KEAN MILLER

FROM MAIN STREET TO WALL STREET

KEAN, MILLER, HAWTHORNE, D'ARMOND, McCOWAN & JARMAN, LLP

Corbello: The Aftermath

by: G. William Jarman
and Pamela R. Mascari

The 51st Mineral Law Institute
Paul M. Hebert Law Center
Louisiana State University
Center of Continuing Professional Development
April 1-2, 2004

Corbello: The Aftermath

by G. William Jarman
and Pamela R. Mascari

I. The State of the Law Prior to *Corbello*[1]

A. Historical Methods to Valuate Property Damage

Louisiana law on the calculation of property damage awards in cases involving environmental pollution has undergone significant change in recent years. Historically, Louisiana courts have followed three approaches in arriving at property damage valuation: (1) the cost of restoration, if the thing damaged can be adequately repaired, (2) value differential, the difference in value prior to and subsequent to the damage, or (3) the cost of replacement new, less reasonable depreciation, if the value before and after the damage cannot be reasonably determined or if the cost of repair is more than the value.[2] [3] [4]

Generally, the third method of valuation was used only if the value before and after the damage could not be determined or if the cost of repairs exceeded the value of the property. Further,

---

[1] *Corbello v. Iowa Production Co.,* 2002-0826 (La. 2/25/03), 850 So.2d 686.

[2] *Mouton v. State*, 525 So. 2d 1136, 1143 (La. App. 1 Cir.) *writ denied*, 526 So. 2d 1112 (La. 1988)*; Coleman v. Victor,* 326 So. 2d 344, 347, n. 4 (La. 1976).

[3] As a general matter, one injured through the fault of another is entitled to full indemnification for the damages caused thereby under Louisiana Civil Code article 2315. In such a case, the obligation of the defendant is to indemnify the plaintiff--to put him in the position that he would have occupied if the injury complained of had not been inflicted on him. Consequently, when property is damaged through the legal fault of another, the primary objective is to restore the property as nearly as possible to the state it was in immediately preceding the damage. Accordingly, the measure of damage is the cost of restoring the property to its former condition. *Coleman,* at 346-347.

[4] *Mouton, supra,* involved a suit by a landowner-lessor against his lessee, an oilfield waste disposal operator, and various of the lessee's customers when wastes migrated to neighboring properties. The plaintiff appealed the lower court's finding that a claim for cleanup was part of a claim for damages. Plaintiff theorized that cleanup should be considered as a separate and independent cause of action. In the context of rejecting that argument, the Louisiana First Circuit Court of Appeal summarized the appropriate quantum analysis in the context of a property damage suit.

the courts routinely held that "where land had been rendered useless, the proper measure of damages is the lesser of either the market value of the property and severance damages minus any residual value or the cost of restoration of the property to its condition prior to damage."[5] Thus, if the land was rendered useless and the cost of restoration exceeded the value of the land, the owner of the property was limited to recovery of only the market value of the land.[6]

B. The *Roman Catholic Church* Decision

In 1993, the Louisiana Supreme Court expressed a new rule, adopting the rule set forth in Section 929 of Restatement (Second) of Torts (1977), which provides that damages should include the difference between the value of the land before and after the harm, or at the owner's election in an appropriate case, the cost of restoration that has been or may be reasonably incurred.[7] The comments to Section 929 provide that the costs of restoration are ordinarily allowable, but the courts will use diminution in value when the cost of restoration is disproportionate to the diminution in value, unless there is a reason personal to the owner for restoring the property to its original condition. In the latter case, damages will include the costs for repairs, even though that amount is greater than the total value of the property.

The Louisiana Supreme Court stated it this way:

> [A]s a general rule of thumb, when a person sustains property damage due to the fault of another, he is entitled to recover damages including the cost of restoration that has been or may be reasonably incurred, or, at his election, the difference between the value of the property before and after the harm. If, however, the cost of restoring the property in its original condition is disproportionate to the value of the property or economically wasteful, unless there is a reason personal to the owner for restoring the original condition or there is a reason to believe that the plaintiff will, in fact, make the repairs, damages are measured only by the difference between the value of the property before and after the harm.[8]

Stated differently, under *Roman Catholic Church*, Louisiana property damage claims based on fault were to be handled in the following manner:

---

[5] *Mouton, supra.*

[6] 525 So. 2d at 1143. *Accord, Ewell v. Petro Processors of Louisiana, Inc.*, 364 So. 2d 604 (La. App. 1 Cir. 1978) *writ denied*, 366 So. 2d 575 (La. 1979).

[7] *Roman Catholic Church of Archdiocese of New Orleans v. Louisiana Gas Service Co.*, 618 So. 2d 874 (La. 1993).

[8] *Id.,* at 879-880 (emphasis added).

a. Generally, the injured party is entitled to recover damages including the cost of restoration that has been or may reasonably be incurred.
b. However, at his option, the injured party may obtain the difference in value of the property before and after the harm.
c. If the cost of restoring the property to its original condition is disproportionate to the value of the property or economically wasteful, property damages are measured only by the difference between the value of the property before and after the harm, unless:
    i. There is a reason personal to the owner for restoring the property to its original condition, or
    ii. There is reason to believe the plaintiff has, or will, in fact make the repairs.

In *Roman Catholic Church*, the Louisiana Supreme Court awarded the Archdiocese the full cost of restoration of its low-income housing apartment complex, as the award met the above-described standards. The court held that the reason personal to the Archdiocese for its restoration was the Archdiocese's object to acquire and maintain the facility to provide housing for its low-income parishioners and the fact that the Archdiocese's ownership was conditioned upon the removal of the complex from commerce and provision of housing for two hundred poor families for a 15-year period. The court also noted that the Archdiocese was clearly entitled to recover the full cost of restoration because it had, in fact, made the repairs by replacing the building to its original condition.[9] The court stressed that in choosing between the cost of repair measure and some other measure of damages, it is important to know how the property is used and what interest in it is asserted, so that the measure can be adopted that will afford compensation for any legitimate use that the owner makes of his property.[10]

C. Cases Applying *Roman Catholic Church* Methodology

1. Instances Where Parties Were Juridical Strangers

Other courts applied *Roman Catholic Church* in awarding property damages. In *Mossy Motors, Inc. v. Sewerage and Water Board of City of New Orleans*,[11] a car dealership's showroom and offices were damaged by a public construction project. The dealership was held to be entitled to the cost of restoration, which was essentially the cost to rebuild and replace prior existing

---

[9] *Id*., at 880.

[10] *Id.*

[11] 753 So. 2d 269 (La. App. 4 Cir.), writ denied 749 So. 2d 638 (La. 1999).

buildings, since its business was "personal to the Mossy family," as it had operated its family business at the same location for three generations.[12]

In *Massie v. Cenac Towing Co., Inc.*,[13] a tug boat company was held liable for $30,500 in costs to restore 50 linear feet of levee damaged when a tugboat landed on the levee, even though per acre value of affected land was only $364. The landowner, a Georgia resident, was held to have a personal reason for restoration in that he had a hunting lodge on the property and breach of the levee would allow saltwater intrusion to a portion of property used for rice and crawfish farming.[14]

2. In Breach of Contract Cases

Other courts began to use the *Roman Catholic Church* analysis to support property damage awards in instances where a contract existed between the landowner and the defendant. For example, in *Abramson v. Florida Gas Transmission Co.,*[15] a property owner's claims for property damage caused by natural gas pipeline reconditioning was held to be limited to the difference between the value of the properties before and after the alleged harm by the contractor; the property owners were held not to be entitled to remediation damages. The approximate value of the properties was only $95,000, while remediation damages were estimated to reach $2.7 million. Furthermore, plaintiffs had no reason personal to them requiring restoration of property to original condition.[16]

In *St. Martin v. Mobil Exploration & Producing U.S., Inc.*,[17] plaintiffs purchased a 7,000 acre tract of property in coastal Louisiana for $245.00 per acre in 1992. Shortly thereafter, they sold all but a 2,400 acre tract to the Nature Conservancy for their approximate purchase price and donated $140,000 to the conservancy in support of a marsh wildlife refuge. In 1995, the landowners filed suit against two oil companies claiming that gaps in the spoil banks along canals dredged by the oil companies had allowed water to flow into and out of the marsh, causing erosion of the interior marsh. Plaintiffs made claims under the canal servitude agreements, the mineral lease, and tort theories.

Although the plaintiffs were not allowed to recover for marsh loss sustained prior to their purchase of the property, the court found that forty acres of the marsh had been damaged post-purchase and, of that amount, the oil companies were responsible for twenty-four acres of damage.

---

[12] *Id.*, at 279.

[13] 796 So. 2d 14 (La. App. 5 Cir. 2002).

[14] *Id.*, at 18.

[15] 909 F.Supp. 410 (E.D. La. 1995).

[16] *Id.*, at 420.

[17] 1999 WL 5671 (E.D. La.), *aff'd* 224 F.3d 402 (5th Cir. (La.) 2000).

(The court's allocation of "cause" was xixty percent oil companies and 40 percent natural causes.) The judge found plaintiffs' proposed restoration plans, however, to be excessive (refilling the entire marsh) and ordered additional briefing on the issue. The court eventually awarded the plaintiffs $240,000, or $10,000 an acre, for the restoration of their property.[18] Defendants appealed on several issues, including the reasonableness of the damage award under *Roman Catholic Church*.

The defendants argued that a $10,000 per acre award for property with a market value of $245 was unreasonable. The United States Fifth Circuit Court of Appeal recognized that *Roman Catholic Church* allowed restoration damages to exceed the property's value only where there was "a reason personal to the owner for restoring the original condition or there is a reason to believe that plaintiff will, in fact, make the repairs."[19] However, the court found that the plaintiffs had demonstrated a genuine interest in the health of the marsh by donating labor and resources to the cause. In addition, the plaintiffs lived adjacent to the marsh in question, had used it for recreational purposes, and had been involved in other marsh restoration projects. Defendants also argued that plaintiffs' commercial motives for buying the property should not be rewarded, but the court found that the plaintiffs demonstrated "a strong personal interest in the marsh and the possibility of an additional commercial interest does not foreclose damages under *Roman Catholic Church*."[20]

After the recent decision of *Corbello*, however, it is no longer necessary to demonstrate "a strong personal interest" in the property since, according to the Louisiana Supreme Court, a *Roman Catholic Church* analysis is not appropriate in breach of contract cases.

II. *Corbello*: Elimination of Reasonable Restraints on Property Damage Awards

A. Facts of *Corbello*

The *Corbello*[21] case involved the issue of restoration of portions of a 320-acre tract of land in the Iowa Field in Calcasieu Parish which was subject to both a mineral lease (1929) and a surface lease (1961). The surface lease contained a standard industry lease stipulation requiring the lessee to "reasonably restore the premises as nearly as possible to their present condition." The 320 acre tract had a total real estate market value of $108,000. After expiration of the surface lease, the landowners brought suit against their lessee to recover the cost of restoring the property to its original condition, seeking restoration damages for trespass for use of the surface after the surface lease expired, for allegedly unauthorized disposal of saltwater on the leased premises, and for the alleged poor condition of the land.

---

[18] *St. Martin*, 1999 WL 5671, at *1-2.

[19] *St. Martin,* 202 F.3d at 410.

[20] *St. Martin* at n. 11.

[21] *Corbello v. Iowa Production*, supra.

B. Action of the Lower Courts

Following a two and one-half week jury trial, the plaintiffs were awarded $33 million to restore their property, $28 million of which was for remediation of the Chicot aquifer, an award to a private citizen for a public harm. The Louisiana Third Circuit Court of Appeal affirmed all damages despite its inconsistency with the property's market value and, in so doing, extended the use of the *Roman Catholic Church* analysis to a situation where the lease agreement between the parties required only a "reasonable" restoration. The landowners had also asserted a tort claim, but it was not the focus of the Third Circuit's opinion.

C. Action of the Louisiana Supreme Court

When the Louisiana Supreme Court granted writs to consider the *Corbello* matter, many in the oil and gas industry were encouraged by the development. However, instead of correcting the inequities of the lower courts by limiting damages under a standard of reasonableness, the Louisiana Supreme Court affirmed the damage award and held that "the damage award for a breach of contract obligation to reasonably restore property need not be tethered to the market value of the property."[22] In affirming an award that was over 300 times the value of the property at issue, the Court put to rest the issue of whether or not a *Roman Catholic Church* analysis was appropriate in a breach of contract case. The Court concluded that "damages to immovable property under a breach of contract claim should not be governed by the rule enunciated in *Church*. We find that the contractual terms of a contract which convey the intentions of the parties, overrule any policy considerations behind such a rule limiting damages in tort cases."[23]

D. Important Practical Issue of Public Concern Ignored

Although the Court resolved the issue regarding the applicability and relevancy of the market value of property when determining an award of damages, the Court otherwise ignored an important issue exposed in *Corbello*. Specifically, in cases where a private litigant is awarded monetary damages for a public harm, i.e. damage to groundwater, how can the public be assured that the money will be used to rectify the public harm?[24]

III. Legislative Response to *Corbello*

A. Act No. 1166

In response to the *Corbello* decision and the potential that a private litigant could be awarded a sum for restoration/remediation of groundwater and choose not to use the money for that purpose,

---

[22] *Corbello* at 693.

[23] *Corbello* at 694-95.

[24] Groundwater is the property of the State of Louisiana. *Adams v. Grigsby*, 152 So. 2d 619, 622-624 (La. App. 2 Cir. 1963).

Act. No. 1166 was passed during the 2003 Louisiana legislative session. Louisiana Revised Statute 30:2015.1 now requires the Louisiana Department of Natural Resources (LDNR) and the Louisiana Department of Environmental Quality (LDEQ) to be notified in the event that any judicial demand includes a claim to recover damages for the evaluation and remediation of any contamination or pollution that is alleged to impact or threaten usable groundwater and provides those agencies a right of action to intervene in such a proceeding.[25] Among other protections, the statute requires the submission of plan(s) for the evaluation of remediation of the contamination of usable groundwater and the review of such plans by LDNR and DEQ and requires adoption of an approved plan.[26] The Act further prohibits a court from adopting a plan for remediation without first providing LDNR or LDEQ an opportunity to provide input with respect to the plan.[27]

Furthermore, and most importantly, the new statute requires that funds awarded for groundwater contamination be placed "exclusively in the registry of the court" to ensure that the public's groundwater is actually remediated or restored. The district court shall retain jurisdiction over remediation funds deposited in the registry of the court until the evaluation and remediation are completed, and, at that time, order any funds remaining in the registry to be returned to the depositor.[28] The Act is intended to be interpretive, remedial and procedural and applicable to all cases filed after August 1, 1993.

Although La. R.S. 30:2015.1 was intended to cure the windfall scenario sanctioned by the Supreme Court in *Corbello,* the fact that its application is limited to suits alleging damage to certain classes of groundwater has allowed landowners to avoid it by careful pleading. In fact, most, if not all, of the flurry of petitions that were filed in the wake of *Corbello* contain some limiting language that denies the applicability of La. R. S. 30:2015.1 and, more specifically, denies that it seeks any damages related to "usable ground water" as defined in that statute.

The complete text of La. R.S. 30:2015.1 is reproduced in Appendix A.

IV. Post-*Corbello* Decisions

A. *Hazelwood Farm, Inc. v. Liberty Oil & Gas Corp.*

The *Corbello* decision has been final for barely more than a year, so there are very few cases implementing its holding. One case that has followed the *Corbello* analysis in the context of upstream litigation is *Hazelwood Farm, Inc. v. Liberty Oil & Gas Corp.*[29] In *Hazelwood Farm*, the

---

[25]La. R.S. 30:2015.1(B).

[26]La. R.S. 30:2015.1(C).

[27]La. R.S. 30:2015.1(D).

[28]La. R.S. 30:2015.1(E).

[29]844 So. 2d 380 (La. App. 3 Cir. 2003).

plaintiff landowner presented claims in contract and tort against the defendant oil company for alleged damages due to operations on the property. In the contract claim arising from an alleged bad faith breach of a 1926 oil and gas lease, the plaintiff was awarded $2 million. On the tort claim, the jury found 60% third party fault (a subsequent operator) and determined that there was no reason to believe the plaintiff would restore the land and there was no reason personal to the plaintiff for such restoration. The jury concluded that the maximum value the plaintiff could recover in tort could not exceed $304,000, the value placed on the property by the jury. Plaintiff was required to select his amount of recovery under the multiple theories raised so, of course, the contract award of $2 million was selected. Relying on *Corbello* and a provision in the lease which provided that the defendant "was responsible for all damages caused by [its] operations," the Third Circuit affirmed the verdict in its entirety since an award based on a breach of contract "need not be tethered to the value of the property."[30]

B. *Simoneaux v. Amoco Production Company*

Recently, *Simoneaux v. Amoco Production Company*[31] was decided by the Louisiana First Circuit Court of Appeal. In *Simoneaux*, landowners brought suit claiming property damages allegedly caused by exploration and production activities between 1957 and 1995. Landowners complained that the property was contaminated with NORM and sought damages for restoration/remediation of the property and fear of cancer, as well as punitive damages. Restoration/remediation plans proposed by plaintiffs' experts were in the tens of millions, while defendants' experts testified that the amount necessary for the cleanup was $375,000 for restoration/remediation damages. Following a two-week jury trial, the jury found that some remediation was warranted and awarded $375,000 in that regard—the exact amount suggested by defendants' experts. Plaintiffs filed a motion for a judgment notwithstanding the verdict. The judge granted plaintiffs' motion and increased the damage award to $12,970,440.

The Louisiana First Circuit Court of Appeal reversed the trial court's decision to overturn the jury's damage award and reinstated the jury verdict. The Court stated that "[w]hile there may have been some minor inconsistencies in the jury's liability determinations, the trial judge was required, in order to overturn the jury's damage verdict, to find that a reasonable jury could not have awarded plaintiffs the sum of $375,000.00. The evidence established, however, that this finding was entirely reasonable. . . ."[32] The court further reasoned that the defense experts refuted the plaintiffs' expert testimony, and that the jury weighed the evidence and chose to accept the credibility of the defense's witnesses. The court held that, "[b]ecause a reasonable jury could clearly have found that only one site required remediation and the cost of that cleanup was $375,000.00, the judge was not empowered to substitute his own evaluation of the evidence to overturn the damage award."[33]

---

[30] *Hazelwood*, at 387, *citing Corbello*.

[31] 860 So. 2d 560 (La. App. 1 Cir. 2003).

[32] *Id.*, at *23.

[33] *Id.*, at *24.

Although *Simoneaux* was decided in the immediate context of *Corbello* and involved related upstream environmental issues, the First Circuit was actually able to reach its decision without much reliance on or consideration of *Corbello*. The *Simoneaux* decision is not yet final as plaintiffs have sought review by the Louisiana Supreme Court.

V. The Legacy of *Corbello*

Not surprisingly, numerous suits claiming *Corbello*-like damages have been filed in the months following the Supreme Court's controversial decision.[34] Absent contractual language differing from that at issue in the lease in *Corbello* or additional corrective measures by the legislature, the battle in these cases will primarily focus on what constitutes a "reasonable" restoration of former oil-field properties.

---

[34]Some of the "copycat" suits include: *Edward T. Weeks, et al. v. Shell Oil Co., et al.,* Dkt. No. 100988-A, 16th Judicial District Court for the Parish of Iberia; *Nolvey Stelly, Jr., et al. v. Exxon Mobil Corp., et al.*, Dkt. No. 38011, 18th Judicial District Court for the Parish of Pointe Coupee; *Nolan A. Lebouef, et al. v. Shell Oil Co., et al.*, Dkt. No. 04-1663, Civil District Court for the Parish of Orleans; *J. Pauline Duhe, Inc. v. Texaco Inc., et al.*, Dkt. No. 101,227, 16th Judicial District Court for the Parish of Iberia; *John Germany, et al. v. Texaco Inc., et al.*, Dkt. No. 101775, 16th Judicial District Court for the Parish of Iberia; *Earlene Gibson King, et al. v. Pennzoil Exploration & Production Company, et al.*, Dkt. No. 47730, 1st Judicial District Court for the Parish of Caddo; *Paul Tyson v. Pennzoil Exploration & Production Company, et al.*, Dkt No. 477329, 1st Judicial District Court for the Parish of Caddo; *Harry Bourg Corp. v. Exxon Mobil Corp., et al.*, Dkt. No. 140749, 32nd Judicial District Court for the Parish of Terrebonne.

APPENDIX A

LSA-R.S. 30:2015.1

Title 30. Minerals, Oil, and Gas and Environmental Quality
Subtitle II. **Environmental Quality,** Chapter 2. **Department of Environmental Quality**

§ 2015.1. Purpose; remediation of usable ground water

A. The legislature hereby finds and declares that Article IX, Section 1 of the Constitution of Louisiana **mandates that the natural resources of the state, including water, are to be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people and further mandates that the legislature enact laws to implement this policy.**

B. Notwithstanding any law to the contrary, upon the filing of any litigation, action, or pleading by any plaintiff in the principal demand, or his otherwise making a judicial demand which includes a claim to recover damages for the evaluation and remediation of any contamination or pollution that is alleged to impact or threaten usable ground water, such plaintiff filing same shall provide written notice by certified mail, return receipt requested, which notice shall contain a certified copy of the petition in such litigation, to the state of Louisiana through both the Department of Natural Resources and the Department of Environmental Quality. To the extent that any such litigation or action seeks to recover damages for the evaluation and remediation of any contamination or pollution that is alleged to impact or threaten usable ground water, the Department of Natural Resources or the Department of Environmental Quality, in accordance with their respective areas of constitutional and statutory authority and regulations adopted pursuant thereto, shall have the right to intervene in such litigation or action in accordance with the Louisiana Code of Civil Procedure. Such department shall not have the right to independently assert a plea for damages to usable ground water beyond that stated by the plaintiff in the principal demand. However, nothing in this Section shall diminish the authority of the departments from independently bringing any civil or administrative enforcement action. No judgment or order shall be rendered granting any relief in such litigation, nor shall the litigation be dismissed, without proof of notification to the state of Louisiana as set forth in this Subsection.

C. (1) If, prior to judgment on the merits, a party admits responsibility or the court makes a determination that contamination of usable ground water exists which poses a threat to the public health, and that evaluation or remediation is required to protect usable ground water and determines the responsible party, the court shall either order the responsible party or a court-appointed expert to develop a plan for evaluation or remediation of the contamination. The court shall also consider any plan submitted by the plaintiff. The court shall order the Department of Natural Resources or the Department of Environmental Quality to respond to any plan submitted within sixty days from the date of submission.

(2) Within sixty days of the submission of a plan as provided in Paragraph(C)(1), any other party may file written objections to or request modification of the plan or submit an alternative plan. If proposed modifications to the plan or an alternative plan is filed by any other party, the court shall order the Department of Natural Resources or the Department of Environmental Quality to respond within sixty days from the date of submission.

(3) After hearing, the court shall adopt or structure a plan which the court determines to be the most feasible plan to evaluate and remediate the contamination and protect the usable ground water consistent with the health, safety, and welfare of the people. Upon adoption of the plan, the court shall order the responsible party to fund implementation of the plan and shall order the estimated cost of implementation deposited in the registry of the court.

(4) No plan shall be adopted by the court without the court having provided the Department of Natural Resources or the Department of Environmental Quality an opportunity to provide input into the formulation of the plan and without the court having given consideration to any input provided by the departments.

D. After a trial on the merits, if the court makes a determination that contamination exists which poses a threat to public health as to which evaluation or remediation is required to protect usable ground water and determines the party responsible, the court shall render judgment adopting the plan which the court determines is the most feasible plan to evaluate or remediate the contamination and protect the usable ground water consistent with the health, safety, and welfare of the people. To the extent the judgment requires the evaluation or remediation to protect usable ground water, the court shall order the responsible party to deposit the estimated cost to implement the plan in the registry of the court. The court shall order the Department of Natural Resources or the Department of Environmental Quality to respond to any plan submitted within sixty days from the date of submission. No plan shall be adopted by the court without the court having provided the Department of Natural Resources or the Department of Environmental Quality an opportunity to provide input into the formulation of the plan and without the court having given consideration to any input provided by the departments.

E. (1) Whether or not the Department of Natural Resources or the Department of Environmental Quality becomes a party, and except as provided in Subsection I, all damages or payments in any civil action, including interest thereon, awarded for the evaluation and remediation of contamination or pollution that impacts or threatens to impact usable ground water shall be paid exclusively into the registry of the court as provided in this Section.

(2) The district court may allow any funds to be paid into the registry of the court to be paid in increments as necessary to fund the evaluation and remediation. In any instance in which the court allows the funds to be paid in increments, whether or not an appeal is taken, the court shall require the posting of a bond for the implementation of the plan of remediation in such amount as provided by and in accordance with the procedures set forth for the posting of suspensive appeal bonds.

(3) The court shall issue such orders as may be necessary to ensure that any such amount is actually expended for the evaluation and remediation of the contamination of the usable ground water for which the award or payment is made.

(4) In all such cases, the district court shall retain jurisdiction over the funds deposited and the party cast in judgment until such time as the evaluation and remediation is completed. The court shall, on the motion of any party or on its own motion, order the party cast in judgment to deposit additional funds into the registry of the court, if the court finds the amount of the initial deposit insufficient to complete the the evaluation or remediation and, upon completion of the evaluation and remediation, shall order any funds remaining in the registry of the court to be returned to the depositor.

F. (1) In any civil action in which a party is adjudicated responsible for damages or payments for the evaluation and remediation of contamination or pollution that impacts or threatens to impact usable ground water, the party or parties providing evidence, in whole or in part, upon which the judgment is based shall be entitled to recover from the party cast in judgment, in addition to any other amounts to which they may be entitled, all costs, including expert witness fees and reasonable attorney fees attributable to producing that portion of evidence that directly relates to the claims of contamination or pollution that impacts or threatens to impact usable ground water.

(2) In any civil action in which the Department of Natural Resources or the Department of Environmental Quality or its employees are parties or witnesses, provide evidence, or otherwise contribute to the determination of responsibility or evaluation or remediation, such agency shall be entitled to recover from the party cast in judgment all costs, including evaluation and review costs, expert witness fees, and reasonable attorney fees.

G. Any judgment adopting a plan of evaluation or remediation of usable ground water pursuant to this Section and ordering the responsible party to deposit funds for the implementation thereof into the registry of the court pursuant to this Section shall be considered a final judgment pursuant to the Code of Civil Procedure for purposes of appeal. The review or appeal of any judgment which consists in whole or in part of an order adopting a plan of evaluation or remediation of usable ground water shall be heard with preference and on an expedited basis.

H. The provisions of this Section are intended to ensure evaluation and remediation of usable ground water. When the court does not find contamination or pollution or a threat of contamination or pollution to usable ground water, the court may dismiss the Department of Natural Resources and the Department of Environmental Quality from the litigation.

I. This Section shall not preclude an owner of land from an award for personal injury or damage suffered as a result of contamination that impacts or threatens usable ground water. Nor shall this Section preclude an owner of land from an award for damages to or for remediation of any other part of the surface or subsurface of his property and any award granted in connection therewith shall not be paid into the registry of the court, but shall be made directly to the owner of the land. This Section shall not preclude a judgment ordering

damages for or implementation of additional remediation in excess of the requirements of the Department of Natural Resources or Department of Environmental Quality as may be required in accordance with the terms of an expressed or implied contractual provision. This Section shall not be interpreted to create any cause of action.

J. For the purposes of this Section, the following terms shall have the following meanings:

(1) "Usable ground water" shall mean any ground water defined as Groundwater Classification I or Groundwater Classification II under the terms of the Risk Evaluation Corrective Action Program (RECAP) regulations promulgated by the Louisiana Department of Environmental Quality and in effect on January 1, 2003.

(2) "Evaluation and remediation" shall include but not be limited to investigation, testing, monitoring, containment, prevention, or abatement.

K. The Department of Natural Resources and the Department of Environmental Quality shall jointly establish rules and procedures for the receipt, evaluation, and approval or modification of plans for evaluation or remediation. The rules established by the agencies shall be based upon risk- based standards sufficient to protect human health and the environment.

Added by Acts 2003, No. 1166, § 1, eff. July 2, 2003**.**