

although North Shore was injured, it could not necessarily bring suit. The "best-placed plaintiff" should be the one to bring suit. Second, only the "principal entity actually hurt" by the action has the requisite standing to challenge the action. Finally, the court found that the "zone of interests" doctrine is applicable to environmental laws. Only those persons for whom a statute is designed to protect can seek relief under it. Environmental laws are designed to protect those harmed by pollution, not polluters. Although North Shore was injured, it was also a polluter, and hence, it did not have standing under the environmental statutes.

Furthermore, the court upheld the district court's dismissal of the suit under section 113(h) of CERCLA. The court addressed the question of whether the construction of a boat slip was a remedial measure. It held that if a measure is part of a remedial plan, and is reasonably related to the plan's objectives so as to be considered an organic element of the plan, then the measure is considered remedial within the meaning of section 113(h). The court determined that the boat slip fit this description and therefore, North Shore's suit was barred. Finally, the court found that because injury to North Shore was probable, EPA's assertion that sanctions should be imposed on North Shore for bringing a frivolous claim should be rejected.

ELAINE RUDEN

*Port Allen Marine Services v. Chotin*, 765 F. Supp. 887 (M.D. La. 1991)

Plaintiffs, Port Allen Marine Services and Chotin Transportation, brought this action against Joseph S. Chotin and his insurer, Morey & Companies, for cleanup costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675 (1988), and under various state causes of action. The insurer motioned to dismiss, claiming a lack of jurisdiction and a failure to state a claim upon which relief could be granted. The insurer's motion presented important issues regarding the right to sue an insurer directly, either under CERCLA or under the Louisiana Direct Action Statute, La. R.S. 22:655. The district court found that neither CERCLA nor the Louisiana Direct Action Statute allows direct actions against the insurer of an "owner or operator," and after dismissing the federal claim, the district court declined to exer-

cise pendent jurisdiction over the state law claims asserted against the insurer.

The court did not find insurers listed as potentially responsible parties under section 107(a) of CERCLA, nor did it agree with the plaintiffs that Mr. Chotin's insurer had contractually assumed the liabilities of a responsible party which might suffice to establish liability under this section. Instead, the district court found that Morey & Companies merely assumed liability for certain coverages within the policy. The court also rejected plaintiffs' argument that CERCLA's preservation of a responsible party's right to insurance under section 9607(e)(1) implied a permissive action directly against the insurer. While CERCLA did recognize direct actions against guarantors, the contribution claims brought here were against an insurer, and were not covered under section 9607(e)(1), which provided only for third party claims against bankrupt parties or parties not subject to federal jurisdiction.

The plaintiffs' attempt to apply Louisiana's Direct Action Statute to CERCLA claims was also rejected by the district court. While the goals of CERCLA might be furthered by requiring that the ultimate "payer" be party to the suit, CERCLA is a comprehensive federal law to be governed by federal law, not needing ad-hoc state law or judicial enhancements. The recent amendment by Congress allowing direct actions against guarantors in limited circumstances showed no intent to include insurers. The court also added that, even if an action under Louisiana's Direct Action Statute were permitted, the statute had already been held inapplicable for contribution claims. Given its disposal of the federal claims against Morey & Companies, the district court held that it lacked subject matter jurisdiction over the state claims against Morey & Companies. Even if the court possessed pendent claim jurisdiction over the insurer, significant issues were raised concerning the ability to maintain suits directly against an insurer under state environmental laws. The court held that these issues were more appropriate for consideration in state courts.

PATRICK SHAW