

Inequality in Water Quality: Reasons and Remedies for Louisiana’s Failure to Prevent Particular Communities’ Exposure to Contaminated Water

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I. INTRODUCTION

"Living here has messed me up." Allen LeBlanc has lived in Mossville, Louisiana his entire life. At age seventy-one, he suffers from seizures, liver problems, a stroke, tremors, insomnia, fatigue, and depression. Dioxins—which can lead to cancer, diabetes, and other immunological problems—course through his blood at a concentration many times greater than that of the overall United States population.¹ Mr. LeBlanc can count over a dozen local family members who have had cancer and even more who have developed conditions such as diabetes, heart disease, reproductive issues, respiratory problems, skin issues, and memory problems, among others.² Mr. LeBlanc washes himself with alcohol because his skin peels when he bathes in tap water.

Mossville is a historic African American community established by former slaves in the 1790s.³ Today, the community is surrounded by over a dozen industrial facilities, including several petrochemical manufacturers and the largest concentration of vinyl production facilities in the United States.⁴ One of those companies is Sasol, whose South African plant is the single largest emitter of carbon dioxide in the world.⁵ In 2022, almost 1.7 million pounds of chemicals were released into Mossville's waters (and over 10.9 million pounds into the air and land).⁶ Mossville residents' average levels of dioxins are triple the average of the

1. Heather Rogers, *Erasing Mossville: How Pollution Killed a Louisiana Town*, INTERCEPT (Nov. 4, 2015), <https://theintercept.com/2015/11/04/erasing-mossville-how-pollution-killed-a-louisiana-town>.

2. *Id.*

3. WILMA SUBRA ET AL., INDUSTRIAL SOURCES OF DIOXIN POISONING IN MOSSVILLE, LOUISIANA: A REPORT BASED ON THE GOVERNMENT'S OWN DATA 1 (July 2007), <https://www.loe.org/images/content/100423/mossville.pdf>.

4. *Id.*

5. Jeanie Riess, *Touring Louisiana's Chemical Ghost Town*, NEW YORKER (Dec. 13, 2021), <https://www.newyorker.com/magazine/2021/12/20/touring-louisianas-chemical-ghost-town>.

6. U.S. ENV'T PROT. AGENCY, TOXIC RELEASE INVENTORY TRACKER, <https://edap.epa.gov/public/extensions/TRIToxicsTracker/TRIToxicsTracker.html#> (last visited Mar. 14, 2024).

general United States population.⁷ In fact, blood samples indicate that the median dioxin levels in Mossville residents exceeds the ninety-fifth percentile of the United States populace.⁸

The abysmal contamination rates measured in Mossville's waters are not unheard of elsewhere in Louisiana. Despite being a notably water-centric state, Louisiana's water quality is substandard under several criteria. The EPA's Toxic Release Inventory measured a release of approximately 12 million pounds of chemicals into Louisiana waters in 2022, 88.3 percent of which were nitrate compounds (found in fertilizers or created as wastewater treatment byproducts).⁹ This makes Louisiana the third largest releaser of chemicals into state waters, following Indiana (approximately 16.91 million pounds) and Texas (approximately 17.35 million pounds).¹⁰ According to a United Health Foundation ranking, Louisiana had the second highest number of water quality violations in 2023.¹¹ Additionally, Louisiana's water quality is seeing unprecedented levels of concentrations of disinfection byproducts and saltwater.¹²

How are the circumstances seen in Mossville able to happen in Louisiana? What is it about Louisiana's laws and enforcement power (or lack thereof) that makes large chemical companies flock to build plants near poorer African American communities? Why do those companies continue to get away with it? This Comment explores what causes of action are available to Louisianans against large petrochemical polluters who contaminate the state's waters. In gauging what causes of action exist, this Comment evaluates the deficiencies of particular actions and considers why plaintiffs are often unsuccessful in alleging them. This Comment then puts forth solutions by assessing gaps in Louisiana law and proposing actions that could help promote better water quality.

7. Subra, *supra* note 3, at i.

8. BRENDA N. COOK ET AL., MOSSVILLE FINAL SITE INSPECTION REPORT 7 (May 3, 2011), <https://www.epa.gov/sites/default/files/2015-11/documents/mossvillefinal051311.pdf>.

9. U.S. ENV'T PROT. AGENCY, *supra* note 6.

10. *Where You Live, Toxic Release Inventory Analysis*, U.S. ENV'T PROT. AGENCY (last visited Mar. 14, 2024), <https://www.epa.gov/trinationalanalysis/where-you-live>.

11. *2023 Annual Report—Data (All States)*, AMERICA'S HEALTH RANKINGS: UNITED HEALTH FOUND., <https://www.americashealthrankings.org/learn/reports/2023-annual-report> (last visited Mar. 14, 2024).

12. Michael Stanisci, *The Louisiana Water Crisis: Dissecting the Spike in Toxic Chemicals*, LEGAL J. (Oct. 27, 2023), <https://thelegaljournal.com/2023/10/27/the-louisiana-water-crisis-dissecting-the-spike-in-toxic-chemicals/>.

II. PRIVATE CAUSES OF ACTION AVAILABLE AGAINST POLLUTERS

A private cause of action allows an individual to bring a lawsuit based on an alleged violation of law, thereby enforcing one's right against others. These private law actions are typically brought by an individual who was harmed, and to recover successfully, that harm usually needs to be shown.¹³ In Louisiana, a multitude of private actions exist that allow individuals whose water was contaminated to bring suit against the polluters responsible. The success of these actions varies.

A. *Actions Based in the Louisiana Civil Code*

The Louisiana Civil Code establishes a variety of actions that private parties can invoke when they have been wronged.

1. Arts. 667-669: The Vicinage Articles

Articles 667-669, which comprise the "vicinage articles," should be read together to understand which acts of a neighbor merit damages and/or injunction and which acts are merely inconveniences that do not warrant a remedy. Article 667 puts forth limitations on the use of property, stating that a proprietor "cannot make any work on [his property], which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him."¹⁴ Someone who makes work on his estate that causes damage to his neighbor is answerable for compensatory damages if it is shown that: i) he knew or should have known that his works would cause damage, ii) the damage could have been prevented by the exercise of reasonable care, and iii) that he failed to exercise such reasonable care. A harmed neighbor who cannot sufficiently illustrate negligence to warrant compensatory damages can still seek injunctive relief to prohibit the wrongdoer from causing further damage.

Article 668 states that mere inconveniences do not warrant injunctive relief or damages. Rather, "landowners may be exposed to some inconveniences arising from the normal exercise of the right of ownership by a neighbor."¹⁵ An inconvenience cannot deprive a neighbor of the liberty to enjoy his own property, and it cannot cause actual damage. Therefore, to be granted injunctive relief or damages, a plaintiff

13. Randy E. Barnett, *Foreword: Four Senses of the Public Law-Private Law Distinction*, 9 HARV. J. L. & PUB. POL'Y 267, 268-69 (1986).

14. LA. CIV. CODE art. 667 (2023).

15. LA. CIV. CODE art. 668 (2023); A. N. Yiannopoulos, *Violations of the Obligations of Vicinage: Remedies Under Articles 667 and 669*, 34 LA. L. REV. 475, 476 (1974).

must show that an activity performed by his neighbor amounts to damage and/or interferes with the plaintiff's use of his own property.

Article 669 explains that without a servitude, a neighbor of a manufacturer does not have to tolerate excessive emissions of "diffusing smoke," "nauseous smell," or similar harmful emissions.¹⁶ The threshold for what should be tolerated is determined by the police or by local customs. Read together, these articles delineate what a landowner can do with his own property and at what point a neighbor can stop that landowner's activities, namely, if those activities deprive the neighbor of enjoying his own land.

Article 667 has been invoked in a variety of groundwater contamination cases. Although recovery under Article 667 can be successful, plaintiffs' recoveries can be limited by the one year prescriptive period on delictual actions and damage to immovable property. This means that plaintiffs must bring suit within a year from when a court may deem that they "should have known" of contamination. For example, in *Marin v. Exxon Mobil Corp.*, the Supreme Court of Louisiana held that the plaintiffs' tort claims prescribed, because they did not file suit within one year from when they should have discovered the damage to their property.¹⁷ Here, the trial and appellate courts found that Exxon was liable for negligence (in part under Article 667) and awarded damages to plaintiffs for the remediation of their groundwater.¹⁸

However, after reaching the supreme court, this case primarily turned on the lower courts' incorrect application of the *contra non valentem* doctrine, meaning that a prescription does not run against one who is unable to act.¹⁹ The court deemed the plaintiffs knowledgeable of the contamination based on their awareness that their crops were not growing correctly, even though they did not have certainty of the cause: "assuming it takes four years to determine if a sugarcane crop will be healthy, based on the information the plaintiffs had acquired by at least 1995, they should have taken further steps to learn the true nature of the damage to their property" by hiring an expert at that time.²⁰ The court deferred to the articles stating general prescriptive periods, namely that "[w]hen damage is caused to immovable property, the one year prescription commences to run from the day the owner of the immovable

16. LA. CIV. CODE art. 669 (2023).

17. 2009-2368 (La. 10/19/10), 48 So. 3d 234, 262.

18. *Id.* at 242-43.

19. *Id.* at 262.

20. *Id.* at 250-51.

acquired, or should have acquired, knowledge of the damage.”²¹ Therefore, plaintiffs possibly could have recovered damages had they sued Exxon almost ten years earlier.

In this way, although Article 667 can provide relief for someone who has been damaged by the activities of his neighbor, a court may stringently measure the point at which that individual should have been aware of the damage. Injured parties should be diligent in obtaining experts to ascertain the extent of damage. Although courts will consider a plaintiff’s means to determine the point at which constructive knowledge would begin, the constructive knowledge burden can bar indigent parties from bringing legitimate suits, therefore precluding the recovery of due damages.

2. Art. 2315: Tort

Victims of contaminant exposure can also bring suit under typical tort actions.

a. General Negligence

Article 2315 addresses general negligence, stating that “Every act of man that causes damage to another obliges him by whose fault it happened to repair it.”²² As a tort, a showing of general negligence requires a showing of duty, breach, causation, and harm. However, Article 2315 states that “[d]amages do not include costs for future medical treatment . . . unless such treatment . . . [is] directly related to a manifest physical or mental injury or disease.”²³ Proving causation in toxic tort requires a showing of both “general causation” and “specific causation.”²⁴ General causation refers to whether a substance is capable of causing a particular injury, while specific causation refers to whether the substance in fact caused the particular individual’s injury.²⁵

In *Arabie v. CITGO Petroleum Corp.*, the Louisiana Supreme Court held that the plaintiffs were entitled to damages for fear of contracting cancer following an oil spill caused by the defendants’ negligence.²⁶ In that case, a major storm caused CITGO’s stormwater/wastewater

21. LA. CIV. CODE art. 3493 (2023).

22. LA. CIV. CODE art. 2315 (2023).

23. *Id.*

24. *Bradford v. CITGO Petroleum Corp.*, 2017-296 (La. App. 3 Cir. 1/10/18), 237 So. 3d 648, 659 (citing *Pick v. Am. Med. Sys., Inc.*, 958 F. Supp. 1151, 1164 (E.D. La. 1997)).

25. *Id.* (citing *Knight v. Kirby Inland Marine, Inc.*, 482 F. 3d 347, 351 (5th Cir. 2007)).

26. 2010-2605 (La. 3/13/12), 89 So. 3d 307, 324.

drainage and storage system to overflow, leading to a major oil spill.²⁷ The area designed to contain overflow from the tanks was in compromised condition due to ongoing construction.²⁸ Over 21 million gallons of waste escaped from the two existing wastewater storage tanks and entered nearby levees and dikes.²⁹ This spill ultimately contaminated over 100 miles of shoreline along the Calcasieu River, and the cleanup process took months.³⁰

The plaintiffs, workmen at the Calcasieu Refining Company, alleged injuries relating to the noxious gases emanating from the spill.³¹ The trial court awarded them damages for fear of developing cancer in the future, which the appellate court affirmed.³² Although CITGO argued that they should not be liable for the plaintiffs' alleged fear, which they deemed speculative or merely possible, the court disagreed and affirmed the damages awarded for fear of future injury.³³ At trial, each plaintiff testified about the fear of contracting cancer as a result of exposure to the toxic chemicals.³⁴ The court stated that, "While to a scientist in his ivory tower the possibility of cancerous growth may be so minimal as to be untroubling, we are not prepared to hold that the trier of fact erred in finding compensable this real possibility to th[ese] worrying workmen."³⁵

Although recovery for future medical treatments as a result of negligence can be feasible, this negligence standard can be difficult for plaintiffs to satisfy, particularly on the causation element. "Because such injuries are not immediately apparent, because symptoms may not be unique to the disease, because the diseases remain latent for a long time, and because there is great opportunity for other sources of injury to arise, proving causation of a toxic tort is a challenging prospect."³⁶ It often takes decades for the adverse effects of new chemicals to be known, and at that point, establishing the causation link can be problematic. Given that scientists cannot test harmful substances on humans to fully understand

27. *Id.* at 310.

28. *Id.* at 31-11.

29. *Id.* at 311.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 322-23.

34. *Id.* at 322.

35. *Id.* (quoting *Anderson v. Welding Testing Laboratory, Inc.*, 304 So.2d 351 (La. 1974)).

36. Laurie Alberts, *Causation in Toxic Tort Litigation: Which Way Do We Go, Judge*, 12 VILL. ENV'T L.J. 33, 34 (2001) (quoting Patricia E. Lin, *Opening the Gates to Scientific Evidence in Toxic Exposure Cases: Medical Monitoring and Daubert*, 17 REV. LITIG. 551, 552 (1998)).

the medical effects of particular contaminants, causation must be extrapolated using data from a given area with confirmed contamination that has manifested in a consistent condition or ailment.

This issue is becoming palpable as concern over per- and polyfluoroalkyl substances (PFAS) chemicals becomes more prevalent. There are over 12,000 types of PFAS chemicals known today, and while some are relatively harmless, others have been linked to “obesity, birth defects, altered metabolism, fertility issues, ulcerative colitis, high cholesterol, development toxicity, liver hypertrophy, thyroid disease, and various types of cancer, including non-Hodgkin’s lymphoma, breast, liver, kidney, testicular, prostate, and ovarian cancers.”³⁷ Pinpointing liability for harm caused by particular PFAS chemicals can be challenging, but it is possible in some cases. “Whether the composition of a PFAS molecule is ‘branched’ or ‘linear,’ the distribution of consecutive perfluorinated carbons, and the formation at the end of a given PFAS chain can indicate what manufacturing process originating that molecule.”³⁸ Therefore, the origin of some PFAS chemicals can be gleaned based on characteristics of the molecules because they denote unique “fingerprints” of different manufacturers.

In many cases, pinpointing a definite source for a physical ailment whose symptoms or causes are common can be too onerous a burden for a plaintiff to meet. Although sometimes an ailment can be traced to a specific toxic substance, such as mesothelioma caused by asbestos, it is not typical that a physical injury is caused by one particular substance. Additionally, like the victims in Mossville, contamination may not stem from any one source, but rather from a slew of chemical plants. Determining which one plant is responsible for the contamination could be impossible. As noted above, it is not sufficient for a plaintiff to satisfy general causation by showing that a plant’s contaminants are harmful; rather, she must also sufficiently show that her injury is caused by that plant’s act of contamination. Therefore, proving the causation element is by and large difficult for victims whose waters are being contaminated by multiple plants that pollute the same chemicals. This is further complicated by the fact that the effects of newfangled contaminants, such as newly synthesized chemicals that a plant may produce, do not come to light until many years after the initial contamination exposure. At that

37. Adam Dinnell, *Causation Issues in PFAS Litigation: Where Did the “Forever” Chemical Come from?*, JD SUPRA (Sept. 21, 2022), <https://www.jdsupra.com/legalnews/causation-issues-in-pfas-litigation-3418299>.

38. *Id.*

point, identifying a singular cause to the exclusion of other possible causes becomes only more problematic.

b. Negligent Infliction of Emotional Distress

Under a negligence action, victims of contamination exposure may also be able to claim negligent infliction of emotional distress if the contamination has caused mental distress. Such a claim can be advanced absent actual physical injury.³⁹ To recover under such an action, the plaintiff must prove “the especial likelihood of genuine and serious mental distress, arising from the special circumstances, which serves as a guarantee that the claim is not spurious.”⁴⁰ While “[t]he emotional distress suffered by a plaintiff need not be ‘reasonably foreseeable,’ nor ‘severe and debilitating,’”⁴¹ “evidence of generalized fear or evidence of mere inconvenience is insufficient.”⁴² Therefore, to succeed on such a claim, the defendant must have been negligent to an extent that caused the plaintiff genuine and serious mental distress amounting to more than a generalized fear. A court’s analysis of such an action is largely fact-intensive; as such, a court’s finding of a plaintiff’s genuine and serious mental distress will be in large part informed by the particular circumstances of the case.

c. Trespass

Also rooted in Article 2315 is the notion of trespass, i.e., “unlawful physical invasion of the property or possession of another.”⁴³ In a toxic tort context, determining whether the trespass is continuous or discontinuous can make or break a plaintiff’s action. A continuous trespass is one where the prescriptive period does not begin to run until the trespass is abated, typically by defendants’ efforts of containment or remediation. In *Hogg v. Chevron USA, Inc.*, the Louisiana Supreme Court deemed defendants’ trespassing gasoline into plaintiffs’ waters to be a discontinuous trespass, so there was no suspension to the running of the

39. *Spencer v. Valero Refin. Meraux, L.L.C.*, 2022-00469 (La. 1/27/23), 356 So. 3d 936, 949.

40. *Id.* (quoting *Moresi v. State Through Dept. of Wildlife and Fisheries*, 567 So. 2d 1081, 1096 (La. 1990)).

41. *Id.* (citing *Lejeune v. Rayne Branch Hosp.*, 556 So. 2d 559, 570 (La. 1990)).

42. *Id.*

43. Melissa M. Cresson, *The Louisiana Trespass Action: A “Real” Problem*, 56 LA. L. REV. 477, 477 (1996).

prescriptive period (which had expired).⁴⁴ Plaintiffs attempted to argue that the trespass of the gasoline into their waters was continuous due to the migratory nature of toxic substances.⁴⁵ However, the court rejected this reasoning and clarified that a trespass is only continuous if the injury or “damage-causing conduct” is continuous, not its effects.⁴⁶

This judgment by the court further limits a plaintiff’s ability to bring action against polluters. Even if a polluter’s contaminants are continuously seeping into a plaintiff’s groundwater, the plaintiff’s opportunity to bring suit will end after the typical one year tort prescriptive period if the cause for the contamination has ceased. More clearly phrased in the concurrence in part, the court considered “whether the continuing presence of noxious chemicals under the plaintiffs’ land constitutes an ongoing wrongful act or is merely an ongoing injury resulting from a prior wrongful act” and determined the circumstance to be merely an ongoing injury.⁴⁷ To be clear, this one year prescriptive period begins at the point that the plaintiffs knew or should have known of the damage-causing conduct.

3. Arts. 2317 & 2317.1: Owners’ Responsibility for Defects

Articles 2317 and 2317.1, which should be read in tandem, address owners’ responsibility for harms caused by defects in their things. Article 2317 states that owners are responsible for damage caused by things in their custody.⁴⁸ Article 2317.1 explains that an owner of a thing is answerable for damage occasioned by its defect only upon a showing that i) the owner knew or should have known of the defect which caused the damage, ii) the damage could have been prevented by the exercise of reasonable care, and iii) that the owner failed to exercise such reasonable care.⁴⁹ Therefore, if harmful contamination is caused by defects in a chemical plant’s facilities—and the plant failed to conduct a reasonable inspection which would have exposed the defect—the plant would be liable for the damage that follows from that contamination.

The Eastern District of Louisiana’s evaluation of the Article 2317.1 claim in *Taylor v. Denka Performance Elastomer, L.L.C.* makes clear that recovery for damage caused by a defective thing is subject to a showing

44. Hogg v. Chevron USA, Inc., 2009-2632 (La. 7/6/10), 45 So. 3d 991, 1006.

45. *Id.* at 1002.

46. *Id.* at 1006.

47. *Id.* at 1007 (Knoll, J., concurring).

48. LA. CIV. CODE art. 2317 (2023).

49. LA. CIV. CODE art. 2317.1 (2023).

of negligence rather than a strict liability standard.⁵⁰ In *Taylor*, the court held that plaintiffs failed to succeed under an Article 2317.1 claim because they were unable to prove that the emissions of chloroprene resulting from defendants' defective operation manufacturing equipment caused personal injury.⁵¹ The plaintiffs were property owners who brought suit seeking injunctive relief and damages against the nearby neoprene manufacturer (in fact, the only neoprene manufacturer in the country) in connection with their exposure to concentrated levels of chloroprene, a known carcinogen.⁵² Although the plaintiffs pointed out that an EPA inspection revealed ruin and vice in the equipment itself (in the form of leaking valves, open-ended lines, and the lack of appropriate emission controls on various components of the chloroprene facility), they were unable to prove that this defective equipment and the resulting chloroprene emissions caused personal injury.⁵³ Therefore, the court explained that the plaintiffs' claim was "not yet ripe."⁵⁴

Before the 1996 amendment of Article 2317.1, a plaintiff's recovery for damage caused by defect in another's thing required a showing of strict liability. Now, fault is limited to a showing of negligence. As the court explained in *Taylor*, "Under Louisiana law, a claim for 'strict' liability requires that a duty of care was breached, just as a negligence claim does . . . In fact, '[t]here is essentially no difference between the two types of claims under Louisiana law.'"⁵⁵ This amendment now puts the burden on plaintiffs, i.e., victims, rather than on owners of defective equipment which causes harmful contamination. This amendment is a regression in the law because it further limits a plaintiff's ability to recover for harm incurred.

4. Art. 2298: Unjust Enrichment

If other actions fail, victims of contamination can allege an action of unjust enrichment against chemical plants who have profited from manufacturing contaminants that ultimately caused harm. Article 2298 of the Louisiana Civil Code states as follows:

50. *Taylor v. Denka Performance Elastomer, L.L.C.*, 332 F. Supp. 3d 1039, 1057 (E.D. La. 2018).

51. *Id.* at 1056.

52. *Id.* at 1039.

53. *Id.* at 1057.

54. *Id.*

55. *Id.* at 1057 (quoting Bd. of Comm'rs of Se. La. Flood Prot. Auth., *East v. Tenn. Gas Pipeline Co.*, L.L.C., 850 F. 3d 714, 729 (5th Cir. 2017)).

A person who has been enriched without cause at the expense of another person is bound to compensate that person. The term “without cause” is used in this context to exclude cases in which the enrichment results from a valid juridical act or the law. The remedy declared here is subsidiary and shall not be available if the law provides another remedy for the impoverishment or declares a contrary rule.⁵⁶

Recovering under this action is difficult for two reasons: i) the term “without cause” requires that the enrichment did not result from a legal act, and ii) a remedy under unjust enrichment is only possible if no other remedy is available. Louisiana jurisprudence has identified a five-part showing required for recovery under unjust enrichment: (1) There must be an enrichment; (2) there must be an impoverishment; (3) there must be a connection between the enrichment and resulting impoverishment; (4) there must be an absence of “justification” or “cause” for the enrichment and impoverishment; and finally, (5) the action will only be allowed when there is no other remedy at law, i.e., the action is subsidiary or corrective in nature.⁵⁷

In this way, “unjust enrichment is a remedy of ‘last resort’ and is only available to fill a gap in the law.”⁵⁸ This is because Article 4 of the Civil Code states that “[w]hen no rule for a particular situation can be derived from legislation or custom, the court is bound to proceed according to equity.”⁵⁹ The Louisiana Supreme Court has construed this to mean that a judge can turn to the unjust enrichment action (i.e., an action of equity) only if that action would not “defeat the purpose of a rule of law directed to the matter at issue.”⁶⁰ Therefore, “[i]t is not the success or failure of other causes of action, but rather the existence of other causes of action, that determine whether unjust enrichment can be applied.”⁶¹ Therefore, since contamination exposure cases typically advance under other causes of action, little case law exists by which to analyze the success of an unjust enrichment claim in this context.

56. LA. CIV. CODE art. 2298 (2023).

57. *Alford v. Chevron U.S.A. Inc.*, 13 F. Supp. 3d 581, 609 (E.D. La. 2014) (quoting *Richard v. Wal-Mart Stores, Inc.*, 559 F.3d 341, 346 (5th Cir. 2009)).

58. *Id.* (quoting *Port of S. La. v. Tri-Parish Indus., Inc.*, 927 F. Supp. 2d 332, 341 (E.D. La. 2013)).

59. LA. CIV. CODE Ann. art. 4 (2023).

60. *Edmonston v. A-Second Mortg. Co. of Slidell, Inc.*, 289 So. 2d 116, 122 (La. 1974).

61. *Port of S. La.*, 927 F. Supp. 2d at 341 (quoting *Garber v. Badon & Ranier*, 2007-1497 (La. App. 3 Cir. 4/2/08), 981 So. 2d 92, 100).

B. Actions Based in the Louisiana Revised Statutes

1. Louisiana Environmental Quality Act

The Louisiana Environmental Quality Act (LEQA) permits citizen suits for those who have been or could be adversely affected by another's violation of the Act.⁶² A violation means a "failure to comply with the requirements of this Subtitle, the rules issued under this Subtitle, and conditions of permits under this Subtitle."⁶³ Section (A) of § 2026 states that at the hearing on the matter, if the court reckons that a violation has occurred, the court may i) enforce the LEQA's provisions, ii) assess a civil penalty (not to exceed \$10,000 for each day of continued noncompliance), and iii) issue a temporary or permanent injunction where appropriate. In issuing a final order, the court may award attorney and expert witness costs to the prevailing party, may award actual damages to the prevailing plaintiff, and may fix the amount of penalty due to be collected and deposited into the Louisiana state treasury. Injured or tentatively injured parties must first provide notice to the violator at least thirty days before commencing an action.⁶⁴

Section 2076(A)(1)(a)-(b) of the LEQA prohibits discharge of any substance that will cause water pollution "in violation of any rule, order, or regulation" or that is not within the limits imposed by an applicable permit.⁶⁵ Section 2076(D) requires that any discharge into state waters be reported to the Louisiana Department of Environmental Quality (LDEQ) if the discharge violates any state regulations. Further, Section 2076(F) prohibits discharge of hazardous waste into underground waters of the state.⁶⁶ Hazardous waste is defined as any waste which, because of its chemical characteristics, may cause or contribute to significant illness or pose a substantial threat to human health or the environment when improperly treated, stored, disposed of, or otherwise managed.⁶⁷

Under the LEQA, plaintiffs such as those in Mossville can bring action against the chemical plants responsible for contaminating their waters. Clearly, those contaminants "may cause or contribute to significant illness or pose a substantial threat to human health," evidenced

62. LA. STAT. ANN. § 30:2026(A)(1).

63. LA. STAT. ANN. § 30:2004(19).

64. LA. STAT. ANN. § 30:2026(B)(1).

65. LA. STAT. ANN. § 30:2076(A)(1)(a)-(b).

66. LA. STAT. ANN. § 30:2076(F).

67. LA. STAT. ANN. § 30:2173(2).

by the staggering levels of cancer, developmental problems, immunological deficiencies, and other health issues prominent in the area.

The Louisiana Supreme Court has found that citizen suits under the LEQA are not subject to a prescriptive period.⁶⁸ This is significant because a citizen action under the LEQA is not subject to the typical one year prescriptive period for delictual actions. The Court reasoned that “[t]he statute is . . . intended for the benefit of the public; it is not intended to provide a citizen plaintiff with a private, personal action for damages.”⁶⁹ Because a citizen suit under the LEQA gives private citizens the right to “institute enforcement actions and enjoin conservation law violations,” this effectively accomplishes the purpose of the state’s environmental regulations and indicates that a plaintiff is not invoking the suit solely for her own personal benefit.⁷⁰

2. Louisiana Mineral Code

The Louisiana Mineral Code provides a cause of action if a landowner is deprived of his right to explore for groundwater. The Mineral Code specifies that its provisions apply to “subterranean water, or other substances occurring naturally in or as a part of the soil or geological formations on or underlying the land.”⁷¹ Further, the Mineral Code states that a landowner may enjoy his property without limitation for the purpose of exploring for and producing minerals; accordingly, he may reduce to possession and ownership “all of the minerals occurring naturally in a liquid or gaseous state” that can be obtained on or beneath his land.⁷² The Mineral Code addresses liability to others with interests in common reservoir or deposit: “A person with rights in a common reservoir or deposit of minerals may not make works, operate, or otherwise use his rights so as to deprive another intentionally or negligently of the liberty of enjoying his rights, or that may intentionally or negligently cause damage to him.”⁷³

By evaluating these provisions of the Mineral Code, it is clear that landowning plaintiffs, who have been deprived of their right to capture and use groundwater underlying their land, have cause for action against

68. State ex rel. Tureau v. BEPCO, L.P., 2021-0856 (La. 10/21/22), 351 So. 3d 297, 309.

69. *Id.* at 306.

70. *Id.*

71. LA. STAT. ANN. § 31:4.

72. LA. STAT. ANN. § 31:8.

73. LA. STAT. ANN. § 31:10.

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chemical plants who intentionally or negligently contaminated that groundwater.

3. Louisiana Products Liability Act

Under the Louisiana Products Liability Act (LPLA), a manufacturer may be held liable if an individual is harmed following contamination by the manufacturer's substances. The LPLA lays out a manufacturer's responsibility and the burden of proof to be satisfied, stating as follows:

§ 2800.54. Manufacturer responsibility and burden of proof

A. The manufacturer of a product shall be liable to a claimant for damage proximately caused by a characteristic of the product that renders the product unreasonably dangerous when such damage arose from a reasonably anticipated use of the product by the claimant or another person or entity.

B. A product is unreasonably dangerous if and only if:

(1) The product is unreasonably dangerous in construction or composition

...

(2) The product is unreasonably dangerous in design . . .

(3) The product is unreasonably dangerous because an adequate warning about the product has not been provided . . . or

(4) The product is unreasonably dangerous because it does not conform to an express warranty of the manufacturer about the product . . .

C. The characteristic of the product that renders it unreasonably dangerous under R.S. 9:2800.55 must exist at the time the product left the control of its manufacturer. The characteristic of the product that renders it unreasonably dangerous under R.S. 9:2800.56 or 9:2800.57 must exist at the time the product left the control of its manufacturer or result from a reasonably anticipated alteration or modification of the product.

D. The claimant has the burden of proving the elements of Subsections A, B and C of this Section.⁷⁴

Under this article, a manufacturer is defined as “a person or entity who is in the business of manufacturing a product for placement into trade or commerce.”⁷⁵ Succinctly, a product can be unreasonably dangerous in construction/composition, in design, because of a lack of adequate

74. LA. STAT. ANN. § 9:2800.54.

75. LA. STAT. ANN. § 9:2800.53(1).

warning provided, or because the product does not conform with an express warranty made by the manufacturer.

A product is unreasonably dangerous in construction or composition “if, at the time the product left its manufacturer’s control, the product deviated in a material way from the manufacturer’s specifications or performance standards for the product or from otherwise identical products manufactured by the same manufacturer.”⁷⁶

Further, a product is unreasonably dangerous in design if, at the time the product left its manufacturer’s control, i) “There existed an alternative design for the product that was capable of preventing the claimant’s damage,” and ii) “The likelihood that the product’s design would cause the claimant’s damage and the gravity of that damage outweighed the burden on the manufacturer of adopting such alternative design and the adverse effect, if any, of such alternative design on the utility of the product.”⁷⁷

In a case where a plaintiff alleges water contamination resulting from a defendant’s manufacture of harmful chemicals, a defendant could potentially be held liable for manufacturing an “unreasonably dangerous” product under the LPLA (though little to no prior case law exists in which a plaintiff has advanced an LPLA action under this circumstance). Unreasonably dangerous composition would cover instances where the manufacturer did not intend for the chemical to have such a harmful nature. By contrast, unreasonably dangerous design would cover instances where the harmful nature of the substance is an intentional design choice of the manufacturer, so long as a viable alternative existed which could fulfill the same function without being so harmful in nature. An example of where a less dangerous alternative could have existed is seen in PFAS cases, given that some PFAS chemicals are known to cause cancer, while others are relatively harmless. Because these provisions cover both intentional and unintentional instances of manufacture of a dangerous product, they could be invoked in many situations where a manufacturer’s chemical products contaminate water.

A product is unreasonably dangerous due to a lack of providing an adequate warning about the product if, “at the time the product left its manufacturer’s control, the product possessed a characteristic that may cause damage and the manufacturer failed to use reasonable care to provide an adequate warning of such characteristic and its danger to users

76. LA. STAT. ANN. § 9:2800.55.

77. LA. STAT. ANN. § 9:2800.56.

and handlers of the product.”⁷⁸ A manufacturer does not have to provide an adequate warning about his product when the product would not be dangerous to an unforeseeable extent by an ordinary user of the product, or if the user of the product should reasonably be expected to know of the dangerous characteristic.

Moreover, a product is unreasonably dangerous “when it does not conform to an express warranty made at any time by the manufacturer about the product if the express warranty has induced the claimant or another person or entity to use the product and the claimant’s damage was proximately caused because the express warranty was untrue.”⁷⁹

Plaintiffs could recover under LPLA by showing that a manufacturer failed to provide adequate warning about the dangerous nature of its product if the product possessed that dangerous quality when it left the manufacturer’s control and if it should not have been reasonably known that the product was dangerous. Additionally, plaintiffs could recover under the LPLA if they have been harmed by water contaminated by substances which the manufacturers expressly warranted were not harmful. It has been recently uncovered that PFAS manufacturers had a preliminary understanding of the dangers of PFAS chemicals as early as the 1960s and had gained a deeper understanding of the chemicals’ hazardous nature by 1970.⁸⁰ Those manufacturers “suppress[ed] unfavorable research, distort[ed] public disclosure of research that does leak out, [and] with[held] information from employees who might be exposed to dangerous levels of PFAS.”⁸¹ PFAS manufacturers did not warn the EPA about the dangers of the chemicals until 1998, contrary to the requirements of the Toxic Substances Control Act (TSCA).⁸² In such a circumstance, plaintiffs could have brought suit against PFAS manufacturers under the LPLA for failure to provide adequate warning about the unreasonably dangerous nature of their products and/or for falsely warranting that their products were safe.

78. LA. STAT. ANN. § 9:2800.57.

79. LA. STAT. ANN. § 9:2800.58.

80. Jeffrey Kluger, *Companies Knew the Dangers of PFAS ‘Forever Chemicals’—And Kept Them Secret*, TIME (June 1, 2023), <https://time.com/6284266/pfas-forever-chemicals-manufacturers-kept-secret>.

81. *Id.*

82. *Id.*; Scott Faber, *For 20-Plus Years, EPA Has Failed to Regulate Forever Chemicals*, ENV’T WORKING GRP. (Jan. 9, 2020), <https://www.ewg.org/research/20-plus-years-epa-has-failed-regulate-forever-chemicals#:~:text=The%20Environmental%20Protection%20Agency%20was,of%20other%20everyday%20consumer%20goods>.

Like other delictual actions, actions under the LPLA need to be brought within a year from when plaintiffs first become aware of the tortious conduct.⁸³ The United States Court of Appeals for the Fifth Circuit has held that the LPLA only applies to causes of action which accrued on or after September 1, 1988.⁸⁴ Here, “accrued” indicates the date when a plaintiff can bring a cause of action.⁸⁵ The prescription will begin to run when damages are sustained, but the doctrine of *contra non valentem* will suspend the period until the plaintiff knows or reasonably should know of the damage.⁸⁶ In the case of a latent disease, the prescriptive period will typically resume running upon diagnosis.⁸⁷

In Louisiana jurisprudence, the LPLA has classically been invoked in cases where the plaintiffs ingested a particular substance which later proved to be harmful, such as tobacco, lead, or weight-loss drugs.⁸⁸ There are few if any cases in which the LPLA was invoked as a response to water contamination. After showing that her cause of action accrued prior to the time the LPLA was enacted,⁸⁹ a plaintiff advancing under this cause of action will have to conclusively show that the product included an injurious substance to which she was exposed (to satisfy the proximate cause element). Then, depending on the product liability claim under which the plaintiff will pursue action, there may be additional criteria to satisfy (as noted in the paragraphs above which detail the various claims). Failure to satisfy these requirements would likely lead to a dismissal for failure to state a claim. Given this burden, few cases have successfully advanced under the LPLA in Louisiana jurisprudence. However, as more time passes between the enactment of the LPLA and the present day, it

83. LA. CIV. CODE ANN. art. 3492 (2024).

84. *Brown v. R.J. Reynolds Tobacco Co.*, 52 F.3d 524, 527 (5th Cir. 1995).

85. *Id.*

86. *Id.*

87. *Id.*

88. *See id.* at 527-28 (where the plaintiff was a smoker who suffered from throat cancer); *see also* *Jefferson v. Lead Indus. Ass’n, Inc.*, 106 F. 3d 1245 (5th Cir. 1997) (where the plaintiff was a parent whose child suffered from lead poisoning resulting from exposure to lead paint); *see also* *Fuller v. Eisai, Inc.*, 513 F. Supp. 3d 710 (E.D. La. 2021) (where the plaintiff alleged that a weight loss drug caused her to develop breast cancer).

89. *Brown*, 52 F. 3d at 527 (affirming the granting of summary judgment in favor of the cigarette manufacturers because there existed “no evidence that Brown sustained injury, latent or otherwise, before the LPLA’s effective date”); *see also* *Arabie v. R.J. Reynolds Tobacco Co.*, 96-978 (La. App. 5 Cir. 6/30/97), 698 So. 2d 423, 425 (noting that “there is no evidence in this record that [the plaintiff] sustained injury, latent or otherwise, prior to 1988, the effective date of the Louisiana Products Liability Act,” and therefore affirming the lower court’s grant of the manufacturer’s motion for summary judgment).

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will become increasingly easier for a plaintiff to illustrate that her cause of action accrued prior to the LPLA's enactment.

4. Louisiana Unfair Trade Practices and Consumer Protection Law

An individual harmed from water contaminated by substances which were purported by manufacturers to not be harmful may be able to recover damages under a consumer protection action. The Louisiana Unfair Trade Practices and Consumer Protection Law (LUTPA) permits private actions to be brought in response to unfair trade practices and under consumer protection law. Section A of the statute states as follows:

Any person who suffers any ascertainable loss of money or movable property, corporeal or incorporeal, as a result of the use or employment by another person of an unfair or deceptive method, act, or practice declared unlawful . . . may bring an action individually but not in a representative capacity to recover actual damages. If the court finds the unfair or deceptive method, act, or practice was knowingly used, after being put on notice by the attorney general, the court shall award three times the actual damages sustained.⁹⁰

The Supreme Court of Louisiana has clarified that “LUTPA grants a right of action to any person, natural or juridical, who suffers an ascertainable loss as a result of another person’s use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”⁹¹ Therefore, plaintiffs can potentially recover damages from companies who engaged in deceptive practices and sold products which led to harm or loss. Invoking the PFAS example stated above, a consumer protection action could be brought against those companies who intentionally mislead about the safety of PFAS chemicals that lead to an ascertainable loss of money (for example, medical bills to treat ailments caused by exposure to PFAS chemicals). As of 2018, LUTPA is subject to a one year prescriptive period.⁹²

However, despite the inclusive wording of the LUTPA statute, the court has held that a plaintiff must show that “the alleged conduct offends established public policy and is immoral, unethical, oppressive,

90. LA. STAT. ANN. § 51:1409.

91. *Cheramie Servs., Inc. v. Shell Deepwater Prod., Inc.*, 2009-1633 (La. 4/23/10), 35 So. 3d 1053, 1057 (rejecting a previously construed “consumer or competitor” limitation, meaning that only consumers or business competitors could bring suit under LUTPA).

92. LA. STAT. ANN. § 51:1409(E).

unscrupulous, or substantially injurious.”⁹³ Therefore, “[t]he range of prohibited practices under LUTPA is extremely narrow,’ as LUTPA prohibits only fraud, misrepresentation, and similar conduct, and not mere negligence.”⁹⁴ Therefore, for a victim of contamination exposure to succeed under a LUTPA claim, there must be a showing beyond mere negligence. A plaintiff must be able to illustrate that a defendant company was particularly immoral and intentionally defrauded consumers. Such a showing is too burdensome for the majority of plaintiffs to achieve.

C. *Actions Based in Federal Statutes*

1. Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) is a federal statute with a citizen suit provision. Pursuant to this provision, plaintiffs can bring suit in federal district court against any person or governmental agency who is in violation of any environmental regulation or permit, which includes improper treatment, storage, or disposal of waste that is hazardous for environmental or human health.⁹⁵ A plaintiff can only bring suit after giving notice about the violation to the administrator of the Environmental Protection Agency (EPA), to the state where the alleged violation occurred, and to the purported violator at least sixty days prior.⁹⁶ Under RCRA, citizens can also bring suit against the administrator of the EPA for alleged failure to perform any duties that are not discretionary.⁹⁷ Actions against violators are to be brought in the district court where the violation occurred, while actions against the administrator may be brought where the violation occurred or in the United States District Court for the District of Columbia.⁹⁸ The remedy for this action is injunctive relief as well as court-related fees.⁹⁹

93. *Quality Env’t Processes, Inc. v. I.P. Petroleum Co., Inc.*, 2013-1582 (La. 5/7/14), 144 So. 3d 1011, 1025 (quoting *Cheramie*, 2009-1633, 35 So. 3d at 1059).

94. *Id.* (quoting *Cheramie*, 2009-1633, 35 So. 3d at 1059).

95. 42 U.S.C. § 6972(a)(1)(A)-(B).

96. *Id.* § 6792(b)(1)(A)(i)-(iii).

97. *Id.* § 6792(a)(2).

98. *Id.*

99. *Id.* § 6792(e).

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2. Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), similar to RCRA, authorizes individuals to bring civil actions against any alleged violator of environmental regulation or standards regarding cleanup of inactive hazardous waste sites.¹⁰⁰ Individuals can also bring suit against the administrator of the EPA for failure to adhere to the position's non-discretionary duties.¹⁰¹ Before bringing suit against a violator under CERCLA, a plaintiff must give at least sixty days' notice to the president, to the state where the alleged violation occurred, and to the violator.¹⁰² Before bringing suit against the administrator, the plaintiff must likewise give at least sixty days' notice.¹⁰³ Like RCRA, actions against violators are to be brought in the district court where the violation occurred, while actions against the Administrator maybe brought where the violation occurred or in the United States District Court for the District of Columbia.¹⁰⁴ The court can grant relief by enforcing the violated regulation or standard, can "order such action as may be necessary to correct the violation," and can "impose any civil penalty provided for the violation."¹⁰⁵

Although the RCRA and CERCLA statutes seem similar, they serve distinct functions. While RCRA governs the federal management of hazardous waste facilities, CERCLA governs the response to abandoned, uncontrolled hazardous waste sites.¹⁰⁶ In other words, RCRA was implemented by Congress to address waste treatment facilities that currently operate, while CERCLA focuses on hazardous waste removal and management of waste management facilities that no longer operate.¹⁰⁷ Therefore, if a plaintiff wants to bring a citizen suit against a waste treatment facility, knowing whether that facility is currently operative or not will determine whether to bring suit under RCRA or under CERCLA.

100. *Id.* § 9659(a)(1); *Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Federal Facilities*, U.S. ENV'T PROT. AGENCY.

101. 42 U.S.C. § 9659(a)(2).

102. *Id.* § 9659(d)(1)(a)-(c).

103. *Id.* § 9659(e).

104. *Id.* § 9659(b)(1)-(2).

105. *Id.* § 9659(c).

106. David Kluesner, *Qs & As on RCRA vs. CERCLA at the DuPont Pompton Lakes Works Site*, U.S. ENV'T PROT. AGENCY 1 (Feb. 2011), https://www.epa.gov/sites/default/files/2017-01/documents/rcravssuperfund_factsheet.pdf.

107. *RCRA vs. CERCLA*, ACTENVIRO (Feb. 3, 2024), <https://www.actenviro.com/rcra-vs-cercla/>.

III. SOLUTIONS FOR EXPANSION OF ACTIONS UNDER LOUISIANA LAW

A. *Reinstatement of Punitive Damages for Negligent Handling of
Toxics*

Former Article 2315.3 of the Louisiana Civil Code permitted punitive damages in addition to general and special damages for “wanton and reckless disregard for public safety in the storage, handling, transporting, and/or disposal of hazardous or toxic substances.”¹⁰⁸ This article was only active between the years of 1984 and 1996 before being repealed by former governor Mike Foster. Today, Louisiana Civil Code Articles 2315.3-.8 state that punitive damages can only be awarded for child pornography, drunk driving, statutory rape, or domestic abuse. Citizens can, however, recover punitive damages for harm resulting from another’s reckless disregard for safety in the handling of toxic materials for actions that took place within the period when the article was active.¹⁰⁹ Such an action would be subject to the typical tort prescriptive period, i.e., a year from when plaintiffs knew or should have known about the tortious conduct.¹¹⁰ The Louisiana Supreme Court has articulated the purpose of former Article 2315.3:

to penalize and punish defendants for engaging in wanton or reckless disregard for public safety in the storage, handling, or transportation of hazardous or toxic substances that causes injury to others;

to deter the tortfeasors and others who might follow their example from exposing the public to the dangers of that kind in the future; and

to provide victims injured by such conduct with the incentive to act as the prosecutors of penal laws against such wrongdoers.¹¹¹

Former Article 2315.3 was efficacious because private citizens could (and were encouraged to) act as prosecutors against wrongdoers.

108. Philip Ackerman, *Some Don’t Like It Hot: Louisiana Eliminates Punitive Damages for Environmental Torts*, 72 TUL. L. REV. 327, 327-28 (1997).

109. *Marin v. Exxon Mobil Corp.*, 2009-2368 (La. 10/19/10), 48 So. 3d 234, 243.

110. *Corbello v. Iowa Prod.*, 2002-0826 (La. 2/25/03), 850 So. 2d 686, 708 (stating that “in order to collect damages under former article 2315.3, plaintiffs needed to have filed a tort suit against Shell within the applicable prescriptive period.”).

111. *Ross v. Conoco, Inc.*, 2002-0299 (La. 10/15/02), 828 So. 2d 546, 550-51 (citing *Billiot v. B.P. Oil Co.*, 93-1118 (La. 9/29/94), 645 So. 2d 604).

“The purposes of punitive damages . . . are to punish defendants and deter similar conduct.”¹¹²

Reinstating former Article 2315.3 to allow chemical plants to be subject to punitive damages for “reckless and wanton disregard for public safety in the storage, handling, transporting, and/or disposal of hazardous and/or toxic materials” would be a helpful step toward curbing water contamination by chemical plants. Currently, chemical plants understand that they may have to pay compensatory damages for any injury resulting from their harmful practices. The cost of compensating victims for their injuries pales in comparison to the massive profits they can derive from (often negligently) producing and disposing of contaminants. While compensatory damages are merely designed to “recompense a plaintiff for injury caused by a defendant’s act,” punitive damages are “not designed to make an injured party ‘whole,’” but instead, “they are meant to punish the tortfeasor and deter specific conduct to protect the public interest.”¹¹³

If Louisiana were to make punitive damages available for chemical plants’ flagrant disregard for environmental and human safety, this would signify the state taking a stand against tolerating such unjust enrichment. Part 3 of the Louisiana Supreme Court’s description of the article’s purpose said plainly so: the article was meant to incentivize injured victims to act as prosecutors and deter wrongdoers. Further, because punitive damages do not have to be calculated based on the actual harm suffered by plaintiffs, invoking punitive damages could be a much more effective tool to financially impair chemical companies and deter future misconduct.

B. Extension of Louisiana’s Prescriptive Period for Torts

Extending Louisiana’s prescriptive period for torts beyond one year would allow more plaintiffs to bring suit under actions based in tort law. Currently, Louisiana is among only three states with such a short prescriptive period for torts.¹¹⁴ Allowing more time between when (a court determines that) a plaintiff first knew or should have known of an injury and when that plaintiff is no longer able to bring suit would clearly make this burden less onerous.

112. *Id.* at 552 (citing *James v. Formosa Plastics Corp.*, 95-1794 (La. App. 1st Cir. 4/4/96), 672 So. 2d 319, 322).

113. *Id.* at 552-53.

114. Cara O’Neill, *Civil Statutes of Limitations*, NOLO (last updated June 23, 2023), <https://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html>.

C. *Expanding Application of the Louisiana Unfair Trade Practices and Consumer Protection Law*

If courts interpreted LUTPA to apply to cases of mere negligence rather than simply fraud, misrepresentation, or other similar conduct that is especially unethical, this would make recovery easier for plaintiffs. Recovery under LUTPA is three times the actual damage sustained; clearly, this high amount of recovery reflects that the statute is currently interpreted to only apply to (and deter) exceptional cases of misconduct by companies. However, victims of contaminant exposure often do not have access to the information necessary to know that a company engaged in fraud or misrepresentation. Although the language of the LUTPA seems to be widely invocable for victims of contaminant exposure, the way courts have interpreted the statute makes its application too narrow to be effective in most toxic tort cases. Interpreting the statute based on its plain language would remedy this limited construal and would increase the number of actions realistically available to victims of contaminant exposure.

IV. CONCLUSION

Louisiana law, rooted in the Civil Code as well as the Revised Statutes, provides citizens with an array of actions to bring forth against chemical plants that have contaminated the state's waters. Cases brought under the vicinage articles or an action of general negligence are typically the most successful. This success is likely due to the fact that these actions are grounded in tort law. Therefore, the elements that a plaintiff must prove to meet their burden have been thoroughly clarified by courts and are relatively straightforward. Additionally, some actions can be brought under federal statutes in order to demand adherence to applicable environmental regulations and standards.

In comparison to the actions based on tort law, it is more difficult for a plaintiff to succeed under many of these statutes given that their requirements are often construed stringently (and therefore create a higher barrier to bring suit). The actions discussed above provide varying forms of relief and are subject to different prescriptive periods, so the circumstances of an individual case may warrant some actions but not others. Ideally, victims, such as the residents of Mossville, Louisiana, should feel empowered by how many ways they can invoke Louisiana law to seek compensation for harm inflicted by polluters.

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Admittedly, Louisiana law still has room to grow. Reinstating punitive damages for environmental torts (former Article 2315.3) would create a more effective way for courts to deter chemical companies' reckless conduct as compared to compensatory damages alone. This would be a critical step toward achieving equity for those harmed by the conditions of their own environment, conditions over which they had no control. In a state where chemical manufacturing is so prevalent, our law and lawmakers must signal that human and environmental wellbeing is paramount.