

# Panel Sends Case Involving 'Ancient' Doctrine To La. Justices

Law360 (November 28, 2023, 2:23 PM EST) -- Louisiana's high court is the right venue to consider whether a unique, deeply rooted state legal doctrine lets a [Chesapeake Energy](#) unit take post-production costs off the top of revenues owed to owners of state-mandated oil and gas pools, according to a divided Fifth Circuit opinion.

A circuit panel on Monday ruled the [Louisiana Supreme Court](#) should decide whether negotiorum gestio, in which a third party interferes in someone's business on their behalf but without consent, meant Chesapeake could take transportation, marketing and other after-drilling costs from shares owed to mineral owners on unleased tracts pooled by state regulators.

The question "presents a complex and novel issue" that calls for the expertise of the Louisiana Supreme Court, said Circuit Judge Jennifer Walker Elrod, writing for the majority. The Pelican State is the only part of the U.S. that recognizes negotiorum gestio, a concept that dates back to the Roman Empire, according to the opinion.

Federal court speculation "about how to square Louisiana's new conservation laws with its ancient civilian doctrines is inappropriate" when a state court can answer the questions itself, the judge added.

But Circuit Judge James L. Dennis said the majority was wrong to send the question to Louisiana justices. The state law that allowed regulators to pool mineral resources and appoint a single operator to produce and sell from the unit "imposes a specific duty of repayment to the owner," Dennis said in a

dissent.

The negotiorum gestio doctrine, on the other hand, only allowed one person without authority to manage the property of another in specific circumstances, Dennis added. Since operators such as Chesapeake were drilling and selling oil and gas with the authority of the state, they were not covered by the old legal concept, according to the dissent.

"Because the answer is clear that negotiorum gestio cannot apply, I find certification to the Louisiana Supreme Court inappropriate," Dennis said.

The panel's decision to hand the question off to state justices stemmed from a 2016 dispute emerging from Louisiana's then-recent conservation law intended to promote efficient mineral extraction and reduce the number of wells by lumping unleased mineral interests together, according to court records. Operators were appointed to produce and sell oil and gas from the units and owed mineral owners a share of the revenues.

Landowners in one of these "forced pools" led by Allen and Linda Johnson sued Chesapeake, claiming the company was skimping on its prorated oil and gas revenue payments by deducting post-production costs.

A U.S. district court initially ruled partially in favor of the landowners, but later reversed course and sided with Chesapeake in its argument that negotiorum gestio provided a mechanism for reimbursement of post-production costs where not otherwise covered by specific law, according to the opinion.

The panel's Monday opinion follows a September ruling to send to the Louisiana Supreme Court a nearly identical question raised in [James Self et](#)

[al. v. BPX Operating Co.](#), a dispute over the same post-production cost issues on resource pools. Judge Dennis also dissented from that opinion, for similar reasons he raised in Monday's decision.

Circuit Judges James L. Dennis, Jennifer Walker Elrod and James C. Ho sat on the panel for the Fifth Circuit.

Chesapeake is represented by Joshua A. Norris and Nicole M. Duarte of [The Norris Firm PC](#) and Patrick S. Ottinger of [Ottinger Hebert LLC](#).

The mineral owners are represented by Grant E. Summers, Andrew D. Martin and J. Davis Powell of [Davidson Summers APLC](#), Sally D. Fleming and Owen M. Courreges of the Law Office of Sally Dunlap Fleming PLC and Michael G. Stag, Ashley M. Liuzza and Matthew D. Rogenes of [Stag Liuzza](#).

The case is Allen Johnson et al. v. Chesapeake Louisiana LP et al., case number [22-30302](#), in the [U.S. Court of Appeals for the Fifth Circuit](#).

--Editing by John C. Davenport.

*Correction: A previous version of this article included the name of an attorney not involved in the case. The error has been corrected.*

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