

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**ANH NGOC VO, NGA VO AND KURTIS
TINH VO**

VERSUS

CHEVRON U.S.A., INC. ET AL.

CIVIL ACTION NO.

SECTION:

JUDGE:

MAGISTRATE:

NOTICE OF REMOVAL

NOW INTO COURT, through undersigned counsel, come defendants, Shell Oil Company and Shell Pipeline Company LP (hereinafter referred to as "Shell"), who hereby remove this lawsuit to this Honorable Court, and aver the following:

I.

On or about April 19, 2012, plaintiffs, Anh Ngoc Vo, Nga Vo and Kurtis Tinh Vo, filed a Petition for Damages in the 25th Judicial District Court, Parish of Plaquemines, State of Louisiana, against Chevron U.S.A., Inc., Chevron Pipeline Company, ExxonMobil Oil Corporation, ExxonMobil Pipeline Company, ExxonMobil Production Company, the State of Louisiana, Shell Oil Company, Shell Pipeline Company LP, Plains Pipeline, L.P., Plains Marketing, L.P. and Plains All American Pipeline, L.P. entitled, "*Anh Ngoc Vo, Nga Vo and Kurtis Tinh Vo versus Chevron U.S.A., Inc. Chevron Pipeline Company, ExxonMobil Oil Corporation, ExxonMobil Pipeline Company, ExxonMobil Production Company, the State of Louisiana, Shell Oil Company, Shell Pipeline Company LP, Plains Pipeline, L.P., Plains Marketing, L.P. and Plains All American Pipeline, L.P.*" No.59-600, Division "A." A copy of plaintiffs' Petition and Citations are attached hereto as Exhibit "A," as required by 28 U.S.C. § 1446(a). These are the only pleadings served on Shell and defendants, as of this time.

II.

Plaintiffs are citizens of and domiciled in the State of Louisiana.

III.

Defendant, Shell Oil Company, is a corporation domiciled in the State of Delaware and which has its principal place of business in Houston, Texas. Shell Oil Company's appointed agent for service of process, CT Corporation System, was served with the Petition on April 30, 2012.

IV.

Defendant, Shell Pipeline Company LP, is a foreign limited partnership which is not domiciled and incorporated in the State of Louisiana nor has its principal place of business in the State of Louisiana. Shell Pipeline Company LP's limited partner is Shell Transportation Holdings LLC, which is a foreign limited liability company. Shell Pipeline Company LP's general partner is Shell Pipeline GP LLC, which is also a foreign limited liability company. Shell Pipeline GP LLC's and Shell Transportation Holdings LLC's sole member is Equilon Enterprises LLC which is a foreign limited liability company. Equilon's members are SOPC Holdings West LLC, a foreign limited liability company, and TMR Company, a foreign corporation who is not domiciled and incorporated in the State of Louisiana nor has its principal place of business in the State of Louisiana. SOPC Holdings West LLC's members are Shell Oil Company, a foreign corporation who is not domiciled and incorporated in the State of Louisiana nor has its principal place of business in the State of Louisiana, and Shell Oil Products Company LLC, a foreign limited liability company.

V.

Defendant, Chevron U.S.A., Inc. is a foreign corporation which is not domiciled and incorporated in the State of Louisiana nor has its principal place of business in the State of Louisiana. Chevron U.S.A., Inc. was served with the Petition on April 30, 2012.

VI.

Defendant, Chevron Pipeline Company, is a foreign corporation which is not domiciled and incorporated in the State of Louisiana nor has its principal place of business in the State of Louisiana. Chevron Pipeline Company was served with the Petition on April 30, 2012.

VII.

Defendant, ExxonMobil Oil Corporation, is a corporation domiciled in the State of New York and its principal place of business is not in the State of Louisiana. ExxonMobil Oil Corporation was served with the Petition on April 30, 2012.

VIII.

Defendant, ExxonMobil Pipeline Company, is a corporation domiciled in the State of New Delaware and its principal place of business is not in the State of Louisiana. ExxonMobil Pipeline Company was served with the Petition on April 30, 2012.

IX.

Defendant, ExxonMobil Production Company, is a corporation domiciled in the State of New Jersey and its principal place of business is not in the State of Louisiana. ExxonMobil Production Company was served with the Petition on April 30, 2012.

X.

Defendant, Plains Pipeline, L.P., is a foreign limited partnership which is not domiciled and incorporated in the State of Louisiana nor has its principal place of business in the State of Louisiana. Plains Pipeline's limited partner is Plains Marketing, L.P., which is also a foreign limited partnership. Plains Pipeline, L.P.'s general partner is Plains Marketing GP Inc., which is not domiciled and incorporated in the State of

Louisiana nor has its principal place of business in the State of Louisiana. Plains Pipeline, L.P. was served with the Petition on April 30, 2012.

XI.

Defendant, Plains Marketing, L.P., is a foreign limited partnership which is not domiciled and incorporated in the State of Louisiana nor has its principal place of business in the State of Louisiana. Plains Marketing's limited partner is Plains All American Pipeline, L.P., which is also a foreign limited partnership. Plains Marketing, L.P.'s general partner is Plains Marketing GP Inc., which is not domiciled and incorporated in the State of Louisiana nor has its principal place of business in Louisiana. Plains Marketing, L.P. was served with the Petition on April 30, 2012.

XII.

All defendants properly joined have consented to this removal.

XIII.

The State of Louisiana was named as defendant in this action by the plaintiffs. However, Shell contends that the State of Louisiana was improperly joined by the plaintiffs. Therefore, the State of Louisiana is not to be considered for diversity purposes based upon this improper joinder nor is their consent necessary for this removal.

XIV.

Improper joinder is a narrow exception to the rule of complete diversity. Kemp v. CTL Distribution, Inc., 440 Fed.Appx. 240, 244 (5th Cir. 2011). To establish improper joinder, the removing party bears the burden of showing the plaintiff's inability to establish a cause of action against the non-diverse party in state court. To do so, the removing party must demonstrate either: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court. Kemp at 244.

XV.

Using the second method of establishing improper joinder, the test is whether the defendant has demonstrated that there is no possibility of recovery by the plaintiff against an in-state defendant, which stated differently means that there is no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant. The district court may conduct a Rule 12(b)(6) -type analysis to decide whether the plaintiff has a reasonable basis for recovery under state law. The district court may also pierce the pleadings in the cases in which the plaintiff has stated a claim, but has misstated or omitted discrete facts that would determine the propriety of joinder. In these cases, the district court may conduct a summary inquiry, but only to identify the presence of discrete and undisputed facts that would preclude the plaintiff's recovery against the in-state defendants. Id.

XVI.

In their Petition for Damages, the plaintiffs seek to impose liability on the State of Louisiana by alleging that a pipeline, which their fishing vessel, allegedly, struck, was owned, operated, placed, maintained and in the care, custody and control of the State of Louisiana. Further, the plaintiffs seek to impose liability on the State of Louisiana by alleging that the State violated governmental regulations and laws governing the placement, maintenance, repair and monitoring of the pipeline. Finally, the plaintiffs allege the State of Louisiana, either intentionally and/or negligently refused and/or failed to enforce governmental rules, regulations and statutes, concerning the dereliction, abandonment and/or removal of ruined and dangerous hydrocarbon related structures placed in waterways of this State.

XVII.

However, none of the causes of action brought by the plaintiffs against the State of Louisiana are remotely viable.

XVIII.

Under applicable jurisprudence, in order to impose liability on the State under their causes of action, the plaintiffs will have to show the State had ownership, custody, control or garde over the pipeline. Giorgio v. Alliance Operating Corp., 05-0002 (La. 2006) 921 So.2d 58 and Price v. Tenneco Oil Company, (La.App. 3rd Cir. 2008) 996 So.2d 1260. However, the pipeline the plaintiffs allege to have allided with is an active pipeline-- which means an oil and gas exploration company has erected and has ownership of the pipeline-- not the State. Therefore, the State does not have ownership, custody, care and/or garde over the pipeline and cannot be liable to the plaintiffs.

XIX.

Further, Louisiana courts have held that the mere fact that the State engages in regulatory activity does not make it liable. Giorgio v. Alliance Operating Corp., 05-0002 (La. 2006) 921 So.2d 58, 73-74. Therefore, the plaintiffs' allegations of the State being liable based upon government regulations, and their enforcement or non-enforcement, are also not viable.

XX.

The plaintiffs have brought similar allegations against Plains All American Pipeline, L.P. However, Plains American Pipeline, L.P. has nothing to do with nor performed any drilling or pipeline operations in the vicinity or area of plaintiff's accident and, therefore, could not have been the cause of plaintiff's accident. Therefore, the plaintiffs will be unable to maintain any causes of action against them.

XXI.

Therefore, this Honorable Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 based upon diversity of citizenship. Accordingly, removal is proper pursuant to 28 U.S.C. §1441(a).

XXII.

The following is an explanation of the basis for diversity jurisdiction:

- a. Complete Diversity: There is complete diversity between the parties, as plaintiffs are citizens of the State of Louisiana and defendants, Chevron U.S.A., Inc., Chevron Pipeline Company, ExxonMobil Oil Corporation, ExxonMobil Pipeline Company, ExxonMobil Production Company, Shell Oil Company, Shell Pipeline Company LP, Plains Pipeline, L.P. and Plains Marketing, L.P., including their constituent members and their members, are domiciled/incorporated and have principal places of business in states other than Louisiana.
- b. Jurisdictional Amount:
 - 1) Pursuant to 28 U.S.C. §1332(a), the jurisdictional amount in a diversity case is \$75,000.00, exclusive of interest and costs.
 - 2) In the Petition for Damages, the plaintiffs have not prayed for a specific amount of damages. However, plaintiffs' Petition for Damages makes it clear that they seek damages in excess of \$75,000.00 exclusive of interest and costs given that they are claiming damages for personal injuries and property damage, as well as punitive damages, against Shell and the other defendants.
 - 3) In the In such a diversity case, the removing defendant must prove by a preponderance of evidence that the amount in controversy exceeds \$75,000. The defendant may make this showing in either of two ways:
 - (i) by demonstrating that it is "facially apparent" that the claims are likely above \$75,000, or
 - (ii) by setting forth facts in controversy that support a finding of the requisite amount. Simon v. Wal-Mart Stores, Inc. 193 F.3d 848, 850 (5th Cir. 1999).

- 4) If a defendant in a Louisiana suit can produce evidence sufficient to constitute a preponderance showing that, regardless of the style or wording of the demand, the amount in controversy actually exceeds the jurisdictional threshold, that Louisiana case will then resemble any other amount-in-controversy case, bringing into play the foundational rule of removal jurisdiction: The plaintiff can defeat diversity jurisdiction only by showing to a 'legal certainty' that the amount in controversy does not exceed \$75,000.00. Grant v. Chevron Phillips Chemical Co., 309 F.3d 864, 868 (5th Cir. 2002).
 - 5) Here, it is facially apparent from the Petition for Damages that the plaintiff's claim is well above the jurisdictional amount. (See Exhibit "A", ¶ XII and ¶ XIII).
- c. Because the elements of complete diversity and jurisdictional amount are met, this Court has diversity jurisdiction pursuant to 28 U.S.C. §1332.

XXIII.

The 25th Judicial District Court for the Parish of Plaquemines, State of Louisiana, is located within the jurisdiction of the Eastern District of Louisiana pursuant to 28 U.S.C. § 98(a). Therefore, venue is proper in accordance with 28 U.S.C. §1441 (a) because it is the district and division embracing the place where such action is pending.

XXIV.

Copies of this Notice of Removal are being served on opposing counsel and being filed with the Clerk of Court of the 25th Judicial District Court, Parish of Plaquemines, State of Louisiana.

XXV.

Based on the foregoing, this Honorable Court has removal jurisdiction over this action based on

diversity pursuant to 28 U.S.C. §1332 and §1441(a).

WHEREFORE, Shell Oil Company and Shell Pipeline Company LP, hereby remove the above action, now pending against it in the 25th Judicial District Court, Parish of Plaquemines, State of Louisiana, to the United States District Court for the Eastern District of Louisiana.

Respectfully Submitted:

/s/ José R. Cot

TIMOTHY P. HURLEY, T.A. (LSBA #1976)

JOSÉ R. COT (LSBA #18852)

DANIEL R. ESTRADA (LSBA #26632)

MAGINNIS & HURLEY, APLC

One Canal Place

365 Canal Street, Suite 2750

New Orleans, Louisiana 70130

Telephone: (504) 524-5353

Telefax: (504) 524-5403

**ATTORNEYS FOR DEFENDANTS,
SHELL OIL COMPANY AND SHELL
PIPELINE COMPANY LP**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon counsel for all parties herein via electronic mail, this 23rd day of May, 2012:

Wayne W. Yuspeh, Esq.
3000 W. Esplanade Ave., Suite 301
Metairie, LA 70002
Attorney for Plaintiffs

James Silverstein, Esq.
Kean Miller
909 Poydras Street
Suite 1400
New Orleans, LA 70112
*Attorney for Chevron U.S.A., Inc. and
Chevron Pipeline Company*

Glenn G. Goodier, Esq.
Jones Walker
201 St. Charles Ave.
New Orleans, LA 70170
*Attorney for Plains Pipeline, L.P., Plains Marketing, L.P.
and Plain All American Pipeline, L.P.*

Amy M. Lusignan, Esq.
Exxon Mobil Corporation
800 Bell Street - Suite 1583J
Houston, Texas 77002
*Attorney for ExxonMobil Oil Corporation, ExxonMobil Pipeline Company
and ExxonMobil Production Company*

/s/ José R. Cot
José R. Cot