

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

RE: Docket Number 2002-CA-1050

WAYNE SIMONEAUX, ET AL

-- Versus --

AMOCO PRODUCTION COMPANY, NEWPARK
RESOURCES, D/B/A NEW PARK ENVIRONMENTAL
SERVICES, JOLEN OPERATING COMPANY AND SOUTH
OAK PRODUCTION COMPANY

23rd Judicial District Court
Case #: 23925
Assumption Parish

On Application for Rehearing filed 09/29/2003, Amended Application filed 10/09/2003.

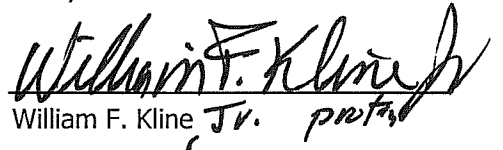
Rehearing DENIED

SEE WRITTEN REASONS ATTACHED.



Frank Foil

Brady M. Fitzsimmons



William F. Kline, Jr. *pro se*

*Fitzsimmons, J dissents in part
and agrees in part.
See Attached reasons*

Filed _____



Christine L. Crow, Clerk

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2002 CA 1050

WAYNE SIMONEAUX, ET AL

VERSUS

AMOCO PRODUCTION COMPANY, NEWPARK RESOURCES D/B/A
NEW PARK ENVIRONMENTAL SERVICES, JOLEN OPERATING
COMPANY,
AND SOUTH OAK PRODUCTION CO.

CONSOLIDATED WITH:

DIANE SIMONEAUX ALEXANDER

VERSUS

AMOCO PRODUCTION COMPANY, ET AL

CONSOLIDATED WITH:

NANCY SIMONEAUX ALEXANDER

VERSUS

AMOCO PRODUCTION COMPANY, ET AL

WRITTEN REASONS

On September 26, 2003, this court rendered judgment in **Simoneaux v. Amoco Production Company**, 2002-1050 (La. App. 1 Cir. 9/26/03), reinstating a jury verdict that awarded the plaintiffs the sum of \$375,000.00 for remediation of one site on which oil and gas exploration activities had been conducted. In so doing, this court found that the evidence reasonably supported the jury's acceptance of defense witnesses testimony that: (1) there was no hazardous contaminant at any of the seven sites involved in the litigation posing any risk of harm; (2) the only constituent presenting any problem at the site was excess salt; and (3) the only site requiring remediation was Simoneaux 1, which, according to defense witness Michael Pisani, would cost \$375,00.00.

The Simoneaux plaintiffs filed an application for a rehearing challenging the correctness of this court's decision, as well as two motions to remand. They urged that this court was obligated to remand the matter to the trial judge for a determination of an appropriate remediation plan. In support thereof, the Simoneaux plaintiffs rely on Act 1166 of 2003, which enacted La. R.S. 30:2015.1, to provide a set of procedures to be followed in litigation wherein the plaintiffs seek "to recover damages for the evaluation and remediation of any contamination or pollution that is alleged to impact or threaten usable ground water." La. R.S. 30:2015.1B. The act provides that it is to be applied both procedurally and retroactively to cases filed after August 1, 1993.

The Simoneaux plaintiffs contend that the trial court made a determination that contamination existed which poses a threat to public health requiring evaluation or remediation to protect usable ground water, thereby triggering the procedural requirements of La. R.S. 30:2015.1D. That provision requires that when a court has made such a determination, it adopt the most "feasible plan" to protect usable ground water, after providing the Department of Natural Resources or the Department of Environmental Quality an opportunity to provide input into the formulation of the plan. Therefore, plaintiffs urge, this court must remand the case so that the trial court may receive and examine plans from all parties and DNR and DEQ, and then adopt the most feasible plan to protect usable ground water.

We disagree. Part D requires a finding by a court that contamination exists which poses a threat to public health requiring an evaluation or remediation to protect usable ground water. A finding of liability by the jury does not equate to ground water contamination or automatically trigger the provisions of the Act. There has not been a judicial determination that contamination exists at Simoneaux 1 which poses a threat to the public health or to usable ground water. Therefore,

Part D does not apply, and we hereby deny plaintiffs' motion for remand on this ground, as well as the amended application for rehearing.

Based on the foregoing, the application for rehearing is denied, and the motion to remand filed October 9, 2003, is denied. Amoco's motion for reconsideration of this court's decision allowing plaintiffs to file a supplemental brief is likewise denied.

SIMONEAUX

STATE OF LOUISIANA

VERSUS


COURT OF APPEAL

FIRST CIRCUIT

AMOCO PRODUCTION COMPANY, ET AL

2002 CA 1050

ON APPLICATION FOR REHEARING



Fitzsimmons, J., respectfully disagrees with the majority's decision not to remand. In my opinion, the trial court's findings concerning the groundwater were sufficient to trigger La. R.S. 30:2015.1D. In all other respects, I agree with the denial of the various motions for re-hearing.