OIL AND GAS UPDATE

2025 RECENT DEVELOPMENTS BY THE JUDICIARY SEMINAR

SHREVEPORT BAR ASSOCIATION

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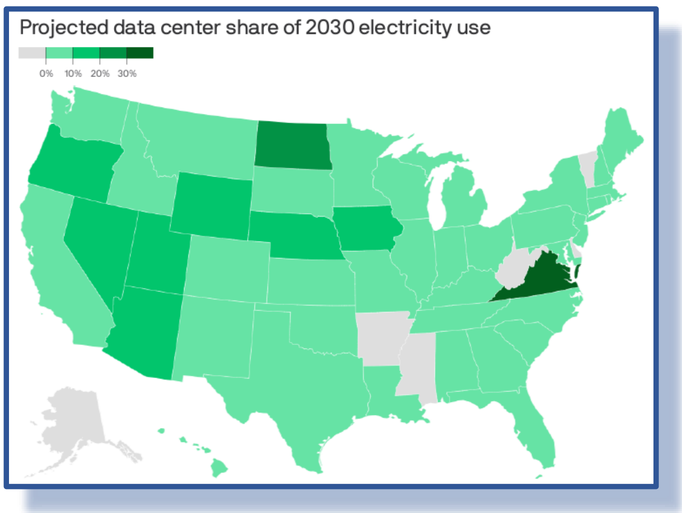
Artificial Intelligence and Natural Gas

Data centers powering artificial intelligence are fueling a sharp rise in U.S. electricity demand. A single query on ChatGPT, for instance, consumes ten times more electricity than a Google search. Wells Fargo projects that, by the end of the decade, overall electricity demand will increase by 20%. By 2030, AI data centers alone are expected to add 323 terawatt-hours of demand to the grid, accounting for 8% of total U.S. electricity consumption.

AI leaders like Amazon, Google, Microsoft, and Meta may favor carbon-neutral energy sources, such as solar and wind, yet there is growing recognition that renewables alone will not be enough to power the AI boom. Because green energy sources currently have capacity and reliability limitations, natural gas is the next best option to bridge the gap. Goldman Sachs estimates that, until new technologies emerge, natural gas will meet 60% of the power demand growth for AI data centers, with renewables covering the remainder. This will increase natural gas demand by 10 billion cubic feet per day by 2030. Many analysts are optimistic about this trend, with some forecasting a 40% rise in natural gas prices to $3.50 per thousand cubic feet.



Source: Axios

AI companies view natural gas as a reliable, affordable, and readily available energy source. As Toby Rice, CEO of EQT Corporation—the nation's second-largest natural gas producer—has noted, "speed to market matters" in the competitive push to expand data centers. Natural gas-fired power plants have significant advantages: they are easier to permit, faster to build, and cheaper to finance than other options. Moreover, unlike renewable energy sources, natural gas avoids intermittency and storage issues. Finally, natural gas is abundant in the key regions of the country where data center growth is the fastest. For instance, the Southeast, led by Northern Virginia—through which 70% of global internet traffic flows—has become the world's hottest data center market.

Once again, natural gas will step into the breach until more advanced technologies, like next generation nuclear and advanced batteries, come online to serve the country's technology-driven energy needs. The author thanks Lisa C. Cronin, W. Drew Burnham, and J. Bert Babington for their contributions.

RECENT DEVELOPMENTS

Pipelines

(1) *ETC Tiger Pipeline, LLC v. DT Midstream, Inc.*, No. 55,534 (La. App. 2d Cir. 4/10/24), 384 So. 3d 458, 460, *writ denied*, No. 24-763 (La. 10/8/24), 2024 WL 4441027.

In 2010, Red River Louisiana I LP ("Red River") granted ETC Tiger Pipeline, LLC ("ETC",) a pipeline servitude on Red River's property (the "Property") in DeSoto Parish (the "ETC Servitude Agreement"). The ETC Servitude Agreement stated in pertinent part:

> Grantor, under threat of expropriation, does hereby grant and convey to Grantee an exclusive servitude of use sixty feet (60') in width and eighteen thousand three hundred seventy six and one tenth (18,376.10') linear feet, more or less, for the purposes of constructing, maintaining, inspecting, operating, patrolling, repairing, replacing, renewing, and removing, in whole or in part, one (1) pipeline for the transmission of natural gas, its products, byproducts, and derivatives, as may be necessary or convenient for such purposes, upon, under, across, through and along the following described property.
>
> . . .
>
> BUT ONLY as to the location specified for such servitude on the sketch attached hereto as Exhibit A.
>
> . . .
>
> Nothing herein shall be construed as a conveyance of any part of the ownership of the above-described property or the mineral rights underlying the above-described property.
>
> . . .
>
> [I]n no event shall Grantee, its successors or assigns be permitted to maintain more than one (1) pipeline in this servitude.
>
> . . .
>
> Grantor may not use any part of the servitude if such use may unreasonably damage, destroy, injure, and/or interfere with the Grantee's use of the servitude for the purposes for which this servitude is being sought by Grantee. Grantor reserves the right to use the servitude for any and all purposes not inconsistent with the purposes set forth in this servitude. Grantor's uses may include but

> shall not be limited to right to cross the servitude and to construct roads, highways and bridges across it and the right to erect, install and construct over and across the servitude power lines, railroads, tram roads, switch tracks, dams, roads, fences and such other similar facilities which Grantor may desire for the use or convenience of its operations. Such roads, highways, bridges, and other facilities shall be erected, installed, constructed and maintained so as not to deprive Grantee of ingress and egress to the servitude and so as not to interfere unreasonably with the rights granted herein. Such roads, highways, bridges, and other facilities that will cross the servitude must cross the servitude at any angle of not less than forty-five (45) degrees to Grantee's pipelines, provided that all of Grantee's required and applicable spacings, including depth separation limits and other protective requirements are met by Grantor. The use of the servitude by Grantor shall be regulated by all appropriate ordinances, regulations, resolutions or laws of the governmental entity with authority over the servitude. Grantor must notify Grantee in writing before streets, roadways, utilities or other encroachments are installed. Grantee shall exercise its rights of ingress and egress in such a way so as to not unreasonably interfere with the operations of Grantor.

ETC constructed a 42-inch diameter natural gas pipeline on the Property. The ETC pipeline begins in Panola County, Texas, runs through the Property, and ends in Richland Parish, Louisiana.

In 2022, DT Midstream, Inc. ("DTM"), obtained a pipeline servitude from Red River's successor in interest affecting the Property (the "DTM Servitude Agreement"). DTM informed ETC that, pursuant to the DTM Servitude Agreement, DTM intended to construct a natural gas pipeline that would cross ETC's pipeline on the Property perpendicularly. Although such pipeline crossings are routine, ETC informed DTM that ETC would not allow the crossing because the ETC Servitude Agreement was "exclusive."

When DTM commenced construction of its pipeline on the Property, ETC obtained a temporary restraining order against DTM, citing its allegedly exclusive rights and safety concerns. After an evidentiary hearing, the trial court entered a preliminary injunction against DTM. The trial court found that, although DTM could complete the crossing safely through the use of horizontal directional drilling and the proposed crossing complied with ETC's own guidelines, ETC had the unilateral right to deny DTM the crossing based on the exclusivity language in the ETC Servitude Agreement. DTM appealed the entry of the preliminary injunction.

The Louisiana Second Circuit Court of Appeals reversed. The court explained that it did not agree that ETC's rights under the ETC Servitude Agreement were exclusive in the sense that ETC had the right to preclude its grantor's successor from granting a crossing pipeline servitude to DTM. The court explained:

> We do not find that the one-time use of the word “exclusive” means that ETC's servitude includes all depths and can subjectively block the crossing of another pipeline.
>
> The ETC Servitude is for one pipeline within the width described. It also grants ETC the ability to access and maintain its pipeline. The depth of the pipeline is not mentioned or described in the body of the ETC Servitude or in the diagrams in Exhibit A. The word “exclusive” does not convey an intent to specifically retain an exclusive depth when the servitude is silent as to depth. Any uncertainty as to the depth of the pipeline was made certain at the time the pipeline was completed. Once ETC laid its pipeline, its depth became defined.
>
> The purpose of the ETC Servitude is “constructing, maintaining, inspecting, operating, patrolling, repairing, replacing, renewing, and removing” a natural gas pipeline. Therefore, now that the pipeline has been completed, ETC is limited to its operating and maintenance activities associated with this pipeline. Under the one-pipeline provision of the ETC Servitude, ETC cannot lay a second pipeline below this current pipeline. Therefore, the purpose of the servitude supports the finding that the depth is limited to the space used for the current pipeline and does not extend to an infinite depth.

The court added that, while the ETC Servitude Agreement allowed ETC to prevent activities that could “unreasonably damage, destroy, injure and/or interfere with” ETC’s use, ETC failed to demonstrate that safety was a legitimate concern. Moreover, language in the ETC Servitude Agreement showed that ETC anticipated that other utilities would cross its pipeline. Finally, the court suggested that ETC’s objections were primarily based on securing a “commercial benefit” from the crossing, not safety or operational concerns. As a result, the appellate court reversed the trial court’s grant of the temporary restraining order and preliminary injunction.

The State of Louisiana, the Louisiana Landowners Association, the Louisiana Oil and Gas Association, the American Petroleum Institute, the Interstate Natural Gas Association of America, and Williams Companies, Inc., filed *amicus curiae* briefs in support of DTM.

On October 8, 2024, the Louisiana Supreme Court denied writs.

(2) *Enable Midstream Partners, LP v. Louisiana Energy Gateway LLC*, No. 55,916 (La. App. 2d Cir. 10/2/24), 400 So. 3d 1142, *writ* denied, No. 24-1523 (La. 2/5/25), 400 So. 3d 662.

In 2010, the predecessor of Enable Midstream Partners, LP (“Enable”), obtained an “exclusive 50-foot-wide” pipeline servitude on property in DeSoto Parish (the “Enable Servitude Agreement”), and built a 42-inch diameter pipeline. In 2023, Louisiana Energy

Gateway, LLC ("LEG"), obtained a servitude on the same property for a crossing pipeline. Enable refused LEG's request for permission to cross Enable's pipeline at 42 different locations, including on the property in question, citing its allegedly exclusive servitude rights, safety concerns, and time limitations based on the number of crossings LEG was requesting.

Enable obtained a temporary restraining order and preliminary injunction. LEG appealed, and the Louisiana Second Circuit Court of Appeal reversed. Citing its recent decision in *ETC Tiger Pipeline, LLC v. DT Midstream, Inc*., *see supra*, the court reasoned that the one-time use of the word "exclusive" in the Enable Servitude Agreement did not grant Enable absolute control over future crossings. The court rejected Enable's efforts to distinguish the case from *DT Midstream* based on the number of crossings requested, stating:

> [W]e find that the trial court improperly considered the number of crossings requested in reviewing the injunction for this one crossing. Mr. Vedral anticipated multiple crossing requests and told LEG to submit all its requests at once. If Enable was overwhelmed or needed more time, it was the result of its own decision to ask that all requests be submitted together.

Likewise, the restrictions in the Enable Servitude Agreement relating to constructions within the prescribed boundary of the servitude did not, in the court's opinion, preclude a subsurface pipeline crossing. The court explained:

> The [Enable Servitude Agreement] states that the landowner may not permit "construction within the boundaries of the Easement, and Grantee shall have the right to prevent the construction within the boundaries of the Easement." Because we do not find the word "exclusive" to convey the meaning of infinite depths, we do not find that the installation of a second pipeline below the Enable pipeline is within the boundaries of the easement.
>
> The prohibition on construction lists multiple above-ground activities as examples. The only underground activities in the prohibition of construction are the changing of the grade, removal of dirt cover, or excavation. This contemplates activities that would change the depth of the pipeline, *i.e.*, leveling the land which would make the pipeline shallower than the initially buried depth. The prohibition against excavation is that which is "near" the easement. What constitutes "near" is ambiguous. Is ten feet "near" or is it only two feet? What is considered "near" will likely be subjectively based on safety concerns and the planned excavation project. Here, Enable did not block LEG based on articulable safety issues.

Finally, like in the *DT Midstream* case, the court suggested that Enable's motivation in blocking the crossing was to obtain a commercial advantage.

(3) *ETC Tiger Pipeline, LLC v. Louisiana Energy Gateway LLC,* No. 55,913 (La. App. 2d Cir. 10/2/24), 400 So. 3d 1123, *writ denied*, No. 24-1350 (La. 1/14/25).

In 2009, ETC Tiger Pipeline, LLC ("ETC"), obtained a pipeline servitude agreement from NORWELA Council, Boy Scouts of America ("NORWELA"), granting ETC an "exclusive" 60-foot-wide permanent servitude to construct, operate, and maintain a pipeline of any diameter and associated facilities on NORWELA's property. The agreement further stated:

> Grantor may not use any part of the Permanent Easement Property if such use may damage, destroy, injure, and/or interfere with the Grantee's use of the Permanent Easement Property for the purposes for which the permanent easement is being sought by Grantee. Grantor is not permitted to conduct any of the following activities on the Permanent Easement Property without the written permission of Grantee: (1) construct any temporary or permanent building on the site improvements, other than streets and roads; (2) drill or operate any well; (3) remove soil or change the grade or slope; (4) impound surface water; or (5) plant trees or landscaping. **Grantor further agrees that no above or below ground obstruction that may interfere with the purposes for which this easement is being acquired may be placed, erected, installed, or permitted upon the Permanent Easement Property without the written permission of Grantee**.

(Emphasis added). In 2023, NORWELA granted a pipeline servitude to Louisiana Energy Gateway LLC ("LEG"), for a pipeline that would cross ETC's pipeline. LEG's servitude agreement specified that its rights were subject to existing recorded leases, servitudes, and other encumbrances. ETC obtained a preliminary injunction, blocking LEG's pipeline crossing, and LEG appealed.

The Louisiana Second Circuit Court of Appeal reversed, relying on *ETC Tiger Pipeline, LLC v. DT Midstream, Inc*., 55,534 (La. App. 2d Cir. 4/10/24), 384 So. 3d 458. The court stated that ETC's servitude agreement granted ETC the exclusive right to lay only one pipeline and did not restrict future servitudes crossing ETC's pipeline. The court remarked that NORWELA did not bargain away its right to grant future crossings:

> NORWELA did not provide ETC, as a servitude holder, the right to approve or deny subsequent servitudes which do not interfere with its one pipeline. There was no showing the installation of the pipelines would adversely affect or cause disturbance to ETC's right to enjoy the property beyond just its existence or presence therein. As mentioned above, ETC agreed to subrogate its rights on a case-by-case basis to subsequent grantees for similar rights. Thus, ETC is without authority to deny or approve LEG's pipeline request

without showing irreparable harm to its existing servitude.

Finally, the court concluded that the record did not reveal how LEG's below ground pipeline would interfere with ETC's servitude rights to operate, maintain, repair, or replace ETC's existing pipeline. According to the court, if any adjustments or changes to LEG's planned pipeline construction needed to be made, or if there were a safety concerns, then those requests should have been made by ETC to LEG, rather than blanket denials, which "serve as a mechanism to deny others their ability to exercise their real rights in immovable property."

(4) *Energy Transfer LP v. The Williams Companies, Inc.*, FERC Docket No. CP24-122-00, Order on Petition to Show Cause.

On April 8, 2024, Energy Transfer LP filed a petition requesting that the Federal Energy Regulatory Commission issue an order requiring the Williams Companies, Inc., to show cause why the construction of the Louisiana Energy Gateway System (LEG System) in Texas and Louisiana is not subject to FERC's jurisdiction under Section 7 of the Natural Gas Act. In the alternative, Energy Transfer asked FERC to clarify the test for determining whether pipeline facilities are non-jurisdictional facilities.

The LEG System was designed to deliver Haynesville Shale natural gas to Gulf Coast markets. The system originates in Texas, extends into Louisiana, and terminates near Lake Charles. Williams has gathering agreements with several producers for 1.8 billion cubic feet of gathering capacity per day for the system. According to FERC, the LEG System includes two distinct segments:

(a) the "Haynesville Spine" segment – This segment features approximately 17 miles of 30-inch pipeline, 34 miles of 36-inch pipeline, and 13 miles of 42-inch pipeline, along with two compressors. It will serve as a spine connecting existing and new gathering facilities with 775 receipt points linked to production wells. The segment originates in Texas and crosses into Louisiana.

(b) the "Juniper South" segment – A 110-mile, 42-inch pipeline, extending south from the Juniper Compressor Station to the Gillis Treater, a planned processing facility in Louisiana providing carbon dioxide (CO_2) removal services.

Energy Transfer argued that the LEG System was an interstate transmission pipeline requiring FERC authorization. Williams countered that the LEG System qualified as a gathering facility for which FERC did not have jurisdiction.

FERC sided with Williams and found that the LEG System qualified as a gathering facility. The Commission explained that, under Section 1(b) of the NGA, its jurisdiction does not extend to facilities used for the production or gathering of natural gas, or to gathering services. Although the NGA does not define "gathering," FERC relies on the primary function test to determine whether a facility falls within its jurisdiction. Under the primary function test, FERC considers the physical and geographical attributes of a facility, including: (1) the length and diameter of the pipeline; (2) the facilities' geographical configuration; (3) the extension of the facilities beyond the central point in the field; (4) the location of compressors and processing plants; (5) the location of the wells along all or part of the facility; and (6) the operating pressures of the pipeline. In addition to the physical and geographical factors, the Commission considers the purpose, location, and operation of the facilities; the general business activities of the facility owner; and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978.

In considering each factor, FERC found that the length and diameter of the pipeline, albeit larger, were dictated by the size and output of the various production areas served. FERC observed that the Haynesville Spine segment was consistent with a typical "spine-like gathering system." As for the Juniper South Segment, although this section currently appears more like a transmission line, there were several interconnections planned with feeder lines, so it was anticipated the segment would serve a gathering function. Because the LEG system had a spine configuration, the central-point-in-the-field analysis did not apply. The fact that the system had compression was not material because the compressor was necessary to allow entry into the system from various high-pressure wells. Finally, the gas transported on the system would not be "pipeline-quality gas" until excess carbon dioxide was removed at the planned Gillis Treater facility at the terminus of the system.

Unleased mineral owners

(5) *Self v. BPX Operating Co*., 80 F.4th 623 (5th Cir. 2023), *certifying question*, No. 23-01242 (La. 6/1/24), 388 So. 3d 366, *answering certified question*, No. 23-01242 (La. 8/2/24), *denying rehearing*, No 22-30243 (5th Cir. 9/19/24), 2024 WL 4273824, *vacating and remanding for further proceedings.*

The plaintiffs are the representatives of a putative class of unleased mineral owners ("UMOs"), who claim that BPX had wrongfully deducted post-production expenses (*e.g.*, the cost of gathering, dehydration, compression, treatment, processing, transportation) from the proceeds of the sale of their share of unit production under La. R.S. 30:10(A)(3). Following the decision on re-hearing in *Johnson v. Chesapeake Louisiana LP* (*see infra*), the federal district court granted BPX's motion to dismiss, and the plaintiffs appealed.

La. R.S. 30:10(A)(3) states:

> If there is included in any unit created by the commissioner of conservation one or more unleased interests for which the party or parties entitled to market production therefrom have not made arrangements to separately sell or otherwise dispose of the share of such production attributable to such tract, and the unit operator sells or otherwise disposes of

> such unit production, then the unit operator shall pay to such party or parties such tract's pro rata share of the **proceeds** of the sale or other disposition of production within one hundred eighty days of such sale or other disposition.

(Emphasis added). In the district court, the plaintiffs contended that "proceeds" as used in La. R.S. 30:10(A)(3) means "gross proceeds," without deducting any post-production costs. Initially, BPX argued that "proceeds" as used in the statute is ambiguous and should be interpreted to mean "net proceeds," *i.e.,* after deducting the UMOs' *pro rata* share of the cost of selling the unit production. Later, BPX argued that, when Subsection (A)(3) is properly harmonized with the Civil Code, there are suppletive provisions which support the deductibility of post-production costs, *viz*., the quasi-contractual regime of *negotiorum gestio* (*i.e.*, management of the affairs of another), which permits the manager (or *gestor*) to recover the "necessary and useful expenses" he incurs in managing the affairs of another.

On September 8, 2023, in a split decision, the United States Court of Appeals for the Fifth Circuit certified to the Louisiana Supreme Court the following question: "Does Louisiana Civil Code article 2292 apply to unit operators selling production in accordance with La. R.S. 30:10(A)(3)?" In certifying the question, the majority observed that the issue involved the proper interplay between Louisiana's relatively new Conservation Laws (set forth in La. R.S., Title 30) and its deeply rooted doctrine of *negotiorum gestio*. The court felt that it could not make a reliable *Erie* guess as to the applicability of *negotiorum gestio* and certified the question accordingly. The majority invited the Louisiana Supreme Court to consider whatever question it deemed appropriate, which opened the possibility that the matter could be decided on other grounds, such as the laws of co-ownership, mandate, or unjust enrichment.

Judge Dennis was the dissenter. He argued that certification was unnecessary because the doctrine of *negotiorum gestio* was inapplicable. Judge Dennis reasoned that a unit operator which sells an UMO's share of unit production under La. R.S. 30:10(A)(3) cannot be a *gestor* as defined in Civil Code article 2292 because a *gestor* is one who acts "without authority." Judge Dennis reasoned:

> In that way, management of another's affairs pursuant to a legal duty does not give rise to an action under *negotiorum gestio*. During the 1995 revision of the Civil Code articles governing *negotiorum gestio*, the legislature replaced the requirement that the *gestor* act "of his own accord" with the requirement that the *gestor* act "without authority" to make clear that the requirement is not merely voluntariness but an absence of authority altogether, including authority granted by statute—appropriate for a doctrine rooted in pure altruism. Here, however, the unit operator does not act without authority. To the contrary, the unit operator is specifically authorized to sell an unleased mineral owner's share of production under La. R.S. 30:10(A)(3). Following

> the rules of statutory interpretation, we must "give meaning to every word in the statute" and cannot "read out of the statute" the elements one must prove to qualify as a *gestor*, including that one must act without authority. Because we cannot apply the two statutes together consistently, only the specific one applicable to conservation applies.

The Louisiana Supreme Court accepted the certified question and, in June 28, 2024, held that the doctrine of *negotiorum gestio* did not apply. In line with Judge Dennis' reasoning, the court stated that the Conservation Laws established a quasi-contractual relationship between unleased mineral owners and unit operators, which was incompatible with the doctrine of *negotiorum gestio*. The court confirmed that that a party can only be considered a gestor if his actions are taken "without authority." However, under La. R.S. 30:10(A)(3), a unit operator is statutorily authorized to sell an unleased owner's share of production when the unleased owner has not arranged to dispose of his share. Consequently, a unit operator who sells an owner's production under the authority of La. R.S. 30:10(A)(3) does not qualify as a gestor under Civil Code article 2292.

Chief Justice Weimer dissented, arguing:

> [A]fter undertaking a full examination of the history and purpose of the relevant laws and the doctrine of *negotiorum gestio*, it is clear that the majority's interpretation of Article 2292 is antithetical to the essence of *negotiorum gestio* and fails to recognize the significance of the doctrine, which has always been rooted in altruism. Properly interpreted, "without authority" should focus on the voluntary nature of the act and be understood to mean the action is not taken pursuant to a legal obligation. The fact that a unit operator is statutorily authorized to sell production is not the same as a statutory mandate. For reasons fully explained below, I find that a unit operator who voluntarily sells production under La. R.S. 30:10(A)(3) is acting as a *negotiorum gestor* under La. C.C. art. 2292. Concluding the certified question must be answered in the affirmative, I respectfully dissent.

The court did not take up any of the alternative potential bases for allowing the deductibility of post-production expenses under La. R.S. 30:10(A)(3) and denied rehearing. Based upon the Louisiana Supreme Court's answer to the certified question, the Fifth Circuit reversed and remanded for further proceedings.

(6) *Johnson v. Chesapeake Louisiana, LP*, 87 F.4th 305 (5th Cir. 2023), *certifying question*, No. 23-01565 (La. 1/24/24), 2024 WL 259477, *denying certification*, No. 22-30302 (5th Cir. 9/20/24), 2024 WL 4269689 (5th Cir. 9/20/24), *vacating and remanded for further proceedings consistent with Self.*

This case pre-dates *Self v. BPX Operating Co*., but both were appealed to the United States

Court of Appeals for the Fifth Circuit at the same time. Both cases were assigned to the same panel for argument. As in *Self*, the panel entered a split opinion, certifying the same question to the Louisiana Supreme Court. However, the Louisiana Supreme Court denied Chesapeake's motion to expedite and consolidate the matter with *Self*. The court explained that, because the matter was virtually identical to the question for which it had accepted certification in *Self*, it would defer consideration of *Johnson*, pending its disposition in *Self*.

Although the two cases present the same issue, the procedural posture of *Johnson* was different. Under La. R.S. 30:10(A)(3), an operator of a compulsory drilling and production unit has the right to sell the production allocable to an unleased mineral owner ("UMO") within the unit, subject to an obligation to pay the UMO the "proceeds" of the sale. Pursuant to this right, Chesapeake sold an UMO's share of production, deducted the UMO's share of post-production costs, and paid the UMO the balance. The UMO sued, contending that, under the provision in question, Chesapeake could not deduct post-production costs from the proceeds of the sale of the UMO's share of production.

Chesapeake argued that La. R.S. 30:10 (commonly referred to as the "Risk Fee Act") does not address the issue of post-production costs and that such costs are deductible from the proceeds of the sale of the UMO's share of production under the general principles of co-ownership and unjust enrichment. According to Chesapeake, any other rule would lead to absurd consequences because the UMO would enjoy a "free ride" at the expense of the operator. The UMO responded that the general principles of co-ownership and unjust enrichment cannot supersede the language of La. R.S. 30:10(A)(3), which requires the operator to pay the unleased owners the "proceeds" of the sale of production without any limiting language.

Initially, the federal district court ruled in favor of the UMO, reasoning that the legislature could have authorized the deduction of post-production expenses in La. R.S. 30:10(A)(3), but did not do so. The court noted that various costs are specifically enumerated in subsection (A)(2), but subsection (A)(3) makes no mention of any deductible costs, demonstrating the legislature's intent. A motion for reconsideration was filed, which was supported by several *amici curiae*.

Almost three years later, the district judge reversed his original ruling, holding that a drilling owner could deduct post-production expenses from the proceeds of the sale of the UMO's share of unit production. In doing so, the court relied on the Louisiana Supreme Court's prior holding that the relationship between a drilling owner and an UMO under the Risk Fee Act is quasi-contractual, which implicated various provisions of the Civil Code, including the law of co-ownership and *negotiorum gestio*. Under the law of *negotiorum gestio*, the *gestor* is entitled to reimbursement for all "necessary and useful expenses" incurred in managing (or, in this instance, selling) the property of another. Recognizing that the issue was *res nova*, the district court stated:

> The Court believes that the instant ruling harmonizes Section 10(A)(3) and [Civil Code] article 2297 and applies *in pari materia* statutory construction rules. The ruling is likewise

> consistent with how both parties agree severance taxes function in relation to operators and UMOs. Moreover, contrary to its prior ruling, the Court now believes there is no reason to treat UMOs differently in the specific context of post-production costs. In *TDX Energy, L.L.C. v. Chesapeake Operating, Inc.,* 857 F.3d 253, 263 (5th Cir. 2017), the Fifth Circuit discussed certain greater protections given to UMOs, such as exemption from the risk charge. Likewise, other courts have focused on the UMOs' right to "in cash balancing" rather than "in kind" balancing. However, this Court now finds that it must look to the nature of the specific protection claimed and finds that to disallow the deduction of post-production costs from UMOs would lead to "free riding." *TDX*, 587 F.3d at 258.

Like *Self*, *Johnson* has now been remanded for further proceedings. Presumably, the defendants will assert the doctrines of co-ownership, mandate, and unjust enrichment as alternative bases for the unit operator to deduct post-production expenses from the UMO's share of production under La. R.S. 30:10(A)(3).

(7) *Dow Construction, LLC v. B P X Operating Company,* 140 F.4th 246 (5th Cir. 2025).

Dow Construction, LLC, owned a mineral lease (the "Dow Lease"). The property subject to the Dow Lease (the "Property") was included in a compulsory drilling and production unit for the Haynesville Shale (the "Unit"). The Unit was operated by BPX. Dow sued BPX, alleging that Dow had sent a series of demands to BPX's predecessor for well cost reporting under La. R.S. 30:103.1; that the predecessor failed to timely provide the reports; and BPX had, therefore, forfeited its right to recoup Dow's share of well costs out of unit production. Alternatively, Dow alleged that BPX did not have the right to deduct post-production expenses (or the costs to market the production) from its share of unit revenue under La. R.S. 30:10(A)(3).

On the post-production expense issue, BPX filed a motion to dismiss, contending that, as a threshold matter, Dow was not an unleased owner and, therefore, La. R.S. 30:10(A)(3) did not apply. The court denied this motion, finding that the subsection applied "to any mineral interest owner in a forced pool unit who has no lease with the operator."

Next, BPX moved for summary judgment, contending (i) that, even if La. R.S. 30:10(A)(3) applied, the doctrine of *negotiorum gestor* allowed it to deduct post-production costs from Dow's share of unit revenue and (ii) that post-production costs should not be included in those costs forfeited under La. R.S. 30:103.2 in the event of untimely reporting. The district court granted summary judgment in favor of BPX on the *negotiorum gestor* issue and denied summary judgment on the forfeiture issue.

Separately, BPX filed a motion to dismiss, arguing that Dow's forfeiture claim under La. R.S. 30:103.2 was subject to a one-year prescriptive period. The district court denied this motion, opting for a 10-year prescriptive period for quasi-contractual actions. The district court granted BPX's motion to certify an interlocutory appeal of these issues.

The United States Court of Appeal for the Fifth Circuit addressed four issues. First, it interpreted the term "unleased interests" in La. R.S. 30:10(A)(3). This subsection requires the operator of a unit well to pay an unleased interest its *pro rata* share of the "proceeds" of production within 180 days if the unleased interest has not otherwise made marketing arrangements. BPX argued this subsection only applies to owners whose mineral rights are completely unleased, not mineral lessees like Dow. The court rejected BPX's arguments and held that "unleased interests" in La. R.S. 30:10(A)(3) means interests for which the drilling owner does not have a mineral lease. Because BPX did not have a lease that covered the Property, the leasehold interest owned by Dow was deemed an unleased interest. Thus, the court affirmed the lower court on this point.

Second, the Fifth Circuit considered whether La. R.S. 30:10(A)(3) allows operators to deduct post-production expenses incurred in marketing the unleased interest's share of production. While the case was on appeal, the Louisiana Supreme Court ruled in *Self v. BPX Operating Co.,* No. 22-30243, (5th Cir. 9/29/24), 2024 WL 4273824 that *negotiorum gestio* is inapplicable because, when a drilling owner sells an unleased interest's share of unit production, the drilling owner is not acting "without authority." Consequently, the court vacated the district court's summary judgment on this point and remanded for further proceedings.

Third, the court analyzed whether La. R.S. 30:103.2's forfeiture provision includes post-production costs. BPX argued the "costs of drilling operations" which are forfeited under section 103.2 only covers actual drilling costs. Relying on *XXI Oil & Gas, LLC v. Hilcorp Energy Co.*, No. 16-269 (La. App. 3d Cir. 9/28/16), 206 So. 3d 885., the court held that "drilling operations" encompasses both pre- and post-production costs. The court remarked that this interpretation aligned with the language of La. R.S. 30:103.1 and the Well Cost Reporting Stature's purpose to address information asymmetry among unit owners and ensure that a drilling owner disclosed all relevant costs. Thus, the court affirmed on this point.

Finally, the court addressed the prescriptive period for forfeiture claims under La. R.S. 30:103.2. Replying on *DePhillips v. Hosp. Serv. Dist. No. 1*, No. 19-01496 (La. 7/9/20), 340 So. 3d 817, 822, the court held that such claims are delictual in nature because they arise from a statutory duty, as opposed to a specific contractual obligation, and, therefore subject to a one-year prescriptive period. So, the court reversed the trial court on this point.

Surface use

(8) *Chesapeake Louisiana, L.P. v. Bonchasse Land & Timber, LLC*, No. 56,287 (La. App. 2d Cir. 5/21/25), 2025 WL 1456822.

Chesapeake owned a mineral lease (the "Chesapeake Lease") affecting 50% undivided interest in a 230-acre tract in DeSoto Parish (the "Property"). The Chesapeake Lease permitted surface use of the Property. Exco owned a separate mineral lease (the "Exco Lease") affecting the remaining 50% undivided interest in the property. The Exco Lease provided: "Lessee shall have no right whatsoever to conduct surface operations of any kind whatsoever on the Leased Premises[.]"

Chesapeake obtained a permit from the Office of Conservation to drill a well and undertook to construct a well pad on the Property. The co-owners of the property opposed the well site location. The co-owners maintained that Chesapeake did not have the necessary rights under Mineral Code article 166 from 75% of the co-owners to use the surface and misrepresented what rights it had to the Office of Conservation in the process of obtaining the well permit. Chesapeake obtained a temporary restraining order, and matter came on for hearing on Chesapeake's application for a preliminary injunction. The district court denied the preliminary injunction, and Chesapeake appealed.

The Louisiana Second Circuit Court of Appeal affirmed. First the court took up Chesapeake's contention that *Nunez v. Wainoco Oil & Gas Co.*, 488 So. 2d 955 (La. 1986) ("*Nunez I*") *Nunez v. Wainoco Oil & Gas Co.*, 606 So. 2d 1320 (La. App. 3 Cir. 1992), *writ denied*, 608 So. 2d 1010 (La. 1992) ("*Nunez II*"), controlled.

In *Nunez I*, the Louisiana Supreme Court held that the concept of unitization modified private property rights so that an owner within a compulsory drilling and production unit did not have the right to assert a claim for subsurface trespass against the operator of unit well. The court explained:

> The intrusion into the subsurface two miles beneath the tract owned by [the plaintiff] was an authorized unit operation. Since established private property law concepts, such as trespass, have been superseded in part by Louisiana's Conservation Law when a unit has been created by order of the Commissioner, we do not find that a legally actionable trespass has occurred in this instance.

In *Nunez II*, the Louisiana Third Circuit Court of Appeal held that the Louisiana Supreme Court's rationale in *Nunez I* extended to temporary surface uses.

The Second Circuit distinguished *Nunez I*, explaining that that case involved a subsurface trespass, not a surface use. Plus, in the instant case, there was no specific finding by the Office of Conservation that the well site was at an "optimum location." Finally, the court noted that *Nunez I* did not involve a material misrepresentation by the well's operator to the Officer of Conservation. Specifically, to get the permit, Chesapeake had certified to the Office of Conservation, that a "contractual relationship presently exists between the operator and surface owner(s) of the subject well. As such, no pre-entry notice is required pursuant to 30:28(I)(1)(c)." Despite its representation, Chesapeake only had a contractual relationship with 50% of the co-owners of the property. As for *Nunez II*, the court explained that there was a difference between a temporary encroachment like in *Nunez II*, as opposed to a multi-well wellsite like in the instant case.

Second, having found the permit alone did not authorize Chesapeake to use the surface in the absence of the necessary contractual rights to do, the court turned to the consent issue under Mineral Code article 166. The court explained that, under Article 166, Chesapeake was not permitted to exercise its rights under the Chesapeake Lease without at least 75% of the co-owners' consent. Chesapeake only had 50% from its lease.

Chesapeake acknowledged the relevance of La. R.S. 31:166 but argued that it does not require the non-leasing owners to consent to every aspect of the operator's plans. Chesapeake maintained that the co-owners tacitly consented to the proposed surface use by consenting to the survey work; not objecting to Chesapeake's plans until relatively late in the process; proposing revisions to the access road; and engaging with Chesapeake regarding proposed operations. The court rejected this argument, observing that, although offers and counteroffers were made, the co-owners never consented to the proposed wellsite location.

Mineral servitudes

(9) *Reef Exploration, Inc. v. Patin*, No. 24-412 (La. App. 3d Cir. 2/5/25), 406 So. 3d 500.

In 1994, Patin reserved a mineral servitude (the "Servitude") affecting 7.94 acres. The land was subdivided, and various parties, including the Lafayette City-Parish Consolidated Government, acquired surface interests.

The Office of Conservation established a compulsory drilling unit in 2001, which included the land subject to the Servitude. On March 29, 2004, the operator, Reef, spudded a unit well outside of the unit. The well was drilled on a directional basis, and the wellbore entered into the unit on April 9, 2004, 26 hours after the ten-year prescription period for nonuse of Patin's Servitude allegedly accrued. In 2005, facing conflicting royalty demands from Patin and the surface owners, Reef initiated a concursus. The parties filed cross-motions for summary judgment.

The surface argued the servitude prescribed for nonuse under La. R.S. 31:28 because drilling did not occur "on" the unit before prescription had accrued. Patin maintained that, under La. R.S. 31:29, the good faith commencement of the unit well outside the unit interrupted prescription. The trial court granted summary judgment for Patin.

On appeal, the Third Circuit reversed, holding that La. R.S. 31:30 requires actual drilling "on' the unit to interrupt prescription and that spudding a well outside the unit was insufficient. The court found Patin failed to prove the wellbore pierced the plane of unit before prescription accrued. Because the record was incomplete, the case was remanded for further proceedings consistent with the court's opinion.

(10) *Ganey v. Cupstid*, No. 55,798 & 55,799 (La. App. 2d Cir. 8/28/24), 400 So. 3d 172.

The plaintiffs sought a declaratory judgment that the defendants' mineral servitudes prescribed as a result of 10-years' nonuse. After a lengthy trial on the merits, with substantial conflicting evidence, the trial court found that the only well maintaining the servitude had stopped producing at the latest by May 1999 and that the servitude had prescribed ten years thereafter.

The Louisiana Second Circuit Court of Appeal affirmed. The court explained that, when the prescription of nonuse is pleaded, the owner of the dominant estate (*i.e.*, the servitude owner) bears the burden of proving that he or someone else has used the servitude during the period required to prevent its extinguishment. The appellate court closely examined the evidence. While the court acknowledged that the official records of the Office of Conservation showed that the subject well had produced small amounts of oil during the relevant 10-year period and that those records are presumed to be true, the court found that the plaintiffs had successfully rebutted that presumption.

The court primarily relied on (i) eyewitness testimony that operations on the property had ceased years before May 1999 and (ii) aerial photographs that showed the well site was overgrown after that date. Also, in the court's view, the defendants' witnesses were not credible. One witness had executed contradictory affidavits. Additionally, one of the defendants' experts, who was an interested party, provided testimony which the court deemed to be "incredulous."

The court was persuaded by consistent testimony from various surrounding landowners that no one accessed the well site for a long time. The court rejected as implausible the defendants' claim that a pumper had accessed the well for 15 years on foot by hopping a fence and navigating an overgrown pasture.

Royalty underpayments

(11) *Rives Plantation, L.L.C. v. BPX Properties (N.A.) LP*, No. 55,301 (La. App. 2d Cir. 12/20/23), 376 So 3d 328, *writ denied*, No. 24-109 (La. 3/12/24), 381 So. 3d 50.

Rives Plantation, LLC ("Rives"), sued its mineral lessee, BPX Properties, (NA) LP ("BPX"), for royalty underpayments. The lease in question included the following Paragraph 28:

> The royalty interest of Lessor provided for in this lease shall not be charged, and shall not bear, any costs whatsoever in connection with the production, compression, gathering and transportation costs, except charges incurred by Lessee from unaffiliated Third Parties in which Lessee does not have a beneficial interest.

BPX drilled six wells (the "BPX Wells"), and another operator, Chesapeake, drilled another seven wells (the "Chesapeake Wells") on the leased property. By virtue of the Rives lease, BPX owned non-operating leasehold interests in the Chesapeake Wells.

BPX marketed the production from the BPX Wells through the Kinderhawk gathering system (the "Kinderhawk System"). BPX owned an interest in the Kinderhawk System until June 2011, when it divested its interest to another company, Kinder Morgan. Four years after the divestiture, BPX began deducting post-production expenses from Rives' royalties for production from the BPX Wells.

Chesapeake marketed the production from the Chesapeake Wells through various gathering systems in which it owned an interest. Chesapeake marketed BPX's share of unit production under a gas marketing agreement between the two companies and paid the proceeds to BPX. Then, BPX paid royalties for production from the Chesapeake Wells to Rives, deducting the post-production expenses incurred by Chesapeake.

Rives filed suit against BPX for royalty underpayments, contending

> (a) that, under Paragraph 28, BPX was not entitled to deduct post-production expenses from the royalties due Rives in connection with the Chesapeake Wells because Chesapeake had affiliated marketing arrangements;
>
> (b) that BPX could not deduct post-production expenses incurred on the Kinderhawk System because, even after the divestiture of the system, BPX retained some beneficial interest therein;
>
> (c) that BPX could not deduct treatment expenses from Rives' royalty because those costs were incurred in connection with gathering; and
>
> (d) that BPX could not deduct transportation expenses from Rives' royalties to the extent those expenses were incurred beyond the first available market and did not enhance the value of the production.

BPX filed four partial motions for summary judgment, addressing each contention. All four motions were granted, and Rives appealed.

The Louisiana Second Circuit Court of Appeal affirmed partial summary judgment, dismissing Rives' claim that, under Paragraph 28, BPX was not entitled to deduct post-production expenses from the royalties due Rives in connection with the Chesapeake Wells. The court explained that, even though the Chesapeake post-production charges were incurred on systems affiliated with Chesapeake, BPX and Chesapeake were not affiliated and neither the parties' gas marketing agreements nor the law of unitization afforded grounds upon which to impute Chesapeake's affiliated charges to BPX.

The Louisiana Second Circuit Court of Appeal reversed partial summary judgment, dismissing Rives' claim that BPX could not deduct post-production expenses incurred on the Kinderhawk System. The court noted that various SEC filings adduced in connection with the motion showed the sale of BPX's interest in the system to Kinder Morgan had been treated as a "failed sale" and that, as a result, there were genuine issues of material fact as to whether BPX had a continuing economic interest in the system even though it no longer possessed record title.

With respect to the partial summary judgment dismissing Rives' claim that BPX could not deduct treatment costs from Rives' royalties, the court affirmed. The court explained that treatment costs were not included among the categories of nondeductible post-production expenses in Paragraph 28 and that it was not the province of the court to alter or rewrite the contracts for the parties. Moreover, the court concluded that treatment is not incidental (or "in connection with") gathering because treatment occurs after natural gas is gathered and not all gas requires treatment.

Finally, with respect to the partial summary judgment dismissing Rives' claim that BPX could not deduct transportation costs from Rives' royalties, the court affirmed. The court emphasized that natural gas at the wellhead has no value until it is marketed and transported to a point of sale. The court noted that, under the lease, the lessee was obligated to pay royalties based on the "reasonable value" of the natural gas. The court reasoned that the "best price reasonably possible" is not always going to be synonymous with "enhanced value" and that the parties did not specifically provide for an "enhancement clause" in the lease. Moreover, the court held that there was no requirement under Louisiana law that post-production costs be limited to the first available market or enhance the value of the gas.

(12) *Flat River Farms, LLC v. MRC Energy Co*., No. 19-1249 (W.D. La. 7/25/24), 2024 WL 3546189.

Flat River Farms, LLC, was a lessee under a mineral lease owned by MRC Energy Co. The leased property was included within a compulsory drilling and production unit. In 2011, Petro-Chem Operating Company, Inc., the operator of the unit, initiated a concursus proceeding. During the pendency of that proceeding, Chesapeake marketed all unit production for Petro-Chem, and the associated revenue was held by Chesapeake in suspense from January 2011 through July 24, 2017.

On December 13, 2013, while the concursus was ongoing, Flat River Farms sent a letter to MRC, asking why Flat River Farms' royalties were being suspended and requesting a monthly accounting of the amount being held. On January 15, 2014, MRC responded, stating that the royalties were suspended pursuant to paragraph 11 of the lease, pending a resolution of the concursus proceeding, and provided a detailed accounting of the amounts in suspense. On July 13, 2015, Flat River's counsel sent MRC a demand under Mineral Code article 137 for royalty underpayments. MRC replied and, again, explained that, in light of the pending concursus proceeding, the royalties were being held in suspense. The response stated: "Until such time that the court renders a final disposition in the Petro-Chem concursus suit, MRC cannot be held in default for payment of royalty. Until that time, your demand against MRC is premature."

Upon resolution of the concursus proceeding, MRC received its proportionate share of revenue held in suspense and subsequently paid Flat River its royalties. Flat River performed a production audit and concluded the gas sale prices shown in their royalty statement were significantly below the fair market value of the gas at the time it was produced and sold.

Flat River filed suit against MRC for royalty underpayments. MRC contended that Flat River's claims were prescribed because it filed suit more than four years after sending its initial demand. The issue for the federal district court was when did the royalty payments became due and payable. MRC argued that the royalty payments were made each month, albeit in suspense. In contrast, Flat River argued that the payments were not made, but rather held in suspense. The court found it illogical to claim that the payment was due before the conclusion of the concursus proceeding because paragraph 11 of the Lease stated that actual payment was not required until the title dispute was resolved. The court noted that MRC acknowledged this position in its August 14, 2015 response to Flat River, wherein MRC stated that any claim was premature until the final disposition of the concursus.

Well Cost Reporting Statute

(13) *Mistretta v. Hilcorp Energy Co.*, No. 24-313 (La. App. 3 Cir. 9/10/24), 395 So. 3d 37.

The plaintiffs are unleased owners in a compulsory drilling and production unit. On September 3, 2022, a unit well was completed. On December 7, 2022, the plaintiffs sent a certified letter to Hilcorp, the operator, requesting well cost and expense reporting under the Well Cost Reporting Statute, La. R.S. 30:103.1 and 103.2. On December 12, 2022, Hilcorp received the request. On February 16, 2023—66 days after receipt of the request—Hilcorp responded to the plaintiffs via email with the requisite reports. On February 20, 2023—70 days after receipt of the request—Hilcorp responded to the plaintiffs via certified letter with the requisite reports.

The plaintiffs filed suit, contending that, under La. R.S. 30:103.2, Hilcorp had forfeited its right to recoup their *pro rata* share of well costs out of production because it failed to provide the reports within 30 days of receipt of the demand. The parties filed cross motions for summary judgment. Hilcorp contended that the plaintiffs' claims should be dismissed because the plaintiffs had failed to send a second notice via certified mail, placing Hilcorp in default of its obligation to provide reports under La. R.S. 30:103.1. The district court granted partial summary judgment for the plaintiffs.

The Louisiana Third Circuit Court of Appeal granted an application for a supervisory writ and reversed. The court explained that, under Section 103.1, an operator's obligation to provide reports to an unleased owner does not arise until a request is made via certified mail. Upon receipt, the operator has 90 days to provide the report. If an operator does not provide the reports, then, under Section 103.2, the unleased owner must send a second notice to the operator "calling attention to the failure to comply with the provisions of R.S. 30:103.1" and give the operator 30 days to cure. If the operator does not send the reports timely, then the operator forfeits its right to recoup the unleased owner's share of drilling costs out of production. The court also noted that La. R.S. 30:103.2 is a penalty statute and must be strictly construed.

In this instance, the plaintiffs never sent a second notice as required by Section 103.2. Accordingly, because they had not satisfied the prerequisites for suit, the plaintiffs' claims were dismissed with prejudice.

"No deduct" royalty provisions

(14) *Franklin v. Regions Bank*, 124 F.4th 613 (5th Cir. 2025).

This case involves Elizabeth Franklin and Cynthia Peironnet (the "Landowners"), two lessors of a 1,805.34-acre tract, who sued Regions Bank ("Regions") for allegedly mishandling their mineral rights in its capacity as their mineral manager.

In 2004, on behalf of the Landowners, Regions negotiated a mineral lease with Prestige Exploration, Inc., for the entire tract with a 20% royalty (the "2004 Lease"). The 2004 Lease included a geographic Pugh clause and a depth-severance clause. Prestige assigned the 2004 Lease to Matador Resources, which drilled a series of Cotton Valley unit wells. In 2007, at the end of the 2004 Lease's primary term, only 168.95 of the leased acres were non-producing. Matador sought an extension which would allow it to drill an additional well on the undeveloped acreage or land unitized therewith. Regions agreed to the extension (the "Extension").

In 2008, with the advent of the Haynesville Shale, the Landowners entered into a new lease with Petrohawk for the deep rights with a 25% royalty (the "2008 Lease"). However, the 2008 Lease was contingent on the Landowner's invalidating the Extension, at least with respect to the depths associated with the Haynesville Shale. The Landowners sued Matador seeking a declaration that, to the extent the Extension may be deemed to apply beyond the 168.95 acres which were undeveloped at the end of the primary term of the 2004 Lease, the Extension was a result of mutual error and should, therefore, be rescinded. In 2013, the Louisiana Supreme Court ruled that the Extension was valid on a lease wide basis.

In 2016, the Landowners sued Regions, alleging that it had negligently entered into the Extension. As a result, the Landowners sought the difference in the royalty rate between the 2004 and 2008 Leases as damages. After a series of appeals and remands, the district ultimately found that Regions breached its duty of care by failing to limit the Extension to the 168.95-acre undeveloped area. A hearing was held with respect to damages. The district court found that the 2008 Lease provided for royalty on a "gross basis" (*i.e.,* with no deductions for post-production expenses) and entered a judgment in favor of the Landowners for $4.5 million in past and future royalties.

Regions appealed, arguing, among other things, that the 2008 Lease did not provide for royalties payable based on gross proceeds. The court observed that, in Louisiana, royalties are usually calculated based on either the market value of the production at the well or gross proceeds. The market value at the well method allows the lessee to deduct post-production costs (such as gathering, procession, and transportation) before determining the lessor's royalty share. Conversely, royalties based on a gross proceeds basis calculates the lessor's royalty share based on the sale price, without any deducting any post-production expenses.

In its printed form, the 2008 Lease specified that royalties would be based on the "market value at the well." However, an addendum to 2008 Lease provided that "[t]here shall be no cost charged to the royalty interest created under this lease, except severance and applicable taxes." The addendum stipulated that its provisions would "prevail" over any conflicting terms in the printed lease form. Regions argued that the addendum did not fundamentally alter the royalty's calculation point (*i.e.*, at the well). It claimed that the addendum merely clarified that severance taxes could be withheld after the post-production costs were deducted. In support of its position, Regions relied on two Texas cases, *Heritage Resources, Inc. v. NationsBank*, 939 S.W.2d 118 (Tex. 1996), and *Warren v. Chesapeake Exploration, L.L.C.,* 759 F.3d 413 (5th Cir. 2014). The Landowners maintained that the addendum changed the royalty from a market value at the well royalty to a gross proceeds royalty, thereby prohibiting the deduction of post-production expenses.

Importantly, the court noted that Petrohawk had consistently paid royalties on a gross proceeds basis to the Landowners for production from an unrelated tract of land subject to a lease form which included the same "no deduct" language. Rejecting Regions position (and the Texas jurisprudence), the court concluded that Louisiana law allows more flexibility for parties to contractually alter an "at the well" royalty provisions. Although the default rule is that post-production costs are shared unless the parties expressly agree otherwise, Louisiana courts have given effect to similar "no deduct" provisions, citing *Columbine II Ltd. Partnership v. Energen Resources Corp*., 129 F. App'x 119 (5th Cir. 2005)(*per curiam*).

After reviewing the evidence, the district court concluded that the addendum's language clearly prohibited deductions of post-production costs from the royalty calculation. The court ruled that the Petrohawk lease provided for a gross-proceeds royalty, with the addendum overriding any conflicting terms in the lease form. This finding was consistent with Louisiana law, which prioritizes the intent of the contracting parties and permits deviations from the default rule of shared post-production costs.

Lease termination

(15) *J. Calhoun One, L. L. C. v. Jeems Bayou Production Corp.*, No. 55,997 (La. App. 2d Cir. 12/18/24), 402 So. 3d 137, *writ denied*, No. 25-197 (La. 5/29/25), 409 So. 3d 756.

J. Calhoun One, LLC, and Carmel Lake Management, LLC, sued Jeems Bayou Production Corporation, alleging the termination of a 1982 mineral lease (the "Lease") affecting land in Sections 35 and Section 36. The Lease contained a standard geographic Pugh clause and a 60-day continuous operations clause.

The leased tract in Section 35 was included in a declared unit. The plaintiffs maintained that the Lease terminated in Section 35 because drilling operating were not commenced before the end of the primary terms and that Jeems Bayou failed to notify them of the termination as required by La. R.S. 30:102.

The leased tract in Section 36 was included in a compulsory drilling and production unit. The plaintiffs maintained that, although the unit well for Section 36 was timely commenced, the Lease terminated because of various gaps in production of more than 60 days and that Jeems Bayou failed to notify them of the termination as required by La. R.S. 30:102.

The plaintiffs sent Jeems Bayou a demand to release the Lease, but no release was forthcoming. The plaintiffs filed suit for dissolution of the lease. Jeems Bayou asserted that the plaintiffs' claims were prescribed and, alternatively, that the plaintiffs were estopped from pursuing their claims. The trial court denied Jeems Bayou exception of prescription, and granted the plaintiffs' motion for partial summary judgment. The judgment was certified as final, and Jeems Bayou appealed.

With respect to the prescription issue, Jeems Bayou argued that the plaintiffs' lease dissolution claims were subject to a 10-year prescriptive period for personal actions and that the plaintiffs did not file suit timely. The plaintiffs maintained that the Lease terminated by its own terms, citing La. R.S. 31:133, which provides a mineral lease ends at the expiration of its term or upon a resolutory condition without notice of default. The plaintiffs framed their action as a "real action" for lease termination, not subject to prescription. The court sided with the plaintiffs and affirmed the denial of Jeems Bayou's exception of prescription. The court's explained that a mineral lease "terminates automatically without any need for putting in default" upon the expiration of its term or occurrence of a resolutory condition and that La. R.S. 31:206 obligates the owner of an expired mineral right to furnish a recordable act evidencing its expiration.

On summary judgment, the Second Circuit found material disputed facts, reversed, and remanded. For example, in Section 35, Jeems Bayou claimed operations, in fact, began before the end of the primary term, pointing to survey work. In Section 36, Jeems Bayou claims that reworking efforts restored production by 2004, negating any alleged termination, and that the plaintiffs' acceptance of royalties after that date amounted to estoppel.

Contract operator

(16) *Gulf Prod. Co., Inc. v. Halliburton Energy Servs., Inc.*, No. 23-1111 (La. App. 1st Cir. 8/6/24), 394 So. 3d 856, 859.

Plaintiff Gulf Production Company, Inc., appealed a trial court judgment, sustaining defendants, Halliburton Energy Services, Inc., and its representative, Robert Peatross' exception of no right of action, granting defendants' motion for summary judgment, and dismissing Gulf Production's claims with prejudice.

In 2010, Gulf Production, under an agreement with Gulf Explorer, LLC, was designated as the operator of the Horseshoe Bayou Prospect in Louisiana. Gulf Explorer had an agreement with Mobil Oil, granting Gulf Explorer the right to earn lease ownership interest by drilling one or more wells on the prospect. At Gulf Explorer's direction, Gulf Explorer drilled two wells, one of which, the ExxonMobil Fee No. 3, encountered significant issues during operations involving a coring gun supplied and operated by Halliburton.

Gulf Production sued Halliburton and Peatross in 2013, alleging negligence in the coring operation. However, Gulf Explorer, the actual owner of the well, was not mentioned in the petition. In late 2022, after nine years of litigation, Gulf Production disclosed an assignment of rights from Gulf Explorer, which had granted Gulf Production the authority to pursue claims against Halliburton.

With respect to the exception of no right of action, the trial court ruled that Gulf Production had no real interest in the litigation because Gulf Explorer (the owner of the well) was the entity which sustained the alleged damage, not Gulf Production (the contract operator). The court noted that Gulf Production did not allege its status as Gulf Explorer's assignee in its original petition, which deprived Halliburton of notice. The court concluded that Gulf Production could not assert claims as Gulf Explorer's assignee without properly amending its petition.

The court then went on to deny Gulf Production's request to amend its petition to include the assignment, citing the prolonged litigation history and Gulf Production's repeated failure to disclose key information. The court deemed the amendment futile and prejudicial to Halliburton.

On appeal, the appellate court affirmed the trial court's rulings, focusing on Gulf Production's lack of a direct interest in the damages and its failure to plead the assignment properly. It also agreed that it was inappropriate to allow a substantive change to the petition at such a late stage in the proceedings. It rejected the argument that the trial court should have joined Gulf Explorer as an indispensable party, holding that the trial court had the discretion to do that, but was not required to and also noting that this issue was not raised at the trial court level.

Louisiana Oilfield Anti-Indemnity Act

(17) *QBE Syndicate 1036 v. Compass Minerals Louisiana, Inc.*, 83 F.4th 986 (5th Cir. 2023), *certifying question,* No. 23-1370 (La. 12/19/23), 374 So. 3d 979, *denying certification*, 95 F.4th 984 (5th Cir. 2024), *reversed and remanded*.

Compass Minerals Louisiana, Inc. ("Compass"), operates a salt mine in St. Mary Parish. The company uses a "drill-and-blast" method, by which it drills holes in the rock salt and uses explosives to blast the rock free. In the course of its operations, Compass contracted with an electrical support company. The contract included a clause whereby the electrical support company agreed to indemnify Compass for any claims and liabilities related to injury to the electrical support company's employees. Under the contract, the electrical support company was obligated to obtain an insurance policy, backing up the indemnity, and name Compass as an additional insured under the policy.

In August 2019, an electrician employed by the electrical support company died in an accident at Compass's mine, and the family filed a wrongful death suit, naming Compass as a defendant. Compass tendered its defense to the electrical support company's insurer, QBE Syndicate 1036 ("QBE"). QBE filed a separate suit, seeking a declaratory judgment that the indemnification and insurance provision in the contract between Compass and the electrical support company was "null, void, and unenforceable" under the Louisiana Oilfield Anti-Indemnity Act, La. R.S. 9:2780. QBE argued that LOAIA's anti-indemnification provisions applied because Compass's drill-and-blast mining method pertained to a "well for oil, gas, or water, or drilling for minerals" as required by the Act. Compass countered that, for LOAIA to apply, as a threshold matter, there had to be a "well" and that, in this instance, there was no well.

The United States District Court for the Western District of Louisiana granted Compass's motion for summary judgment, finding that LOAIA's anti-indemnity provisions did not apply because there was no well. QBE appealed. Citing the absence of any authority on the issue, the United States Court of Appeals for the Fifth Circuit certified two questions to the Louisiana Supreme Court:

> (a) Does the LOAIA apply to provisions in agreements that pertain to "drilling for minerals," even where the agreement does not "pertain to a well"?
>
> (b) If the Act applies to agreements that pertain to "drilling for minerals," irrespective of the agreement's nexus to a well, does the Act apply to invalidate the indemnification and additional-insured provisions contained in contracts in question?

On December 19, 2023, in a 4-to-3 decision, the Louisiana Supreme Court denied the request for certification.

Following the denial, the Fifth Circuit concluded that the district court had erred by imposing a well requirement for LOAIA to apply. According to the court, in *Transcontinental Gas Pipe Line Corp. v. Transportation Insurance Co.*, 953 F.2d 985 (5th Cir. 1992), a prior Fifth Circuit panel had contemplated LOAIA might apply to indemnification provisions "contained in some [1] agreements pertaining to wells for oil, gas, or water, or [2] drilling for minerals." So, the "drilling for minerals" requirement was not necessarily "tethered" to the requirement that there be a "well for oil, gas or water." Second, in *Transcontinental Gas*, the court's inquiry focused on whether there was an "agreement pertaining to wells for oil, gas, or water," not on whether there was an agreement pertaining to the "drilling for minerals," suggesting the two requirements could be considered separately.

Third, *Transcontinental Gas* approvingly cited a district court opinion that found that the "Act did not apply to the contract in question because the contract must pertain **to** a well for oil, gas or water, or **to** drilling for minerals." Fourth, when introducing its list of factors for the "case-by-case analysis," the court in *Transcontinental Gas* again gave "drilling" separate grammatical treatment. Specifically, the court explained, "to determine whether a contract pertains **to** a well or **to** drilling requires a fact intensive case-by-case analysis."

Having dispensed with the well requirement, the court noted that it was inconclusive as to whether the contract in question—concerning fire-suppression and electrical work at a salt mine—qualified as an agreement "pertaining to . . . drilling for minerals" under the statute. The court remanded the matter to the district court for further fact finding, including the presentation of expert testimony, for this determination.

Subsurface trespass

(18) *Hill v. TMR Exploration, Inc.,* No. 22-0687 (La. App. 1st Cir. 11/29/23), 2023 WL 8251997 ("*Hill I*").

In *Hill I*, the plaintiffs filed suit for trespass, negligence, and violations of Civil Code Article 667, claiming that the wellbore of a lease-based horizontal well intruded into the subsurface of their property without their consent. Among the defendants was Halliburton, which conducted fracking operations in the well for the well's owner, TMR Exploration, Inc. Halliburton moved for summary judgment, maintaining that, as a contractor of TMR, it had no duty to protect the plaintiffs from subsurface trespass. The trial court granted the motion, and the plaintiffs appealed.

The Louisiana First Circuit Court of Appeal held that Halliburton could not be directly liable to the plaintiffs for trespass, did not owe a duty to the plaintiffs under a negligence theory, and was not a "proprietor" subject to liability under Article 667. However, the court found that, if TMR were found directly liable to the plaintiffs under Article 667, then Halliburton could be secondarily liable to them under La. R.S. 9:2773(A).

At the time, La. R.S. 9:2773(A) provided:

> It is the public policy of the state that the responsibility which may be imposed on [a] . . . contractor . . . by reason of the responsibility of proprietors under Article 667 of the Louisiana Civil Code shall be limited solely to the obligation of such . . . contractor . . . to act as the surety of such proprietor in the event the proprietor is held to be responsible to his neighbor for damage caused him and resulting from the work of such . . . contractor . . . in the event the proprietor is unable to satisfy any claim arising out of such damage. The . . . contractor . . . who is responsible for damages as limited by this Section, shall have a right of action against the proprietor for any damages, costs, loss or expense which he may suffer in his capacity

> as the surety of the proprietor.

The court explained:

> Under Article 667, while a proprietor generally has the right to use their property as they see fit, they are liable for damage caused to a neighbor's property if certain conditions are met. Specifically, a proprietor is responsible for damages to neighboring property when: (1) the proprietor knew or should have known that the activity on their property would cause damage to the neighbor's property; (2) the damage could have been prevented through the exercise of reasonable care; and (3) the proprietor failed to exercise such reasonable care. Moreover, a proprietor is liable not only for their own actions but also for the actions of their contractor if the activities were carried out with the proprietor's consent and permission. This liability extends to the contractor, but under La. R.S. 9:2773, the contractor's liability is that of a surety rather than a principal.

The court reasoned that TMR could be considered a "proprietor" under Article 667 because its rights were derived from the landowner under whom it held a mineral lease. If TMR were found liable under Article 667, then Halliburton could potentially be liable as a surety for any judgment entered against TMR, which TMR could not satisfy. Accordingly, the court concluded that summary judgment was improper to the extent that it dismissed the plaintiffs' claim against Halliburton as a potential surety of TMR.

La. R.S. 9:2773 was amended in 2021 to limit its application to ultrahazardous activities only. Under the statute, as amended, a contractor can still be found directly liable for its own negligence or the improper performance of the work under the contract.

(19) *Hill v. TMR Exploration., Inc.*, No. 22-744 (La. App. 1st Cir. 12/19/23), 2023 WL 8742973, *writ denied*, No. 24-98 (La. 3/5/24), 380 So. 3d 572 ("*Hill II*").

Hill II involved the plaintiffs' claims against another oilfield service company, Schlumberger. TMR engaged Schlumberger "to direct and steer" the path of the wellbore using specialized equipment. Like Halliburton in *Hill I*, Schlumberger filed a motion for summary judgment. With respect to the trespass claim, Schlumberger argued that, in drilling the well, it had relied on information provided to it by TMR and this information would not have alerted it of the possibility the well's bottomhole location was on the plaintiff's property. With respect to the claim under Civil Code article 667, Schlumberger maintained that, like Halliburton, it was merely a contractor performing a specific task and not a "proprietor." With respect to the negligence claim, Schlumberger argued that, as a contractor, it did not owe a duty to the plaintiffs and that, even if it did owe a duty, there was no factual basis to find a breach. The trial court granted Schlumberger's motion for summary judgment and dismissed all claims against it. On appeal, the First Circuit held that its reasoning in *Hill I* applied equally to Schlumberger. Therefore, the court reversed the trial court, but only with respect to the plaintiffs' potential claims against Schlumberger as a surety under La. R.S. 9:2773.

Joint operating agreements

(20) *Certain Underwriters at Lloyd's, London v. Alliance Drilling Consultants, L.L.C.*, No. 23-265 (La. App. 3d Cir. 12/20/23), 377 So. 3d 459, *writ denied*, No. 24-00117 (La. 3/12/24), 381 So. 3d 48.

This case involved a suit by a non-operating working interest owner (Petro-Hunt, LLC) and its insurer (Lloyds of London) against the operator of an oil and gas well (XH, LLC) and its agent (XTO Energy, Inc.), for breach of contract following a blowout. The well was drilled under a 1983 Joint Operating Agreement between Petro-Hunt and XH, in which XH was designated the operator. In 2008, XTO entered into an Agency Agreement with XH to "manage all of the oil and gas interests held by XH."

Pursuant to the JOA and Agency Agreement, XTO proposed drilling the well, and Petro-Hunt agreed to participate. XTO contracted a drilling contractor to drill the well and another entity for wellsite supervision. Drilling commenced on July 8, 2014, and the blowout occurred three days later.

After a six-day jury trial, the jury rejected Petro-Hunt's breach of contract claims against XH and XTO. On appeal, the plaintiffs argued the trial court erred by instructing the jury that only the direct acts or omissions of XH and XTO—and not those of their contractors—could be considered in determining if XH and XTO breached their contractual obligations. The court found that, when viewed as a whole, the jury instructions fairly presented the breach of contract issues and accurately reflected the law.

The plaintiffs also contended that the trial court incorrectly required them to prove gross negligence in their breach of contract claims against XTO under the Agency Agreement. The court reviewed the JOA and Agency Agreement, noting that the JOA included a standard exculpatory clause limiting the operator's liability to losses resulting from gross negligence or willful misconduct. The court found that XTO was XH's "legal representative" under the JOA. The court further noted that the Agency Agreement stated XTO would operate and maintain all of XH's oil and gas interests "in a good and workmanlike manner in accordance with the past practices of XH and the terms of the applicable operating agreements," which included the JOA. Thus, the appellate court concluded that the exculpatory clause in the JOA applied to XTO, requiring the plaintiffs to prove gross negligence, which they failed to do.

Expropriation

(21) *Trunkline Gas Co. v. Beissel*, No. 24-1343, (W.D. La. 11/7/2024), 2024 WL 4710377.

In this case, the federal court granted condemnation rights and a preliminary injunction to Trunkline Gas Company under the Natural Gas Act. Trunkline operates interstate natural gas pipelines across property in Calcasieu Parish under FERC-issued Certificates of Public Convenience and Necessity. Its lease on the property was set to expire, but it asserted that continued operation of above-ground facilities, access roads, and power poles was essential for pipeline safety and regulatory compliance under both FERC and PHMSA standards.

Trunkline sought condemnation of three servitudes: a perpetual, exclusive surface site servitude; a perpetual, non-exclusive access servitude; and a perpetual, non-exclusive power pole servitude. After negotiations with the landowner failed, Trunkline filed suit under 15 U.S.C. § 717f(h) and Fed. R. Civ. P. 71.1. The landowner, despite being properly served, failed to respond. Trunkline demonstrated (i) it held valid FERC certificates, (ii) the servitudes were necessary to the pipeline's operation, and (iii) it could not reach an agreement with the landowner despite making a $50,000 offer, supported by a $7,340 appraisal.

Because Trunkline satisfied the statutory elements and the defendant did not oppose the suit, the court granted the condemnation. It also issued a preliminary injunction allowing immediate access, finding that Trunkline showed a likelihood of success on the merits, risk of irreparable harm, minimal harm to the landowner, and alignment with the public interest. The court ordered compensation issues to be resolved in later proceedings.

Subpoenas

(22) *EXCO Operating Company, LP v. BRP, LLC*, No. 56,018 (La. App. 2d Cir. 12/18/24), 402 So 3d 668.

In a discovery dispute arising from a concursus proceeding over competing mineral servitudes in DeSoto Parish, the Louisiana Second Circuit affirmed the trial court's decision compelling document production from several out-of-state, nonparty timber corporations (*i.e.*, International Paper Company, IP Timberlands Co., Ltd., and Sustainable Forests, LLC—collectively, the "IP Entities").

The underlying lawsuit involves a decades-old mineral servitude (the "Placid Servitude") originally granted in 1979, which Petro-Hunt claims was validly maintained through acknowledgments of interruption by the IP Entities. BRP, LLC, a joint venture once owned in part by IP, asserts that those acknowledgments were invalid because the IP Entities lacked ownership of the subject properties at the time. BRP claimed instead that its own servitude, created in 2010, was the only valid one.

Petro-Hunt subpoenaed documents from the IP Entities relating to the ownership history of the subject properties and the corporate relationships among International Paper and its affiliates. The IP Entities, headquartered out of state, moved to quash the subpoenas, arguing that Louisiana courts lacked subpoena power over them and that Petro-Hunt failed to demonstrate relevancy and good cause.

> The court found that the IP Entities, despite being nonparties, were sufficiently connected to Louisiana to be considered "residents" for discovery purposes. IP is registered to do business in Louisiana, maintains offices and employees in the state, and its subsidiaries owned and managed substantial Louisiana timberlands, including the disputed tracts. Applying *Phillips Petroleum Co. v. OKC Ltd. Partnership*, 634 So. 2d 1186 (La. 1994), the court held that the IP Entities were subject to Louisiana's subpoena power based on their extensive Louisiana contacts.
>
> The court further held that Petro-Hunt had shown both relevancy and good cause for the requested discovery. The documents were central to the issue of whether the IP Entities were the owners of the property when the servitude interruptions occurred, and Petro-Hunt demonstrated that the information was not obtainable through less intrusive means.
>
> The judgment compelling production and denying the motion to quash was affirmed.

NEW LEGACY LEGISLATION

As the 2025 Regular Legislative Session neared its end, the Louisiana Legislature passed Senate Bill No. 244 ("SB 244"), ushering in significant changes to Louisiana's oilfield site remediation law, commonly known as "Act 312" (La. R.S. 30:29). On June 24, 2025, SB 244 was signed by the governor and became Act No. 458.

Act 312 applies to cases involving environmental damage allegedly caused by historical oil and gas operations—often referred to as "legacy" cases—and outlines the process for the State to evaluate, approve, and oversee site assessment and cleanup.

Act No. 458 applies to legacy cases filed after September 1, <u>2027</u>, and aims to provide much-needed clarity not only for the parties involved in litigation but also for the State agencies charged with managing oilfield site remediation.

In legacy cases, any party that admits responsibility—or is found liable at trial—for environmental damage must submit a plan to the Louisiana Department of Energy and Natural Resources ("the Department") for review and approval. The approved plan becomes the Most Feasible Plan for addressing the environmental impacts.

Recognizing recent court decisions, Act No. 458 revised Act 312 to allow responsible parties to submit either a remediation plan or an evaluation plan. This aligns with Act 312's stated goal: ensuring that environmental damage is assessed and, if needed, addressed in a way that protects the public interest. This change is expected to encourage more parties to step forward and admit responsibility, while giving the Department more flexibility in how it manages remediation efforts.

The new law also clarifies that the Department may use risk-based standards—such as the Risk Evaluation/Corrective Action Program ("RECAP")—and other exceptions to Statewide Order 29-B when approving or shaping the Most Feasible Plan. While the Department must consult with landowners about these exceptions, it doesn't need their approval, allowing a balanced approach that weighs environmental concerns against practical and scientific realities.

Under Act No. 458, courts must adopt the Department's plan as the Most Feasible Plan unless a party can prove—by clear and convincing evidence—that a different, timely submitted plan is more feasible for protecting the environment and public health. This higher burden of proof replaces the prior "preponderance of the evidence" standard and is intended to streamline the adoption process, helping avoid delays and cut down on unnecessary expenses.

Any appeal of a court's decision adopting the Most Feasible Plan must now go to the First Circuit Court of Appeal in Baton Rouge. Centralizing the appeals process near the Department is designed to promote consistency and efficiency in how remediation disputes are resolved statewide.

Act No. 458 would also formally pause the trial on the merits from the time a party files a limited admission until the court adopts the Most Feasible Plan. This stay helps reduce costs and allows everyone involved to focus on getting a workable plan approved—so the trial can proceed with that plan in hand.

The updates to Act 312 also adopt guidance from recent case law. A party satisfies its legal responsibility by meeting regulatory standards unless a contract specifically requires remediation to the property's original condition or sets a different standard.

Act No. 458 limits the kinds of non-remediation damages plaintiffs can recover. Economic losses can still be recovered if proven by a preponderance of the evidence. All other non-remediation damages are capped at 300% of the property's fair market value (based on its undamaged surface condition).

Once the court adopts the Most Feasible Plan, parties who have admitted responsibility or were found liable will not be on the hook for any additional attorneys' fees, expert witness fees, or environmental evaluation costs. And, if a defendant is found not to have caused the environmental harm, then it can recover reasonable attorneys' fees and costs from the plaintiff.

Finally, the bill introduces a new administrative option for resolving disputes if both sides agree to it. This voluntary process offers a less adversarial way to handle claims and encourages collaboration and efficiency when dealing with environmental damage.