



**Trusts, Estate,
Probate &
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Property Law**

Property Owner Still Not Entitled to Damages Based on Actions Occurring Prior to Ownership

The Louisiana Supreme Court has finally laid to rest the question of whether the subsequent purchaser rule applies to non-apparent property damages inflicted prior to the sale. Over the past few years, this issue has plagued plaintiffs and defendants alike in oil and gas legacy litigation.

In *Eagle Pipe & Supply, Inc. v. Amerada Hess Corp.*, 10-2267 (La. 10/25/2011), ___ So.3d ___, the Supreme Court held that the “fundamentals of Louisiana property law compel the conclusion” that:

an owner of property has no right or actual interest in recovering from a third party for damage which was inflicted on the property before his purchase, in the absence of an assignment or subrogation of the rights belonging to the owner of the property when the damage was inflicted.

Id. p. 1, 4.

The issue before the Supreme Court arose from a 1998 sale of land to plaintiff, Eagle Pipe and Supply, Inc., who later discovered the land was allegedly

contaminated with radioactive material. From 1981 to 1988, the property was allegedly leased and operated as an industrial pipeyard that bought, stored and sold used oilfield tubing. After Eagle Pipe purchased the property, the LDEQ issued violations of state exposure regulations to Eagle Pipe as a result of the presence of radioactive materials and ordered that the property be remediated. Eagle Pipe sued the former landowners and the oil and trucking companies allegedly responsible for the contamination. The oil and trucking companies filed exceptions of no right of action arguing “Eagle Pipe had no right to assert a claim for damage to the property which occurred before Eagle Pipe was its owner.” *Id.* p. 2.

As first reported in this Section in the June/July 2010 (Volume 58, Number 1) *Louisiana Bar Journal*, the appellate court initially affirmed the dismissal, but reversed on rehearing, limiting the subsequent purchaser rule to situations where the damage was apparent at the time of the sale. The Supreme Court granted certiorari to determine whether a subsequent purchaser of property has the right to sue a third party for non-apparent property damage inflicted before the sale of the property absent an assignment or subrogation to that right.

The court’s opinion spans numerous legal issues from continuous torts to real versus personal rights to the proper method of assigning or subrogating such rights in an act of sale. The court first found that when property is damaged, the owner of the property obtains a personal right to demand repair from the tortfeasor. “In the absence of an assignment

or subrogation of this personal right,” held the court, “a subsequent purchaser of the property cannot recover from a third party for property damage inflicted prior to the sale.” *Id.* p. 22.

Applying these principles to the exception of no right of action against Eagle Pipe’s claims, the court held that “[i]nsofar as Eagle Pipe claims a right to sue based on the damage to the property which occurred before its ownership, we hold the plaintiff has no right of action to assert as a matter of law.” *Id.* The court explained that “the law has provided to Eagle Pipe a cause of action in redhibition and the right to sue for rescission of the sale or the reduction of the purchase price,” but “the law is not required to provide Eagle Pipe with every possible remedy.” *Id.* p.26.

The court also rejected Eagle Pipe’s assertion that the right to assert a claim for damages was properly transferred by the subrogation clause in the act of sale, which provided that the sellers “sell, transfer and deliver, with full guarantee of title and free from all encumbrances, and with full subrogation to all their rights

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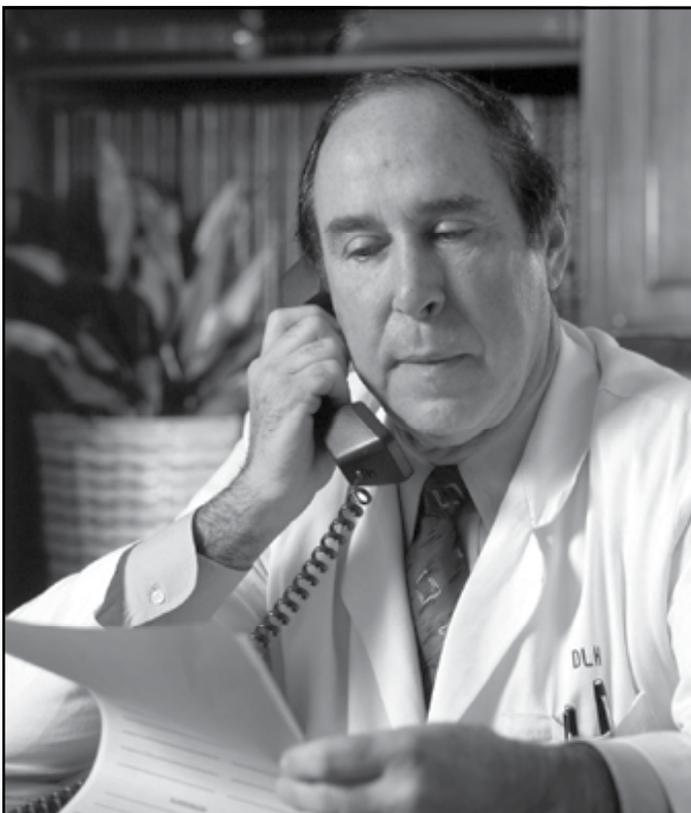
and action of warranty against previous owners . . .” *Id.* p. 24. The court held that this language was not an “express assignment or subrogation of the former property owner’s personal rights to sue for damage” because the subrogation clause did not explicitly mention the assignment or subrogation of the former property owners’ right to sue for property damage. *Id.* p. 25.

In an attempt to sidestep the subsequent purchaser rule, *Eagle Pipe* argued that the damage to the property was continuing such that *Eagle Pipe* was asserting its own right of action that did not accrue until the LDEQ first notified *Eagle Pipe* of the contamination. The Supreme Court rejected this argument, finding that “the continued presence of the alleged contamination,” the injury claimed by *Eagle Pipe*, “is simply the continuing ill effect from the original tortious acts,” which the court explained were the tender of

contaminated oilfield equipment from the oil and trucking companies to the former property owner. *Id.* p. 23.

The core legal issues underpinning the court’s analysis and ultimate opinion in *Eagle Pipe* extend beyond the toxic tort context. The *Eagle Pipe* decision impacts the viability of oil and gas legacy cases, the nature and extent to which any plaintiff can successfully assert property damage claims, the proper method of transferring certain personal rights and the proper language to include in an act of sale to transfer such rights in a real estate transaction.

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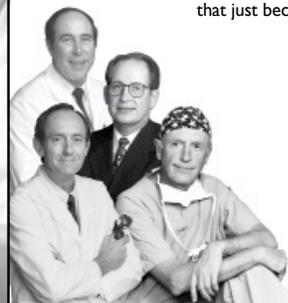
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