

# Will the proposed legislative changes reign in legacy lawsuits and bring energy development back to Louisiana?

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APRIL 15, 2014

Legacy lawsuits unfortunately have become a way of life in Louisiana. Landowners with historic exploration and production operations (and speculators purchasing the rights to sue from prior landowners) line up for their chance to win the “Louisiana Environmental Lottery.” Gone are the days when the landowner and operator would resolve their differences on their own, or through the course of informal negotiations. Now, landowners (through their attorneys) rush to the courthouse in an effort to obtain large settlements and/or verdicts that are greatly disproportionate to what was ever contemplated as “damages” when the leases were originally executed.

There’s no denying that regulations governing exploration and production operations have evolved over time. And over time, environmental obligations concerning oil and gas operations have become more stringent. Simply put, many legacy lawsuits are about punishing historic operators for conducting oil and gas operations pursuant to the regulations of their time – and then holding them liable to the more stringent present-day standards. More and more, energy companies are deciding they don’t want to do business in Louisiana – for fear of legacy lawsuits.

This, in part, has led to the perception that Louisiana is a “judicial hellhole.” Couple that perception with the fact that oil and gas companies are choosing to invest in oil and gas plays within other states, and you quickly realize the economic impact that legacy lawsuits truly have on Louisiana’s economy.

For instance, David E. Dismukes, Ph.D of Louisiana State University’s Center for Energy Studies, developed a comprehensive report titled “The Impact of Legacy Lawsuits on Conventional Oil and Gas Drilling in Louisiana.” His findings, as they relate to oil and gas interests, are quite stunning. For instance, his research estimates that “legacy lawsuits have led to a loss of some 1,200 new wells, translating into a total statement reduction of about \$6.8 billion dollars in lost Louisiana drilling investments.” Dr. Dismukes also states:

Louisiana has simply become an increasingly difficult place for conventional oil and gas producers to operate. The factors contributing to this difficult environment include a challenging physical environment, as well as a number of permitting and regulatory requirements, increasing drilling costs, and a strong perception that Louisiana is a litigious state that subjects producers (past and current) to what many would consider significant legal obstacles.

Dr. Dismuke's findings are astounding, considering the oil and gas resurgence the United States is experiencing right now. The usual economic drivers would suggest that when energy prices are high, energy companies initiate drilling operations to develop additional reserves. In fact, many other states are experiencing an uptick in oil and gas exploration and production investment – while Louisiana has been in a steady decline. Certainly, there are a myriad of factors at play, but there's no denying the increase in legacy lawsuits filed in Louisiana has contributed to the decrease in energy development. Clearly, oil and gas companies have decided to invest their money in states with less hostile legal climates.

The Louisiana legislature currently has an opportunity to provide more certainty within legacy litigation. That certainty could eventually lead to additional investment in Louisiana's oil and gas sector. While the Louisiana legislature has been engaged in efforts to bring certainty to legacy litigation for almost a decade, it has yet to achieve a balance between industry and landowner interests. Indeed, each proposed bill to curb legacy lawsuits has been met with opposition and eventually legislative amendments – which have effectively left legacy litigation unchanged within courtrooms.

The current 2014 Legislative session, however, could be different. Governor Jindal announced before the legislative session that a deal has been reached with major stakeholders with regards to legacy lawsuit reforms. Both industry and landowner groups have tentatively reached a deal on how to change the legal process for cleaning-up environmental damages. The current proposal would spell out the types of damages that can be recovered in lawsuits and the standards for recovery. Yet, while a deal had been struck on the front end, the proposed agreement will still need to go through the legislative process in order to become law. This, unfortunately, could allow interests (including plaintiffs' attorneys) that were not included within the deal brokered by Governor Jindal to propose amendments to the proposed legislation, or effectively kill legislation before it comes up for a vote.

Only time will tell if Louisiana is truly serious about its energy future.

