

individual fired simply for refusing to do his job, but the court's opinion never reached the issue as formulated by plaintiff. Instead the court found that the joint venture's actions of which plaintiff had complained were not "possible environmental violations" within the meaning of the statute.

The court emphasized that La. R.S. 30:2027 is part of the Louisiana Environmental Quality Act, La. R.S. 30:2001-2423. This Act addresses the regulation and control of the discharge of pollutants. The court held that La. R.S. 30:2027 "was obviously intended to deal with violations of the type proscribed under the Louisiana Environmental Quality Act, *i.e.* the discharge of pollutants into the environment, and not violations of other laws of an environmental nature such as those protecting wildlife." Therefore, the dismissal by the trial court was affirmed.

Judge Shortess dissented. He asserted that part of the purpose of the Louisiana Environmental Quality Act was to unify the state's environmental protection laws, and that the broad language of La. R.S. 30:2027 in no way limited its applicability to possible violations of the Environmental Quality Act. He further stated that La. R.S. 30:2027 does indeed apply when the employee has complained only to his superior, and not reported the possible violations to the government.

STEVEN O'ROURKE

Magnolia Coal Terminal v. Phillips Oil Co., 576 So. 2d 475
(La. 1991)

Magnolia Coal Terminal brought an action for damages in state court against Phillips Oil Company (Phillips) as the successor to the company that originally drilled a now allegedly leaking oil well. Phillips motioned to remove the case to federal court but the case was remanded back due to a lack of complete diversity. Phillips then filed "restated" exceptions of no right and no cause of action, asserting that exclusive jurisdiction over disputes arising out of leaking wells, plugging, and cleaning of oil well sites was vested in the office of Commissioner of Conservation. Phillips also sought a stay of the judicial proceedings which was denied by the trial court. The Louisiana Appellate and Supreme Courts declined to exercise supervisory jurisdiction over the trial court's decision. Concurrently, at Phillips' request and pursuant to Louisiana Revised Statute 30:6(F), the Commis-

sioner of Conservation instituted the process for a public hearing. Magnolia Coal did not participate in these hearings.

On September 3, 1987, the district court found for the plaintiff and noted that the leaking well had not been properly plugged by Phillips' predecessor. The court awarded Magnolia damages that included the costs of properly plugging the well and restoration of the land. On March 11, 1988, the Commissioner of Conservation issued his findings that the well had been properly plugged and abandoned according to law. Some further cleanup remained, however, for which Phillips was to prepare and implement a plan. After these contradictory findings, the case was appealed to the court of appeals on the grounds that (1) proper jurisdictional authority rested with the Commissioner of Conservation under title 30 of the Louisiana Revised Statutes, and (2) because the trial court lacked jurisdiction, Magnolia had no cause of action for monetary relief. The appellate court held that the questions of whether the well was properly plugged, whether it was leaking, and which procedure or plan was proper for cleanup and remediation were delegated to the Commissioner by the legislature under title 30, section 4 of the Louisiana Revised Statutes. The judgment of the trial court was reversed and set aside, and plaintiff's suit for damages was dismissed.

The Louisiana Supreme Court reversed in part and affirmed in part the judgment of the court of appeals. The court stressed that the Commissioner of Conservation was given jurisdiction over site cleanup of abandoned and unused wells. However, because monetary damages are within the exclusive original jurisdiction of the courts, the Commissioner cannot award damages. Phillips' liability for damages arose out of the breach of a contractual obligation and was separate from its obligations to stop the oil leakage from the well. The supreme court, noting that the trier of fact could determine damages from soil pollution using its conventional knowledge and expertise, held that the damages could be determined before the Commissioner of Conservation made a final determination. The trial court's damage award of 2.1 million dollars was reinstated.

Further, the supreme court held that the Commissioner had infringed judicial authority by holding a hearing while this case was proceeding in the trial court. However, it ruled that the Commissioner has jurisdiction to monitor and supervise the plugging and abandonment of a well. Phillips, therefore, was

ordered to seek a new hearing at which time the court record and any additional evidence would be considered.

JANET L. WOODKA

II. FEDERAL CASE LAW

A. *The Comprehensive Environmental Response, Compensation, and Liability Act; The Superfund Amendments and Reauthorization Act*

Claussen v. Aetna Casualty & Surety Co., 754 F. Supp. 1576 (S.D. Ga. 1990)

Defendant, Aetna Casualty and Surety Company, sought a summary judgment against the plaintiff, Henry Claussen, to avoid payment of an insurance policy protecting damage to property. Claussen had contracted land he owned in Florida to the city of Jacksonville to be used as a landfill. In 1982, the Environmental Protection Agency (EPA), pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675 (1988), notified Claussen that it was investigating the release of hazardous materials from the landfill. Later, EPA determined that the ground water beneath the landfill had been contaminated by toxic substances. Claussen, alleging that Aetna, in bad faith, refused to pay the claim, sought to amend his complaint to recover attorney's fees and punitive damages. Aetna claimed it was not liable to its insured, Claussen, for these damages.

The court rejected Aetna's arguments in support of summary judgment. First, Aetna argued that an "owned property" exclusion clause contained in the insurance policy prevented recovery based solely on damages to Claussen's property. The court rejected this argument because, under the controlling law, Claussen did not own the ground water under his land. Further, the toxic dumping damaged not only Claussen's land but surrounding land and water. Second, Aetna argued that a "pollution exclusion" clause contained in the insurance policy excluded coverage for pollution-related property damage, unless the discharge of pollution was "sudden and accidental." The court rejected this argument because the Georgia Supreme Court had defined the term "sudden and accidental" to mean "unexpected and unintended" from the point of view of the insured. Because evidence existed that Claussen did not expect