challenged the removal; however, the district court found that removal was merited on the basis of subject matter jurisdiction and diversity jurisdiction.

### Background

As is well known, on April 17, 2010, the Deepwater Horizon oil rig exploded, resulting in the loss of eleven lives and the largest oil spill in U.S. history. A month later, the State of Louisiana sued BP, as owner and operator of a Minerals Management Service Mineral Lease, and others (collectively BP) in state court.<sup>1</sup> Louisiana alleged that BP had harmed fish and wildlife, in violation of Louisiana state law. Specifically, Louisiana argued that BP failed to comply with state laws governing the exploration and the production of minerals. The State claims this dereliction on the part of BP led to the explosion aboard the Deepwater Horizon, which released oil, minerals, and other contaminants into the Gulf of Mexico. Louisiana further alleged that BP’s failure to timely contain the spill resulted in death and injury to Louisiana aquatic life and wildlife.

Louisiana only asserted claims under a Louisiana statute which held that any person who “kills, catches, takes, possesses, or injures any fish, wild birds, wild quadrupeds, and other wildlife and aquatic life” in violation of this law, or any relevant federal law, is liable to Louisiana for the value of any unlawfully harmed creature.<sup>2</sup> Louisiana expressly stated that it was bringing this action solely upon this state law and would not, at any time, raise claims under federal law.

Despite the State’s sole reliance on state law, BP removed the action from state court to federal court on June 17, 2010. In support of removal, BP asserted that the federal court had original subject matter jurisdiction over the case because the activity occurred on the outer continental shelf. Pursuant to 43 U.S.C. § 1349(b)(1)(a), the district courts of the United States have jurisdiction to hear cases “arising out of, or in connection with any operation conducted on the outer Continental Shelf...”<sup>3</sup> BP also asserted that the court had original subject matter jurisdiction under 28 U.S.C. § 1331, which states that the district courts have original jurisdiction over all civil actions which arise from federal law.<sup>4</sup> In this case, BP asserted that Louisiana’s claims arose under the Outer Continental Shelf Lands Act (OCSLA), which is a federal statute.<sup>5</sup> Following the removal action, Louisiana filed a motion in the federal court seeking to remand the case back to state court, asserting that the matter was improperly removed.

### Well-Pleaded Complaint Rule

Federal courts are courts of limited subject matter jurisdiction, meaning, they only have jurisdiction to decide certain types of cases. One explicit grant of jurisdiction to federal courts is a federal question lawsuit. In a federal question case, the claims of the case arise under federal law. The well-pleaded complaint rule provides that “federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.”<sup>6</sup> Determination that a cause of

presented on the face of the plaintiff's properly pleaded complaint. 6 Determination that a cause of action presents a federal question depends upon the allegations of the plaintiff's well-pleaded complaint. When a plaintiff has a choice between federal and state claims, she may proceed in state court "on the exclusive basis of state law, thus defeating the defendant's opportunity to remove."<sup>7</sup> In this case, Louisiana argued that the well-pleaded complaint rule barred the action from being removed to federal court.

The court noted, however, that the rule only applies to removal based on 28 U.S.C. § 1331. BP asserted that the court had federal question jurisdiction based not only on 28 U.S.C. § 1331, but also based on the OCSLA. The court accepted Louisiana's argument that the well-pleaded complaint rule prevented the action from being removed solely on the basis of 28 U.S.C. § 1331, but stated that nothing prevented BP from removing the action if OCSLA jurisdiction existed pursuant to 43 U.S.C. § 1349.8

### **OCSLA Jurisdiction**

The OCSLA provides that "the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf...."<sup>9</sup> In deciding whether the statute granted jurisdiction, the court conducted a two-part analysis.

First, the court examined whether the activities that caused the injury could be classified as an "operation conducted on the outer Continental Shelf" and whether that "operation" involved the exploration or production of minerals.<sup>10</sup> Because BP was indeed exploring and producing minerals from the outer Continental Shelf, the court found that BP's activities fell within the scope of the OCSLA.

Second, the court considered whether Louisiana's claims "arise out of, or in connection with the operation."<sup>11</sup> The court employed a simple "but-for" test to determine this. In other words, the court asked, "but for" the operation, would Louisiana's claims have arisen? Because the oil and contaminants would not have entered Louisiana's waters, killing the wildlife, "but-for" BP's drilling and exploration operation, the case satisfied this requirement. Therefore, because the two-part test was satisfied, the court determined that it had original subject matter jurisdiction under the OCSLA.

### **Admiralty Jurisdiction**

Louisiana also argued that, even if the court had jurisdiction under the OCSLA, the case should still be remanded based on Louisiana's maritime law claims.<sup>12</sup> Maritime law claims do not arise under federal law. Claims not based on federal law may only be removed on the basis of diversity of citizenship. Diversity of citizenship means that the opposing parties in a case are citizens of different states. Such diversity grants a federal court jurisdiction over a case.

In this case, the court recognized that maritime claims could not be removed to federal court unless diversity of citizenship was found. The court noted that this was true even if it had both OCSLA jurisdiction and admiralty jurisdiction because the Fifth Circuit has never held that where OCSLA and maritime law overlap, the case is removable without regard to citizenship.<sup>13</sup> Because BP's corporate citizenship resides in Texas and Louisiana, the court noted that it did not matter whether Louisiana's claims arose under federal law. BP was permitted to remove based on diversity of citizenship.

### **Conclusion**

The court found that it had original jurisdiction under the OCSLA and that neither the well-pleaded complaint rule nor admiralty jurisdiction barred BP from removing the case to federal court. The court also rejected Louisiana's argument that sovereign immunity precluded removal. The case will remain in federal court before U.S. District Court Judge Carl Barbier. Judge Barbier presides over more than 300 other consolidated lawsuits spawned by the oil spill that will be heard in federal court in New Orleans.

### **Endnotes**

1. *In re Oil Spill by the Oil Rig Deepwater Horizon*, No. 2179, 2010 WL 3943451, at \*1 (E.D. La. Oct. 6, 2010).
2. La. Rev. Stat. Ann. § 56:40.1.
3. 43 U.S.C. § 1349(b)(1)(a).
4. 28 U.S.C. § 1331.
5. *In re Oil Spill*, 2010 WL 3943451, at \*1.
6. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987).
7. *Medina v. Ramsey Steel Co., Inc.*, 238 F.3d 674, 680 (5th Cir. 2001).
8. *In re Oil Spill*, 2010 WL 3943451 at \*2.
9. 43 U.S.C. § 1349.

10. *Id.* § 1349(b)(1).
11. *In re Oil Spill*, 2010 WL 3943451, at \*3.
12. *Id.* at \*4.
13. *Id.*

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