dismissed from the suit. Longenecker, thereafter, died and his estate was substituted as the sole defendant.

The trial court found in favor of Longenecker's estate, holding that Covington had failed to meet its burden of proving that Longenecker had knowledge that Ketchum and Keating were committing fraud by using the lawsuit to cancel the lease and not informing Gambino of the lawsuit. Covington appealed, contending the trial court erred in requiring Covington to prove Longenecker's actual knowledge of Ketchum's intent to commit fraud by concealing the suit instead of concluding that Longenecker had such knowledge on circumstantial grounds. The 1st Circuit affirmed the trial court, holding that the trial court had not required the plaintiff to prove actual knowledge by Longenecker. Rather, the appellate court held that the trial court clearly concluded that the plaintiff failed to meet its burden of proving of Longenecker's knowledge even by circumstantial evidence.

Judge Welch dissented from the majority opinion, stating that the record amply demonstrated Longenecker's involvement in the lawsuit for cancellation of the lease, as well as his knowledge of Ketchum's positions with Covington as agent, director and officer. At the very least, Judge Welch argued, Longenecker "would have been aware" that Ketchum had failed to act in his role as agent for Covington based on Covington's failure to timely respond to the lawsuit for cancellation of the lease. These facts and circumstances, the dissent argued, were sufficient to infer that Longenecker put himself in an "unusual and inappropriate ethical circumstance" and knew of his client's fraudulent intent.

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Environmental Law

Arguments to Combine Land Loss Suits Rejected

In Re: La. Coastal Zone Land Loss Litigation, 317 F.Supp.3d 1346 (Mem) (Multi. D. Lit. 2018.)

After being removed to federal court again (the third time for some of the cases), five judges of the United States Judicial Panel on Multi-District Litigation rejected defendants' arguments to combine the dozens of coastal-land-loss suits into a multi-district litigation format (MDL) pursuant to 28 U.S.C. § 1407. The panel, which sat for hearings in Santa Fe, NM, concluded that centralization is "not necessary for the convenience of the parties and witnesses or to further the just and efficient conduct of this litigation."

The panel acknowledged that the 41 cases (29 pending in the Eastern District of Louisiana and 12 in the Western District of Louisiana) broadly implicated the same factual questions — namely, that the five coastal parishes were experiencing significant coastal-land loss and whether or to what extent oil and gas extraction or transmission contributed to that loss — but the panel focused on the fact that each case was specifically tailored to an "operational area" that would likely have distinct causes of action, discovery needs and different defendants.

Although the parties disagreed over the prudence of consolidation as an MDL under section 1407, the parties were mutually agreeable to some form of consolidation at the federal court level. As such, the MDL panel recognized that future consolidation by the Eastern and Western District Courts may be a possibility under 28 U.S.C. § 1404.

The 41 separate cases, which were removed on the basis that the plaintiffs' preliminary expert reports implicated federal directives issued during World War II and thus before the passage of the Coastal Zone Management Act (upon which the cases are based), now remain in federal district court and await decisions on pending motions to remand.

NORM Litigation

Lennie v. Exxon Mobil Corp., 17-0204 (La. App. 5 Cir. 6/27/18), ____ So.3d ____, 2018 WL 3131444.

In an appeal from the 24th Judicial District Court, the Louisiana 5th Circuit recently clarified its application of prescription and *contra non valentem* in NORM (naturally occurring radioactive material) litigation.

This case was a survival and wrongful death suit brought by the surviving spouse and children of a man who had worked in a pipe yard where they allege he was exposed to NORM, leading to his death from lung cancer some 16 years after his retirement.

The plaintiffs' claims were based in tort, thus carrying a one-year prescriptive period under La. Civ.C. art. 2315.1. Lennie died in 2010 — some four years prior to his family filing suit on his behalf. As such, the defendants filed prescription exceptions at the trial court, which were granted. The trial court found that the plaintiffs failed to meet their burden of proof to apply the doctrine of *contra non valentem*, which suspends the running of prescription against a claimant who is "ignorant of the existence of facts that would enable him to bring a cause of action, provided that his ignorance is not willful, negligent, or unreasonable." *Guillot v. Daimlerchrysler Corp.*, 08-1485 (La. App. 4 Cir. 9/24/10), 50 So.3d 174, 181 (citing *Wimberly v. Gatch*, 93-2361 (La. 4/11/94), 635 So.2d 206, 212). Relevant to the *Lennie* case, *contra non valentem* may apply when: 1) there has been concealment by the alleged tortfeasor; or 2) where the plaintiffs do not have actual or constructive knowledge of the cause of action even if not induced by the defendant.

More specifically, the plaintiffs alleged that "the defendants actively sought to conceal the causal link between work-related NORM exposure and lung cancer, and downplay the danger of exposure to the radioactive material in the workplace." *Lennie* at *4. In support of this claim, the plaintiffs alleged that NORM was previously discovered by the oil industry and that a trade group was established to develop a screening method to detect NORM, which was approved by the state and adopted by Lennie's employer. A similar argument was successfully made in *Lester v. Exxon Mobil Corp.*, 10-743 (La. App. 5 Cir. 5/31/12), 102 So.3d 148. However, the 5th Circuit distinguished the *Lester* case due to the plaintiffs' failure to present "any evidence of actions taken by defendants that would rise to the level of concealment, misrepresentation, or fraud directed towards them." *Lennie* at *4. In *Lester*, there was evidence suggesting that the employer showed videos to workers suggesting that NORM exposure was very unlikely.

The *Lennie* plaintiffs also sought to avail themselves of the suspensive influence of *contra non valentem* by alleging that they had no actual or constructive knowledge of the cause of action, also known as the "discovery rule."

The *Lennie* plaintiffs testified that they did not have actual knowledge that another party wrongfully caused Lennie's death until they read a newspaper article in 2013. However, the court concluded in its *de novo* review that "Mr. Lennie's diagnosis of lung cancer in January 2010 was constructive notice sufficient to put the Lennies on guard and to call for them to inquire further into the cause of his condition." *Lennie* at *8. The court found that the Lennies' lack of knowledge was due only to their lack of investigation. In so ruling, the court distinguished an earlier ruling allowing for the application of *contra non valentem* in a situation where the plaintiff has investigated the cause of an injury, but received an alternative diagnosis from a physician.

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Succession

Sork v. Sork, 17-0300 (La. App. 1 Cir. 2/9/18), 242 So.3d 640.

Following Mr. Sork's death, 50 percent ownership of a home and the debt thereon was received by Ms. Sork, who was Mr. Sork's second wife, and the other 50 percent of the home and liability was received by his four children from his first wife. She subsequently sued the stepchildren for reimbursement for mortgage payments and for repair and maintenance expenses. After serving two of the four children, she obtained a default against those two children for one-half of the mortgage payments she had made and for one-half of the repair and maintenance expenses. The court of appeal found that the two children were liable only for their virile shares and amended the judgment to require the two children to pay one-fourth each of the mortgage expenses. The children were joint, not solidary, obligors.

Regarding the repair and maintenance expenses, the court of appeal first rejected the children's argument that those expenses should be offset by Ms. Sork's use of the home, finding that the children had never demanded occupancy of the home and been refused. The children further argued that many of the expenses were not necessary expenses. The court of appeal agreed, reducing the award to those only for expenses necessary to preserve the home and which were sufficiently proven. The dissent argued that the children should have been solidarily obligated on the debt.

In re Succession of Buhler, 17-0049 (La. App. 1 Cir. 2/22/18), 243 So.3d 39.

During the parties' marriage, Mr. Buhler executed a will in which he bequeathed all