

Louisiana law and pipeline trespasses

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In Louisiana, landowners sometimes feel helpless before representatives of pipeline companies threatening to expropriate their land. The representatives tell them that the law is against them, the low-ball appraisals of their property are more than generous, and if they insist on going to court to protect their property rights, they will be compelled to pay the fees of the pipeline company's attorneys in connection with the expropriation proceeding.¹

Directional drilling makes it easy for companies to place pipelines carrying explosive hydrocarbons or other corrosive materials deep under a landowner's property without his knowledge. Louisiana law, however, provides a very powerful defense of landowner's rights: The penalty for being caught trespassing is disgorgement of profits or revenues.

Louisiana belongs to the overwhelming majority of states that allow plaintiffs to receive damages for trespass claims for pre-condemnation entries.² "[A] trespass occurs when there is an unlawful physical invasion of the property or possession of another."³

As the Louisiana Third Circuit Court of Appeal in *Belgarde v. City of Natchitoches* explained, a landowner is entitled to compensatory damages "for the violation of his constitutional property right to be free of unlawful trespasses upon his land, whether by the municipality or by private person."⁴

Land ownership is a cornerstone right embedded in the very fabric of our constitution, rather than one "relegated to the status of a poor relation."⁵ The First Circuit Court of Appeal declared such a right to be a "fundamental right of free and unmolested



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ownership of property."⁶

The Louisiana Constitution, Article 1, § 22 guarantees to every person "an adequate remedy by due process of law and justice . . . for injury to him in his person, property, reputation, or other rights."⁷ A right without a remedy is not a right, which is one reason Louisiana law provides remedies to landowners to protect their property rights.

Louisiana law distinguishes between three categories of trespass: good faith, legal bad faith, and moral bad faith. The standard used is preponderance of the evidence, which may be met by either direct or circumstantial evidence.⁸

For a trespass to be in good faith, the trespasser must have entered the property having obtained permission from a party identified as the owner in a record title document that was in fact inaccurate.⁹ In contrast, the Louisiana Supreme Court defines legal bad faith as "where the trespasser believes himself to be the owner but should have known otherwise, either from information available to him or other ascertainable facts which would have placed a reasonably prudent man on notice."¹⁰

Finally, Louisiana law acknowledges a third category of trespass — "moral bad faith," or trespass committed "through [defendants'] recklessness and wanton disregard of plaintiff's property rights. . . ."¹¹

The definition of "willful and wanton" means possessing "an intent to perform the act with utter disregard for the rights of others."¹²

The settled law of trespass in Louisiana harshly penalizes bad-faith trespass for two reasons. First, private property rights are fundamental, enjoying sweeping

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constitutional protection.¹³ Second, only making the business risk of being caught too high for a company to self-insure against can deter trespass.¹⁴

Louisiana courts have uniformly held that the classification of the trespass determines the measure of damages in trespass cases. The trespasser's profits are an obvious measure of what value the trespasser placed on his trespass. If the bad-faith trespass is found to be legal bad faith, then the defendants must disgorge their profits.¹⁵

This is so, the courts reason, because a bad-faith trespasser may not profit from his wrongdoing.¹⁶ In *Amoco Production Co. v. Texas Meridian Resources Exploration Inc.*, for example, Texas Meridian forfeited two producing wells because they were drilled on Amoco's property.¹⁷

The Louisiana Supreme Court held that, "[i]f the trespass has been reckless and willful, the trespasser is said to be guilty of moral bad faith and is liable for the converted value of the timber 'without allowance or deduction for costs and expenses.'"¹⁸ In other words, if the bad-faith trespass is found to be moral bad faith, then the trespasser must disgorge his revenues.

The goal of Louisiana's trespass law is to deter future bad behavior. In the context of bad-faith pipeline trespasses, if the trespasser is held liable for only what he should have paid for the right-of-way in the first place, then there is no deterrent to trespass.

In this age of directional drilling, a pipeline company could trespass at will and only have to pay what it should have paid in the first place, but only if it gets caught. Clearly, such a "penalty" would continue to make the business risk of trespassing very low.

As observed by the Third Circuit Court of Appeal in *Belgarde v. City of Natchitoches*:

[A] municipality which appropriates property in violation of the constitution, without prior judicial authority for the taking, should pay such trespass damages in a suit by the landowner to recover for this illegal taking. If in such an instance the landowner should receive

only the value of the land taken, the municipality thus is liable only for the same amount as if it had expropriated in accordance with law — indicating, should that be the holding, the judicial expropriation proceedings required by the constitution are a useless formality . . .¹⁹

The *Belgarde* court equated the trespass of private persons with the trespass of a municipality.²⁰ In pipeline cases, common carriers have the expropriating power of a municipality, which they may be tempted to game for their own financial benefit.

To honor the spirit of Louisiana's law on trespass, the measure of damages needs to capture the attention of any pipeline company that knowingly or negligently trespasses on private land. Expropriating land is expensive and time consuming in an era of reduced land budgets and tight scheduling deadlines.

In choosing a measure of damages, trial

courts have vast discretion to send a message to offending pipeline companies that will protect the interests of landowners of all economic backgrounds for decades to come.²⁰

Endnotes

1. This is the first part of a two-part article. The next article will discuss Louisiana law on pipeline expropriations.
2. See Burkhart, Ann M. "Takings and Trespass: Trespass Liability for Precondemnation Entries," 56 *Drake L. Rev.* 341, 349-52, 357-60 (2008).
3. *Richard v. Richard*, 09-539 (La.App. 3 Cir. 11/04/09), p. 5, 24 So.3d 292, 296.
4. *Belgarde v. City of Natchitoches*, 156 So.2d 132, 135-36 (La.App. 3. Cir. 1963).
5. *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994).
6. *Central Louisiana Electric Co., Inc. v. Covington & St. Tammany Land & Improvement Co.*,

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Pipeline trespass

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- 131 So.2d 369, 373 (La.App. 1 Cir. 1961).
7. Louisiana Constitution, Article 1, § 22.
 8. See *Lacombe v. Carter*, 07-1063, p. *2 (La.App. 3 Cir. 2008), 975 So.2d 687, 689 (citing *Griffin v. Abshire*, 04-37 (La.App. 3 Cir. 6/2/04), p. 11, 878 So.2d 750, 757-58, writ denied, 04-1663 (La. 10/8/04), 883 So.2d 1018).
 9. *Morgan v. Fuller*, 441 So.2d 290, 298 (La.App. 2 Cir. 1983).
 10. *Kennedy v. Perry Timber Co., et al.*, 52 So.2d 847, 851.
 11. *Id.* at 848.
 12. *Boyett's Estate v. L.L. Brewton Lumber Co.*, 223 So.2d 495, 498 (La.App. 2 Cir. 1969).
 13. See, e.g., *Belgarde*, 156 So.2d at 135-36; *Dolan*, 512 U.S. at 392.
 14. See, e.g., *Amoco Production Co. v. Texas Meridian Resources Exploration, Inc.*, 180 F.3d 664 (5th Cir. 1999); *Knoll v. Delta Development Co.*, 218 So.2d 109 (La. App. 3 Cir. 1969).
 15. *McGee v. Seco Timber Co.*, 350 So.2d 1265 (La.App. 3 Cir. 1977) (quoting *Kennedy* 52 So.2d at 219 La. at 847).
 16. See, e.g., *Corbello v. Shell*, 850 So.2d 686, 709 (La.2003); *Rosenthal-Brown Fur Co. v. Jones-Frere Fur Co.*, 110 So.630, 632 (La.1926).
 17. *Amoco*, 180 F.3d at 671-72.
 18. *McGee*, 350 So.2d at 1267-68 (quoting *Kennedy*, 52 So.2d 847 (La.1951)); see also *Terry v. Butler*, 123 So.2d 865, 869 (La.1960).
 19. *Belgarde*, 156 So.2d at 135-36.
 20. See *id.*
 21. La. C.C. art. 1999.



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