

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CA 0631

PONTCHARTRAIN NATURAL GAS SYSTEM,  
K/D/S PROMIX, L.L.C., AND  
ACADIAN GAS PIPELINE SYSTEM

VERSUS

TEXAS BRINE COMPANY, LLC

Judgment Rendered: JUL 03 2019

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On Appeal from the  
23rd Judicial District Court  
In and for the Parish of Assumption  
State of Louisiana  
Trial Court No. 34,265

Honorable Thomas J. Kliebert, Jr., Judge Presiding

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BEFORE: GUIDRY, HIGGINBOTHAM, AND THERIOT, JJ.

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## HIGGINBOTHAM, J.

This is an appeal from a district court judgment dismissing a third-party defendant on a motion for involuntary dismissal during a bench trial.

### FACTS AND PROCEDURAL HISTORY

The pertinent background in this complex litigation has been repeated multiple times in several appeals. This particular appeal relates to the Phase 1 liability trial in one of the numerous lawsuits surrounding the August 3, 2012 Bayou Corne sinkhole that developed near the Napoleonville Salt Dome in Assumption Parish.<sup>1</sup> The plaintiffs, Pontchartrain Natural Gas System, K/D/S Promix, L.L.C., and Acadian Gas Pipeline (collectively “Pontchartrain”), own and operate natural gas pipelines and storage facilities in the vicinity of the property affected by the sinkhole. After the sinkhole emerged, Pontchartrain and other pipeline companies, Florida Gas Transmission Company, LLC (“Florida Gas”), and Crosstex Energy Services (“Crosstex”), brought separate lawsuits against Texas Brine. In each of the main demands, the pipeline companies sought recovery for damages to their respective inoperable pipelines due to the alleged negligence of Texas Brine Company, LLC’s (“Texas Brine”) operation of a brine production well known as the Oxy Geismer #3 Well (“OG3”).

Texas Brine responded to each lawsuit by filing identical incidental demands asserting tort and contract claims against various parties, including Browning Oil Company, Inc., which was one of the operators of an adjacent oil and gas well known as the Adams-Hooker #1 Well (“AH1”). Texas Brine sought recovery for its own damages in the form of reimbursement expenses for environmental-

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<sup>1</sup> The district court issued a Trial Order on September 23, 2016, wherein four phases of trial were outlined and ordered to be tried separately. The district court further ordered that the Phase 1 trial on liability was to “be tried jointly in this action with the trial of the issue of liability in the action entitled *Florida Gas Transmission Company, LLC v. Texas Brine Company, et al.*, 23rd JDC Assumption Parish, Hon. Thomas Kliebert, Division ‘B,’ Docket No. 34,316 (*‘Florida Gas’*).” Separate judgments were rendered in the pipeline company cases, as well as separate orders of appeal.

response costs that it paid out after the sinkhole appeared, litigation expenses, and lost profits, along with claims for indemnity and/or contribution for the damages allegedly sustained by the pipeline companies. The Phase 1 liability trial was held for the purpose of determining what caused the sinkhole to form and which parties, if any, were at fault under any theory of law for causing the formation of the sinkhole. All other issues were reserved for trial in phases 2 through 4.

Texas Brine began drilling and operating the OG3 brine well on property owned by Occidental Chemical Corporation (“Oxy”) in 1982. Texas Brine was the sole operator of the OG3 brine well, which was solution-mined for almost thirty years, including the timeframe when the sinkhole developed in August 2012. Texas Brine’s operation of the OG3 well provided brine to a plant owned by Legacy Vulcan Corporation, f/k/a Vulcan Materials Company (“Vulcan”).<sup>2</sup> In 1983, Oxy leased the land adjacent to the OG3 brine well to the Colorado Crude Company, so that Colorado Crude could drill the AH1 well for the commercial production of hydrocarbons. The AH1 well was drilled at the approved location by the initial operator, Adams Resources Exploration Corporation (“Adams”), without incident. It is undisputed that Adams did not drill into the salt dome or the AG3 cavern created by the solution-mining of the AG3 brine well.

Adams began producing hydrocarbons from the AH1 well in 1986, which in turn created the AH1 depletion-drive reservoir. Browning eventually became the operator of the AH1 well in 1991, operating the AH1 well without incident for a decade between 1991 and 2001, when Browning ceased its operations. AHI was ultimately plugged and abandoned in 2010 by another operator, Energy Self-

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<sup>2</sup> Vulcan later sold its assets to Basic Chemicals Company, LLC, in 2005, which then merged with Oxy.

Service Oils, Inc.<sup>3</sup> The Colorado Crude lease required the operators of the AH1 well to refrain from damaging any salt formations on Oxy's property. The western wall of the Napoleonville salt dome was located between the OG3 brine well cavern and the AH1 oil well reservoir. Texas Brine contends that Browning's operations caused the pressure in the AH1 reservoir to drop dramatically, which in turn damaged the salt dome's wall and triggered the collapse of the highly pressurized OG3 cavern, thereby contributing to the eventual development of the August 2012 sinkhole.

Numerous motions for summary judgment were decided by the district court before the Phase 1 liability trial was held on September 18, 2017, through October 11, 2017. Among the many summary judgments rendered by the district court, two are pertinent to this particular appeal: the dismissal of all of Pontchartrain's claims against Browning and the dismissal of all of Texas Brine's pre-1996 tort claims against Browning. Two days before the end of the Phase 1 liability trial, and after the pipeline companies and Texas Brine had rested their cases in chief, Browning moved for an involuntary dismissal of all of Texas Brine's incidental demands against Browning. Asserting that Texas Brine had failed to produce any evidence of negligent conduct or wrongdoing by Browning during its ten years of operating the AH1 well or any evidence that the operations of the AH1 well caused the OG3 cavern to leak or collapse, Browning maintained that no liability could be attributed to it. The district court ruled in favor of Browning, dismissing all of Texas Brine's claims against Browning with prejudice. A judgment was signed in accord with that ruling on October 31, 2017.

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<sup>3</sup> In between Adams and Energy Self-Service, the AH1 well was operated by HECI Exploration Company, Browning, and Mid-America Resources Corporation. However, the issue in this particular appeal focuses on Browning's actions/inactions as operator of the AH1 well during 1991 through 2001.

Texas Brine appealed, urging two assignments of error: (1) the district court manifestly erred in determining that Browning had no liability; and (2) the district court erred in the pretrial summary judgment ruling where it concluded that pre-1996 law did not govern Texas Brine's tort claims against Browning. Browning counters that because there was no evidence introduced of any wrongdoing on the part of Browning during the limited ten-year period that Browning operated the AH1 well, the district court's dismissal of Browning on its motion for involuntary dismissal was reasonable, clearly not manifestly erroneous, and should be affirmed. Additionally, Browning contends that consideration of the summary judgment ruling is mooted by their dismissal at trial.

#### LAW AND ANALYSIS

Louisiana Code of Civil Procedure article 1672(B) provides the basis for an involuntary dismissal at the close of a plaintiff's case in a bench trial, when the plaintiff has not shown a right to relief based on the facts and law. **Lakeshore Chrysler Dodge Jeep, Inc. v. Windstream Communications, Inc.**, 2017-0841 (La. App. 1st Cir. 12/21/17), 240 So.3d 939, 942. In a non-jury case, the appropriate standard for the district court's determination of a motion to dismiss is whether the plaintiff has presented sufficient evidence on its case-in-chief to establish its claim by a preponderance of the evidence. **Hutzler v. Cole**, 633 So.2d 1319, 1323 (La. 1st Cir.), writ denied, 637 So.2d 1070 (La. 1994). Simply put, the district court examines the evidence as a whole, without any special inferences in favor of the opponent to the motion, to determine whether the fact or cause sought to be proved is more probable than not. **Lakeshore Chrysler Dodge Jeep, Inc.**, 240 So.3d at 943. However, absent circumstances in the record that cast suspicion on the reliability of the testimony and sound reasons for its rejection,

uncontroverted evidence should be taken as true to establish a fact for which it is offered. **Id.**

The district court's grant of an involuntary dismissal is subject to the manifest error standard of review. **Broussard v. Voorhies**, 2006-2306 (La. App. 1st Cir. 9/19/07), 970 So.2d 1038, 1041-42, writ denied, 2007-2052 (La. 12/14/07), 970 So.2d 535. Therefore, in order to reverse a grant of involuntary dismissal, we must find that there is no factual basis for the district court's finding or that the finding is clearly wrong. **Id.**, 970 So.2d at 1042. See also **Stobart v. State through Dept. of Transp. and Development**, 617 So.2d 880, 882 (La. 1993). The issue to be resolved is not whether the district court was right or wrong, but whether its conclusion was a reasonable one. See **Stobart**, 617 So.2d at 882. Even though an appellate court may feel its own evaluations and inferences are more reasonable than the district court's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. **Id.** Moreover, where two permissible views of the evidence exist, the fact finder's choice between them cannot be clearly wrong. **Id.**, 617 So.2d at 883. Additionally, the principle that questions of credibility are for the trier of fact applies to the evaluation of expert testimony as well, unless the stated reasons of the expert are patently unsound. **Hutzler**, 633 So.2d at 1324.

Because an involuntary dismissal of an action pursuant to La. Code Civ. P. art. 1672(B) is based on the "facts and law," a review of the substantive law applicable to the plaintiff's case is necessary. **Lakeshore Chrysler Dodge Jeep, Inc.**, 240 So.3d at 943. At trial, Texas Brine's incidental demands against Browning were based on negligence. Most negligence cases are resolved by employing the duty-risk analysis, entailing five separate elements: (1) whether the defendant had a duty to conform its conduct to a specific standard (the duty

element); (2) whether the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) whether the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the causation element); (4) whether the defendant's substandard conduct was the legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) whether the plaintiff was damaged (the damages element). **Hanks v. Entergy Corp.**, 2006-477 (La. 12/18/06), 944 So.2d 564, 579. A negative answer to any of the elements of the duty-risk analysis prompts a no-liability determination. **Talbert v. Restoration Hardware, Inc.**, 2017-0986 (La. App. 1st Cir. 5/31/18), 251 So.3d 532, 536, writ denied, 2018-1102 (La. 10/15/18), 253 So.3d 1304.

Texas Brine contends that the district court incorrectly concluded that Browning was not negligent in operating the AH1 well so as to damage the salt wall between the AH1 reservoir and the OG3 cavern. The threshold issue in any negligence action is whether the defendant owed the plaintiff a duty, and whether a duty is owed is a question of law. **Bufkin v. Felipe's Louisiana, LLC**, 2014-0288 (La. 10/15/14), 171 So.3d 851, 855. In negligence cases, there is an almost universal duty on the part of a defendant to use reasonable care to avoid injuring another. **Rando v. Anco Insulations Inc.**, 2008-1163 (La. 5/22/09), 16 So.3d 1065, 1086.

The duty to refrain from damaging the Napoleonville salt dome is found in the Colorado Crude lease, to which Texas Brine claims to be a third-party beneficiary. Texas Brine argues that Browning's breach of that duty started as early as 1991, but did not manifest until the sinkhole developed in 2012. However, we find it unnecessary to analyze the duty and breach of duty elements in this matter, because our review of the record reveals the evidence was insufficient to establish that there was any causal relationship between the harm suffered by

Texas Brine in 2012 after the sinkhole emerged and Browning's alleged negligent conduct during its ten years of operating the AH1 well. Texas Brine's evidence does not establish that it would have suffered the post-sinkhole injuries complained of "but for" Browning's conduct. The pertinent inquiry is whether Browning contributed to Texas Brine's harm or whether Browning's conduct was a substantial factor in bringing about Texas Brine's harm. See Hutzler, 633 So.2d at 1325. Direct or circumstantial evidence constitutes a preponderance when it shows that causation is more probable than not. The question of whether Browning's conduct is a cause-in-fact is a factual inquiry to be determined by the trier of fact, be it judge or jury. **Id.**

In support of its claim for damages against Browning, Texas Brine presented the testimony of numerous witnesses who testified about the factual incidents before, during, and after the sinkhole, including the testimony of several expert witnesses. It is undisputed that Browning did not participate in the drilling, completion, and initial years of operation and production of the AH1 well. Browning took over operations in 1991 and then later sold all of its rights and interest in 2001. There was no evidence or testimony that Browning's operation of the AH1 well during that limited ten-year period violated any regulatory or other standard customs and requirements of the industry. Texas Brine solution-mined the OG3 cavern before, during, and after the production of hydrocarbons from the AH1 well. When Browning's hydrocarbon production from the AH1 well ceased in 2001, the evidence reveals that the OG3 cavern, the Napoleonville salt dome, and all surrounding formations were stable and remained so at least until 2010. Notably, while the AH1 well did not produce hydrocarbons after 2001, the OG3 brine well continued to be solution-mined and the OG3 cavern continued to expand in size until it approached the western edge of the Napoleonville salt dome.



The evidence and testimony presented by the lay and expert witnesses at trial clearly established that the 2012 sinkhole was caused by three primary factors: (1) the proximity of the OG3 cavern to the edge of the salt dome wall; (2) a leak in the OG3 cavern; and (3) the plugging and abandoning of the OG3 well and cavern without continued monitoring of the loss of brine and reduction in pressure in the OG3 well and cavern. A summary of the pertinent evidence follows.

Dr. Evan Passaris, an expert in geomechanics and solution-mining, testified that Texas Brine's actions were dismissive and risky, given the knowledge that the position of the OG3 cavern was very close to the edge of the salt dome. Dr. Passaris expressed the opinion that Texas Brine must have known that there was a leak in the OG3 cavern in 2010, and instead of monitoring the pressure in the OG3 cavern, Texas Brine plugged and abandoned the OG3 well. This, according to Dr. Passaris, precipitated the formation of the sinkhole in 2012.

Gary Kinler, an Oxy project manager at the time that the decisions were made to continue mining the OG3 well versus drilling a new well, testified that Texas Brine was aware that Dr. Joseph Ratigan, an Oxy consultant, had informed Oxy that the OG3 cavern was close to the edge of the salt dome and the cavern could break through the salt edge. Despite this knowledge, Mr. Kinler stated that Texas Brine continued to operate the OG3 well at a higher cavern level rather than idle operations. Mr. Kinler also testified that Texas Brine never asked Oxy for information concerning the AH1 well or voiced any concern that the AH1 reservoir threatened the stability of the OG3 cavern. Mr. Kinler stated that at that time, he did not know of any company named Browning, but that another oil and gas company expressed interest in re-opening the AH1 well in 2006; however, that never happened.

An expert in geomechanics, Dr. Neal Nagel, testified on behalf of Texas Brine. Dr. Nagel's theory was that the sinkhole resulted from a combination of pressure loss in the OG3 cavern and the close proximity of the OG3 cavern to the edge of the salt dome. Dr. Nagel included the AH1 reservoir in his analysis, and he was the only expert who attempted to link the gas found in the salt brine produced from the OG3 cavern with the AH1 reservoir pressure decline. However, Dr. Nagel declined to opine as to whether the AH1 reservoir caused the OG3 cavern leak. He stated that his models did not show any stress changes in the salt dome wall that was caused by the depletion of the AH1 reservoir or that the AH1 reservoir made the OG3 cavern more likely to fail. Yet, Dr. Nagel concluded that the brine moved from the OG3 cavern to the AH1 reservoir, without an explanation for the pathway in his modeling. In fact, he clearly stated that the models did not show a pathway from the OG3 cavern to the AH1 reservoir.

Another expert on behalf of Texas Brine was Dr. Robert Thoms, who specialized in the characteristics of salt/brine. Dr. Thoms opined that because the AH1 under-pressurized reservoir was close to the OG3 cavern, it could have served as a flow pattern out of the OG3 cavern. However, Dr. Thoms did not have knowledge of the location of any leak pathway. On cross-examination, Dr. Thoms acknowledged that the OG3 cavern breach was caused by the close proximity of the salt dome edge and the thin wall of the edge, which was directly related to the solution-mining of the OG3 well/cavern. He definitively testified that none of the oil companies had anything to do with making the salt dome wall thinner over time, or causing the breach in the OG3 cavern. Dr. Thoms stated that the salt dome wall was thin because of the brine-mining operations.

Additionally, another Texas Brine expert, Michael Veazy, who had expertise in pressure differentials, testified that it did not appear there was any evidence that

a pathway existed between the AH1 reservoir and the OG3 cavern. Mr. Veazy also stated that he did not see anything irregular with Browning's operation or pressure reports. After the AH1 well was plugged and abandoned, Mr. Veazy saw no attempt by any operator to re-pressurize the AH1 reservoir. Similarly, Texas Brine's petroleum geologist expert, Louis Gilbert, admitted that he saw no evidence that the AH1 drilling damaged the salt dome or that there was a flow path from OG3 to AH1.

The president of Texas Brine, Theodore Grabowski, testified that no one had ever expressed concern about the AH1 well or reservoir before the sinkhole. He only heard about it as a possible theory after the sinkhole emerged. Dr. Ahmad Ghassemi, an Oxy expert on reservoir mechanics, statics, and dynamics, stated that in his view the depletion of pressure in the AH1 reservoir did not have a significant impact on the OG3 cavern wall or salt dome wall. He testified that the AH1 reservoir depletion did not cause the OG3 cavern to fail and there was absolutely zero evidence of flow of brine from the OG3 cavern to the AH1 reservoir.

Our review of the totality of the evidence presented at trial reveals that Browning's operations played absolutely no role in any of the causative factors for the development of the sinkhole and the damage that resulted. Browning did not choose the location of the OG3 well or cavern, nor did Browning have any part in the decision to continue solution-mining the OG3 well even though the OG3 cavern grew closer and closer to the edge of the Napoleonville salt dome. Browning had nothing to do with the decision to plug and abandon the OG3 well and cavern. Moreover, there was no evidence that the leak in the OG3 cavern was the result of any of Browning's operations of the AH1 well or the depletion of the AH1 reservoir. In reality, the evidence revealed that prior to 2008, there were no operational issues with the OG3 well or cavern. None of the experts established a

*definitive* path through which the brine could flow from the OG3 cavern through the salt wall into the sealed AH1 reservoir. Thus, Texas Brine's depressurization theory was mere speculation and not substantiated.

Given the manifest error standard of review for the involuntary dismissal of Browning, we conclude that the district court had a reasonable basis for granting the dismissal. Every witness presented, both lay and expert, led the district court to reasonably conclude that Browning did nothing wrong and did not contribute in any way to the cause of the sinkhole. Instead, the evidence revealed that the sinkhole was caused by factors over which Browning had no involvement or control. The district court has the prerogative to accept the testimony of any one witness over another if the testimony or opinion is reasonably supported by the evidence. See Crane v. Exxon Corp., U.S.A., 613 So.2d 214, 226 (La. App. 1st Cir. 1992).

In this case, the district court assessed the credibility of each expert and lay witness to determine the most credible and reasonable evidence. In reaching conclusions, the district court need not accept all of the testimony of any witness as being true or false and may believe and accept a part or parts of a witness's testimony and refuse to accept any part or parts thereof. **Holmes v. Southeastern Fidelity Ins. Co.**, 422 So.2d 1200, 1203-04 (La. App. 1st Cir. 1982), writ denied, 429 So.2d 133 (La. 1983). Furthermore, the opinions of expert witnesses are not binding on the district court and are to be weighed the same as any other evidence. **Id.**, 422 So.2d at 1204. The district court's evaluation of the expert and lay testimony concerning the liability of Browning will not be disturbed unless found to be clearly wrong. **Id.** We find that the district court's grant of Browning's motion for involuntary dismissal was reasonable and not clearly wrong; thus, that ruling is hereby affirmed.

As for the grant of Browning's motion for partial summary judgment regarding the pre-1996 law prior to the phase 1 liability trial, we recently held in **Pontchartrain Natural Gas System v. Texas Brine Company, LLC**, 2018-0606 (La. App. 1st Cir. 12/21/18), 268 So.3d 1058, 1063, writ denied, 2019-0526 (La. 6/17/19), \_\_\_ So.3d \_\_\_, that since all of Texas Brine's alleged damage to its property and/or equipment, as well as its claims for litigation expenses, lost profits, and environmental-response costs all occurred *after* the sinkhole emerged in August 2012, the substantive law in effect at that time applies. Therefore, the district court did not err in granting summary judgment in favor of Browning and dismissing all Texas Brine's incidental demands concerning pre-1996 claims. Further, we find that our upholding of the district court's grant of Browning's motion for involuntary dismissal negates any need for further discussion or analysis of Texas Brine's pre-1996 claims against Browning.

#### **CONCLUSION**

For the stated reasons, the October 31, 2017 judgment involuntarily dismissing Browning Oil Company, Inc. from this litigation is affirmed. All costs of this appeal are assessed to Texas Brine Company, LLC.

**AFFIRMED.**