

# The CZMA Lawsuits

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An Overview of the Coastal Zone Management Act  
Suits Filed by Plaquemines and Jefferson Parishes

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## **The CZMA Lawsuits**

### **I. Introduction & Background**

On November 8, 2013 Plaquemines Parish filed twenty-one suits alleging violations of Coastal Zone Management (CZM) permits against various oil and gas companies in the 25th Judicial District for the Parish of Plaquemines, State of Louisiana. Three days later, Jefferson Parish followed in the footsteps of Plaquemines Parish, and filed seven similar suits against various oil and gas companies in the 24th Judicial District for the Parish of Jefferson on November 11, 2013.

The suits bring claims for alleged violations of Louisiana’s federally approved coastal zone management program – the State and Local Coastal Resources Management Act of 1978 (“SLCRMA”), La. R.S. § 49:214.21, *et seq.* Each suit covers a different so-called “Operational Area,” generally based on one or more oil and gas fields, and alleges that defendants have either violated Coastal Use Permits issued in the Operational Area or have performed activities without a required Coastal Use Permit.<sup>1</sup> In the petitions, the Parishes seek broad relief, including damages and remedies under the CZM statutes. More specifically the suits seek the costs of and/or actual restoration and remediation, costs and expenses of litigation, and reasonable attorneys’ fees. The suits claim that the Parishes have authority to bring these suits based on a provision of SLCRMA, La. R.S. § 49:214.36D, which allows a local government with an approved program to “bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the coastal zone for which a coastal use permit has not been issued when required or which are not in accordance with the terms and conditions of a coastal use permit.” Per the CZM statutes, civil liability and damages, actual restoration, sanctions, and reasonable attorneys’ fees may be imposed for violations of the permits. The suits also specifically disclaim a number of other claims, essentially limiting their stated claims to violations of SLCRMA and CZM permits.

### **II. Removal: Background & the Parties’ Arguments**

#### **A. Background**

During the week of December 20, 2013, Defendants removed all twenty-eight cases to the United States District Court for the Eastern District of Louisiana on a number of bases: diversity jurisdiction, maritime jurisdiction, Outer Continental Shelf Lands Act (“OCSLA”) jurisdiction, jurisdiction based on the Class Action Fairness Act (“CAFA”), jurisdiction under the Natural Gas Act (“NGA”), and federal enclave jurisdiction.<sup>2</sup> Shortly after removal of all 28

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<sup>1</sup> The CZM suits do not specify which permits have been violated, but do attach a list of permits “known to have been issued for work within the Operational Area.”

<sup>2</sup> All bases for removal were not asserted in every case. For purposes of this paper, this discussion focuses on the removal bases alleged in one case, *The Parish of Plaquemines v. Total Petrochemicals & Refining USA, Inc.*, as all bases for removal were asserted in this case, and this case is the lowest-docketed case in federal district court.

In addition, both NGA and CAFA were dropped as removal bases shortly after the removals were filed.

cases, Plaintiffs asked the courts to find that these cases were “related cases” pursuant to a local federal court rule, arguing that, because there is a “complete overlap of the ‘material part of the subject matter,’” and the cases involve “identical legal issues and very similar factual issues” the cases are related. Defendants responded to this claim, arguing that these cases were not “related” cases as defined under the rule and interpreting jurisprudence. Pursuant to Local Rule 3.1, the judge allotted to the lowest docket number case, here Judge Zainey in *The Parish of Plaquemines v. Total Petrochemicals & Refining USA, Inc.* (Federal Docket #13-6693), was called upon to decide whether the cases were related. Judge Zainey ruled that these 28 cases were not related cases, stating that “each case will ultimately be decided on unique underlying facts specific to each defendant’s independent activity.”

In mid-January 2014, Plaintiffs filed motions to remand in all 28 cases. This paper focuses on the arguments of the parties in one case, *The Parish of Plaquemines v. Total Petrochemicals & Refining USA, Inc.*, the lowest docketed removed case.

## **B. The Parties’ Arguments on the Motions to Remand**

### **a. Diversity Jurisdiction**

#### **i. Defendants’ Arguments**

Defendants argue that removal based on diversity jurisdiction is proper, as these permit enforcement actions against a number of defendants were improperly misjoined under the fraudulent misjoinder theory articulated by the Eleventh Circuit in *Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353 (11th Cir. 1996). As such, after severance of the improperly misjoined claims, complete diversity would exist between plaintiffs and defendants as to many of these newly-severed suits. Defendants argue that the permit enforcement claims do not share the requisite “community of interest” under Louisiana Code of Civil Procedure art. 463 – the article allowing for joinder of parties and claims.<sup>3</sup> In addition, the Defendants argue that the State of Louisiana<sup>4</sup> is not a real party in interest to these suits whose citizenship (or lack thereof) would destroy diversity. Defendants contend that, as the Parishes neither have express or implied authority to sue on behalf of the State, the State cannot be a real party in interest.

#### **ii. Plaintiffs’ Arguments**

The Parishes contend that the these permit enforcement claims, including those claims against non-diverse defendants, *are* properly joined such that diversity jurisdiction is destroyed. They contend

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<sup>3</sup> Defendants also claim that joinder was improper under FED. R. CIV. PROC. 20.

<sup>4</sup> The Parishes purport to bring suit individually as well as on behalf of the State of Louisiana.

that joinder is proper as all of the causes of action arise out of common issues of law and fact. Moreover, they contend that the practical necessities of fashioning a remedy makes joinder proper in this instance. The Parishes also claim that diversity is destroyed because the State of Louisiana is a real party in interest, as SLCRMA gives the Parishes the authority to sue on behalf of or act as agent for the State, and also gives the Parishes the authority to pursue claims for violations of uses of state concern – claims to which they contend the State is a real party in interest because it is a type of injury that the State should address. Finally, the Parishes contend that the State is a real party in interest as to those claims relating to uses of local concern because the State retains the ability to file enforcement actions related to local uses.

## **b. Maritime Jurisdiction**

### **i. Defendants' Arguments**

Removal is proper under general maritime law, Defendants contend, because the recent amendments to 28 U.S.C. § 1441, effective January 2012, permit removal of general maritime law claims, and the location and connection requirements of general maritime jurisdiction as outlined by the United States Supreme Court are met. Defendants admit that prior to the amendments, removal of general maritime law claims absent diversity was barred; however, they contend that the recent amendments to the removal statutes now allow removal of general maritime law claims because these amendments removed the provision of 1441 that courts had previously relied on in barring removal of admiralty claims absent diversity. To support their claim, Defendants point to cases which have found that removal of admiralty claims, even absent diversity, is proper. Defendants contend that general maritime jurisdiction exists as the location and connection tests are satisfied because: (1) the injuries suffered on land were caused by vessels (dredging vessels) on navigable waters; and (2) the alleged dredging activities are potentially disruptive to maritime commerce and dredging is a traditional maritime activity (or at the very least is substantially related to traditional maritime activity). Defendants' rebut Plaintiffs' argument that the court should abstain from exercising jurisdiction under the *Burford* abstention doctrine even if the court should find maritime jurisdiction is present by contending that *Burford* is a narrow exception and is inapplicable where plaintiffs (as they do here) seek monetary damages.

## **ii. Plaintiffs' Arguments**

Plaintiffs argue that: (1) removal of cases “into admiralty” has always been and remains improper despite recent revisions to 28 U.S.C. § 1441(b); and (2) even if removal into admiralty is allowed, these cases are not maritime cases as they do not meet the test for maritime tort jurisdiction outlined by the United States Supreme Court in *Grubart*. In support of their first argument, Plaintiffs contend that maritime cases cannot be removed because: (1) removal would interfere with plaintiffs’ right to a jury trial; (2) the savings-to-suitors clause expressly prohibits removal; and (3) that Congress’ intent in passing the Federal Courts Jurisdiction and Venue Clarification Act of 2011 that amended 28 U.S.C. § 1441(b) was not to allow removal of admiralty cases. In support of their second argument, Plaintiffs argue that the location test is not satisfied because most of the oilfield related dredging was associated with private access canals that are not considered navigable waters. Because the determination of connectivity turns on whether the activities that caused the alleged violations were in furtherance of a maritime activity, Plaintiffs argue that the connectivity element is not met because Defendants’ uses or activities were in furtherance of oil and gas exploration and production activities; these oil and gas activities are not traditional maritime activities. Plaintiffs additionally argue that, even if the court should find maritime jurisdiction exists, the *Burford* abstention doctrine should apply due to “concerns of sovereignty and comity.”

## **c. OCSLA Jurisdiction**

### **i. Defendants' Arguments**

Defendants claim that removal is proper under OCSLA because the action arises in connection with oil and gas operations on the Outer Continental Shelf and OCSLA itself does not contain a “situs” requirement. Defendants also claim that the Parishes’ alleged injuries would not have occurred “but for” OCS operations and the remedy requested by the Parishes would necessarily result in interruption and interference with OCS operations; thus they claim the exercise of OCSLA jurisdiction is proper.

### **ii. Plaintiffs' Arguments**

Plaintiffs contend that there *is* a situs requirement in order for the court to exercise OCSLA jurisdiction, and since none of the activities at issue in these suits occurred on the Outer Continental Shelf, the exercise of OCSLA jurisdiction in this instance would be

improper. Plaintiffs additionally support their argument that the exercise of OCSLA jurisdiction on removal is improper by contending that the remedies requested in their Petitions would not interfere with OCS operations.

#### **d. Federal Enclave Jurisdiction**

##### **i. Defendants' Arguments**

Defendants removed Case No. 13-6693 on federal enclave jurisdiction grounds, contending that, because the Plaintiffs' claims arise out of conduct in the Delta National Wildlife Refuge (hereinafter, "DNWR"), a federal enclave, the exercise of federal enclave jurisdiction is appropriate. Defendants claim that all three requirements for federal enclave jurisdiction are present, as the United States acquired the land for the purpose of erecting forts, magazines, arsenals, dockyards or other "needful" buildings and there is "some connection" between the complained-of activities and the DNWR, the Louisiana Legislature consented to the jurisdiction of the federal government, and there is a presumption that the federal government accepted exclusive jurisdiction, as the DNWR was acquired prior to 1940.

##### **ii. Plaintiffs' Arguments**

Plaintiffs argue that remand is proper under this ground because the Plaintiffs have properly pled out of federal enclave jurisdiction under the well-pleaded complaint rule and Defendants have not shown that the federal government has accepted jurisdiction as required.

### **III. Current Status**

As of September 15, 2014, all 28 cases remain pending before 10 judges in the United States District Court for the Eastern District of Louisiana, and defendants have been granted some form of extension to file responsive pleadings in all 28 cases until after a ruling on the motion to remand is made by Judge Zainey. Many judges have expressly deferred ruling on the motion to remand in the cases pending before them or have administratively closed the case until after Judge Zainey's decision in the *Total* suit. Oral argument on the motion to remand was heard in front of Judge Zainey in Case No. 13-6693 on July 2, 2014, and Judge Brown heard oral argument in the two cases pending before her on July 9. Both Judge Zainey and Judge Brown allowed post-hearing briefing – Judge Brown's post-hearing briefs for both Plaintiffs and Defendants were due on July 23, while Defendants filed their post-hearing brief in front of Judge Zainey on July 31 and Plaintiffs filed theirs on August 21.<sup>5</sup> The reply of Defendants is due

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<sup>5</sup> After post-hearing briefs were filed, Judge Brown entered orders in the two cases pending before her administratively closing the cases pending a decision by Judge Zainey on the motion to remand in Case No. 13-6693.

September 12, at which time Judge Zainey has indicated that he will take the matter under advisement.