

# The Latest Limitation on Corbello – Wagoner v. Chevron

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*Wagoner v. Chevron* is the latest of the oil and gas “legacy” cases emanating from the 2003 decision of the Louisiana Supreme Court in *Corbello v. Iowa Production*, 2002-0826 (La. 2/25/03), 850 So.2d 686. These “legacy” lawsuits have resulted in the imposition of enormous liability on oil and gas production companies found responsible for contaminated property at production sites. Some of those lawsuits are based on activity that took place decades before suit was filed. The latest decision in this line of cases, *Wagoner v. Chevron*, 45,507 (La. App. 2d Cir. 11/24/10), recognizes another important limitation on landowners’ rights to pursue oil and gas producers for damages allegedly resulting from historical contamination.

Late last year, the Louisiana Supreme Court ruled that a group of landowners had waited too long to assert claims for alleged contamination that had occurred many years previously. *Marin v. Exxon*, 09-2368, \_\_\_ So.3d \_\_\_, 2010 WL 4074948 (La. 10/19/10). In that decision, the Supreme Court expressly declined to reach another critical issue that had been argued before the Court: whether the current landowners had the right to sue for property damage that had occurred prior to their acquisition of the property. That question now has been squarely addressed by the en banc Second Circuit in *Wagoner*.

The *Wagoner* plaintiffs filed suit against Chevron and other oil and gas producers seeking recovery for damages allegedly caused by oil and gas production activities on their property dating back to 1945. Chevron, however, had conducted no activity whatsoever on the site since 1992, and the Wagoners had not even purchased the land until 2004. The trial court found that, under these circumstances, the right to sue Chevron and others for allegedly contaminating the land was a personal right that could be asserted only by the landowners who owned the property at the time the contamination occurred.

A unanimous panel of the Second Circuit initially reversed the trial court and held that the original mineral lease to Chevron had created real rights that remained with the land through successive owners. The original panel of judges therefore found that the 1945 lease created ongoing obligations that the current landowners could still enforce today against Chevron and the other mineral lessees.

Following the Louisiana Supreme Court decision in *Marin*, however, the en banc Second Circuit reconsidered the original panel ruling in *Wagoner*. On rehearing, the appellate court ruled that the current landowners did not have the right to sue for damages that had occurred before their acquisition of the property. Relying on the “subsequent purchaser doctrine,” the en banc Second Circuit Court found that the right to sue for these damages was personal to the landowners at the time of the injury and did not pass to future owners.

There now is arguably a split among the Louisiana appellate circuits concerning the application of the “subsequent purchaser doctrine” in the context of legacy suits. See *Eagle Pipe and Supply, Inc. v Amereda Hess*

*Corp.*, 09-0298 (La. App. 4th Cir. 02/10/10), \_\_\_\_ So.3d – 2010 WL 487238. The *Wagoner* decision surely will be appealed. This is an issue that will have to be finally resolved by the Louisiana Supreme Court.

For more information, please contact the author of this alert or a member of McGlinchey's Environmental team.