

SUPREME COURT OF LOUISIANA

DOCKET NO. 2020-C-685

STATE OF LOUISIANA AND THE VERMILION PARISH
SCHOOL BOARD, *Plaintiffs-Respondents*

Versus

LOUISIANA LAND AND EXPLORATION COMPANY, ET AL.,
Defendants-Applicants

On Application for Writ of Certiorari From the May 6, 2020
Decision of the Third Circuit Court of Appeal, Docket No. CA 19-248,
John D. Saunders, Elizabeth A. Pickett, and Van H. Kyzar, Judges

A CIVIL PROCEEDING

**MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF
AMERICA FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*
IN SUPPORT OF THE WRIT APPLICATION**

NOW INTO COURT, through undersigned counsel, comes the Chamber of Commerce of the United States of America (the “Chamber”), who moves this Court for leave to file a brief as *amicus curiae*, pursuant to Rule VII, Section 12 of the Rules of the Supreme Court of Louisiana, in support of the Applicant’s writ application, as follows.

The Chamber is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

As part of this advocacy, the Chamber regularly files briefs as *amicus curiae* urging courts to adopt fair interpretations of laws that advance free enterprise and promote economic growth. The Chamber has participated as *amicus curiae* in cases that have the potential to impact the interpretation and enforcement of contracts, such as this case. *See, e.g., USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479 (Tex. 2018); *Ace Secs. Corp. v. DB Structured Prods., Inc.*, 36 N.E.3d 623 (N.Y. 2015).

The Chamber has a substantial, legitimate interest in the principles of contract that courts apply to the freely negotiated contracts of the U.S. business community. Specifically, the Third Circuit's decision threatens to undermine the predictability of contracts that is of central concern to the business community because it used a statute passed decades after the parties entered into a contract to define the parties' obligations under that contract. Parties to a contract cannot anticipate being bound in their obligations to one another by a statutory standard that has not yet been established at the time of contracting. The rule adopted by the Third Circuit in the decision subject to the writ would, if allowed to stand and spread throughout the State, introduce uncertainty and instability into the private obligations of the Chamber's many members operating in Louisiana.

The Chamber's brief focuses on narrow, but important issues of contract law that are implicated by the Third Circuit's decision. These issues, and their particular significance to the business community, could otherwise escape the Court's attention. Permitting the Chamber to participate as *amicus curiae* will assist this Court by addressing the far-reaching effects of the Third Circuit's opinion on the predictability of contracts in Louisiana.

The Chamber files its *amicus curiae* brief herewith, conditioned upon this Court's

grant of leave. By service of this motion and brief, the Chamber has served notice on all counsel of record.

WHEREFORE, the Chamber of Commerce of the United States of America respectfully requests leave of Court to file the attached brief as *amicus curiae*.

Dated: June 9, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the allegations in the foregoing motion for leave to file brief as *amicus curiae* are true and correct to the best of my knowledge; and that a copy of the above motion has been served upon the Louisiana Third Circuit Court of Appeal and the below-listed counsel via next day delivery service, this 9th day of June, 2020, as specified below:

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ORDER

Having considered the foregoing Motion of the Chamber of Commerce of the United States of America For Leave to File Brief as *Amicus Curiae* In Support of the Writ Application,

IT IS ORDERED that the Chamber of Commerce of the United States of America be and is hereby GRANTED leave to file the attached Brief as *Amicus Curiae*.

THUS DONE AND SIGNED, this _____ day of _____, 2020, in
New Orleans, Louisiana.

JUSTICE, LOUISIANA SUPREME COURT

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A CIVIL PROCEEDING

BRIEF OF *AMICUS CURIAE*
THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA
IN SUPPORT OF THE WRIT APPLICATION

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I. INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America (the “Chamber”) is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation’s business community.¹

Predictability in the interpretation and enforcement of contractual obligations is of central concern to the business community. Businesses, as well as individuals and government entities, depend on the predictability of contracts to arrange their affairs and make decisions regarding their conduct. The Third Circuit’s decision in this case undermines a basic tenet of contract law by reading the statutory definition of one term adopted by the legislature in 2006 as dispositive of the meaning of a different implied term in leases agreed to in 1935 and 1994. The parties could not have anticipated, and certainly could not have intended, that their contract would be governed by a substantive statutory standard not in existence when they formed their contract. Allowing the Third Circuit’s decision to stand would cast doubt on the ability of businesses, and all parties that rely on enforcement of contractual obligations according to the terms to which they agree, to make long-term decisions that depend on the mutually understood content of the private-law obligations that they assume.

¹ *Amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

The Third Circuit's decision overturning the jury finding of no breach of the lease agreements appears to suffer from numerous flaws that warrant correction under this Court's supervisory authority. The Chamber writes to focus attention on one particular issue that is narrow in scope, but broad in import.

By concluding that the jury's verdict of no breach of the lease agreements was inconsistent with an admission of liability for environmental damages under a statute that postdates, by decades, those agreements, the Third Circuit effectively modified the terms to which the parties agreed. That decision calls into question overarching principles of contract law, which could undermine the predictability of contracts essential to commercial activity. The decision could also lead to contracting parties receiving windfall recoveries never intended by the parties or by the legislature. Everyone must comply with valid laws, but that does not change the meaning of contractual undertakings and thus the availability of contractual remedies as between contracting parties.

III. ARGUMENT

The Third Circuit overturned the jury's verdict, concluding that there was an internal inconsistency in the jury's finding that Union Oil Company of California ("UNOCAL") was responsible for environmental damage under Act 312 but did not breach its contractual obligations under two mineral leases between UNOCAL and the State of Louisiana. *See State v. La. Land & Expl. Co.*, 19-248, at p. 41 (La. App. 3 Cir. 5/6/20) ("*LL&E*").

The relevant leases governing UNOCAL's use of the Sixteenth Section School Lands in Vermilion Parish were entered into in 1935 and 1994. Act 312, which was enacted in 2006,

establishes a procedure by which a party can make a limited admission of liability, agree to clean up any environmental damage found on the property, and adopt a remediation plan structured and approved by the Department of Natural Resources. La. R.S. § 30:29(C)(2–3). The Third Circuit concluded that, because UNOCAL made such a limited admission of statutory liability under Act 312, it must have violated the leases and was therefore liable for breach of contract. *LL&E*, 19-248, p. 36. The decision by the Third Circuit runs contrary to general principles of contract law that emphasize parties’ freedom of contract and the need for predictability in contractual relationships. The Third Circuit used a statute passed decades after UNOCAL and the Vermilion Parish School Board freely entered into a lease to interpret the meaning of terms in that lease, effectively altering the parties’ private-law contractual obligations to one another. The Third Circuit then relied on these new purported contractual obligations, to which the parties never agreed, as a vehicle for the extraordinary step of overturning a decision properly committed to the jury. This interpretation of Louisiana contract law threatens to erode the contractual protections that businesses rely upon to engage in efficient, profitable business within the State of Louisiana. In particular, it creates a heightened level of risk for parties engaged in, or considering entering into, long-term business relationships in Louisiana.

A. General Principles of Contract Law Underscore the Importance of Freedom of Contract and Predictability to Promote Business Efficiency.

Enforcement of contracts ensures that individuals and businesses honor their commitments and can rely on the commitments of others. The law of contracts is rooted in the axiomatic principle that the formation of a contract requires a meeting of the minds. The law requires parties to perform the obligations to which they agree and entitles them to rely on

performance by their counterparties of the obligations to which the counterparties agree. *See Clovelly Oil Co. v. Midstates Petroleum Co.*, 12-2055, p.5 (La. 3/19/13), 112 So.3d 187, 192 (“Contracts have the effect of law for the parties[.]” (internal quotation marks omitted)). The legitimacy of contract enforcement derives from the voluntary undertaking of obligations and is maintained to the extent that it effects the parties’ common understanding of those obligations. *See Normand v. Wal-Mart.com USA, Inc.*, 19-263, p.26 (La. 1/29/20), 2020 WL 499760, at *13 (citing La. Civ. Code Ann. arts. 1983, 2045) (“A contract between parties is the law between them, and the courts are obligated to give legal effect to such contracts according to the true intent of the parties.”). Consent of the parties is at the heart of contract formation, and parties have broad leeway in negotiating the terms to which they agree to be bound under a contract. *See* La. Civ. Code Ann arts. 1927, 1971; *see also La. Smoked Prods., Inc. v. Savoie's Sausage & Food Prods., Inc.*, 96-1716, p.14 (La. 7/1/97) 696 So.2d 1373, 1380.

Because parties are responsible for forming their own contracts, Louisiana courts limit their duties “strictly to the ascertainment of the limits of the rights and obligations of the contracting parties as they have defined for themselves.” *Salles v. Stafford, Derbes & Roy*, 173 La. 361, 366, 137 So. 62, 64 (1931); *see also Clovelly Oil Co.*, 112 So.3d at 196 (“A court is not authorized to alter or make new contracts for the parties. A court’s role is only to interpret the contract.”). These rights and obligations are construed “as the parties must be supposed to have understood them at the time of [the contract’s] execution.” *Salles*, 137 So. at 64; *see also La. Smoked Prods.*, 696 So.2d at 1378. The consensual nature of contracts extends to subsequent modifications to a contract after its formation, which require the knowledge and consent of both parties to the contract. *See Taita Chem. Co. v. Westlake Styrene Corp.*, 246 F.3d 377, 387 (5th

Cir. 2001) (citing La. Civ. Code Ann. art. 1927). In other words, parties are obliged to each other based on, and to the extent of, their mutual understanding of the terms of their agreement.

The utility of contracts is likewise dependent on predictability. Contracts allow individuals and businesses to maintain stable and predictable commercial relationships, enabling them to plan for the future. *See* 5 La. Civ. L. Treatise, Law of Obligations § 1.7 (2d ed.) (“It is the essence of an obligation that the creditor or obligee is assured that his expectation will be fulfilled through means other than the debtor’s mere willingness to perform.”); Howard O. Hunter, *Modern Law of Contracts* § 1:1 (2020). Laws may impose public-law obligations on the parties to a contract and may even render impossible the performance of private obligations under the contract, but other than in exceptional circumstances, changes in public obligations do not alter the meaning of private obligations or the rights of the contracting parties *inter se*. *See* 11 Williston on Contracts § 30:23 (4th ed. 2020).²

The judicial role in enforcing contracts is to “protect the expectations of the contracting parties,” allowing parties to have confidence in the provisions for which they have bargained and to receive the benefits of those bargains. Williston, *supra*, § 1:1; 5 La. Civ. L. Treatise, Law of Obligations § 12:101 (2d ed.) (“[W]here a contract is concerned, interpretation thereof is the determination of the common intent of the parties.”). By making rights and obligations under contracts more predictable, contract law allows businesses to allocate their risks and costs,

² To the extent the Third Circuit’s opinion could be read to suggest that the legislature intended to alter the terms of the contract, such reasoning would place Act 312 at odds with the United States Constitution’s Contract Clause and the Court should reject that reasoning for purposes of Constitutional avoidance. *See* U.S. Const. art. I, § 10, cl. 1; *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 17 (1977) (“It long has been established that the Contract Clause limits the power of the states to modify their own contracts as well as to regulate those between private parties.”); *see also* Appl. for Writ of Cert. by Union Oil Co. of Cal., et al., 20-685, pp. 14-16 (La. 6/5/20).

including both knowing what risks exist and allowing the party to assess the likelihood of incurring those risks. *See* Williston, *supra*, § 1:1; Hunter, *supra*, § 17:1. In doing so, contract law is often viewed as a vehicle to promote economic efficiency. Hunter, *supra*, § 4:4. Parties need to be able to rely on their mutual understandings and must not be permitted to extract more from their counterparties in contract than they were entitled to expect. Otherwise, one party could receive a windfall—and thus impose a substantial cost—that the counterparty could not have predicted upon the formation of the contract.

B. Interpreting Contract Terms to Incorporate Future Legislative or Regulatory Enactments Threatens the Predictability of Contracts.

Courts generally agree that when interpreting a contractual term, statutes enacted or modified after contract formation have no impact on the rights of the parties under the contract. Williston, *supra*, § 30:23 (“[A]s a rule of construction, changes in the law subsequent to the execution of a contract are not deemed to become part of agreement unless its language clearly indicates such to have been intention of parties.”) (collecting cases). The purpose of this principle is to ensure that subsequent legislation “ought not to change the character of past transactions carried on upon the faith of the then existing laws,” *E. Enters. v. Apfel*, 524 U.S. 498, 533 (1998) (holding that employer was not responsible for later enacted statute requiring retirement payments) (quoting H. Broom, *Legal Maxims* 24 (8th ed. 1911)). These principles are not altered simply because the government is a party to the contract. The law applicable to the rights and duties of a government party to a contract are the same as for private parties. *See United States v. Winstar Corp.*, 518 U.S. 839, 895 (1996) (quoting *Lynch v. United States*, 292 U.S. 571, 579 (1934)).

As discussed above, the central purpose of contract interpretation is to determine the intent of the parties. When faced with an ambiguous contract term, it is therefore appropriate to interpret it with reference to the law in existence at the time of the contract since such law was presumably known to the parties when entering into the agreement. Williston, *supra*, § 30:19 (explaining that there is a presumption of incorporation of “valid applicable laws existing at the time of the making of a contract”).

Louisiana’s civil code expressly provides that “[w]hen the parties made no provision for a particular situation, it must be assumed that they intended to bind themselves not only to the express provisions of the contract, but also to whatever the law, equity, or usage regards as implied in a contract of that kind or necessary for the contract to achieve its purpose.” La. Civ. Code Ann. art. 2054. Likewise, courts agree that substantive legislative and regulatory enactments cannot be used to clarify ambiguity in pre-existing contracts unless the parties intended to incorporate future changes to the law. *Alvin Ltd. v. U.S. Postal Serv.*, 816 F. 2d 1562, 1565 (Fed. Cir. 1987) (holding that a change in law did not affect the terms of a pre-existing contract because there was “no evidence of contemporaneous recognition” that a change in law was a possibility); *see also Fla. East Coast Ry. Co. v. CSX Transp., Inc.*, 42 F.3d 1125, 1130 (7th Cir. 1994) (relying on law at time of contract formation to interpret contract because “[w]hereas the law in effect at the time of execution sheds light on the parties’ intent, subsequent changes in the law that are not anticipated in the contract generally have no bearing on the terms of their agreement.”).

The danger in interpreting contract terms in light of later-enacted legislation lies in the inherent uncertainty it creates. One of the primary principles in contracts is the predictability and

certainty required for the parties to adhere to a contractual agreement. Courts in other states have consistently declined to interpret contracts on the basis of changes in the law because such an interpretation would result in modifying the contract without the parties' consent "and would promote uncertainty in commercial transactions." *See, e.g., Swenson v. File*, 475 P.2d 852, 856 (Cal. 1970) (holding that non-compete covenant should be interpreted consistently with law at time of signing); *Peterson v. D.C. Lottery & Charitable Games Control Bd.*, 673 A.2d 664, 667 (D.C. 1996) (declining to interpret language on lottery ticket to include later enacted assignment regulations).

In *EEJ Inc. North American Land Development v. H.G. Angle Co. Inc.*, the Louisiana Second Circuit Court of Appeal came to the same conclusion in considering the application of a procedural requirement to two liens. 618 So.2d 566, 567 (La. App. 2 Cir. 1993) (*rehearing denied* 618 So.2d 566 (La. 1993), *writ denied* 652 So.2d 1176 (La. 1993), and *reconsideration of writ decision denied* 629 So.2d 1150 (La. 1993)) (holding that liens could not be interpreted to include later-enacted procedural requirement). The liens at issue in *EEJ* were filed one day after a legislative amendment requiring notice of nonpayment to the property owner before filing a lien against that property. Despite the fact that the legislation took effect one day after recording the liens, the court reasoned that the defendants "had met all the legal requirements which were in effect at the time of the confection of their respective contracts." *Id.* at 567. As the court recognized, parties must be able to enter contracts with certainty that their contractual obligations will not change. They must be able to tailor their behavior based on the requirements of the contract at the time of signing.

The United States Supreme Court has pointed to similar policy concerns in the context of

legislative retroactivity, explaining that such laws present “problems of unfairness” in large part because they “can deprive citizens of legitimate expectations and upset settled transactions.” *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992). Indeed, the United States Supreme Court has noted that the “largest category of cases in which [it] has applied the presumption against statutory retroactivity has involved new provisions affecting contractual or property rights, matters in which predictability and stability are of prime importance.” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265, 271 (1994) (“[E]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.”).

The Third Circuit’s decision presents a danger of exactly what courts have cautioned against. The Third Circuit held that the jury’s verdict was inconsistent because the jury found that UNOCAL was liable for environmental damage under Act 312 of 2006 but had not breached the 1935 mineral lease or the 1994 surface lease. *LL&E*, 19-248, pp. 37–41. The decision effectively creates a new obligation under the leases by reading the meaning of “environmental damage” under Act 312 into the parties’ implied agreement to refrain from “unreasonable or excessive” operations—notwithstanding that the parties’ understanding of the terms of that agreement predate Act 312 by more than 70 years in the case of the mineral lease and more than a decade in the case of the surface lease.

Under the Louisiana Civil Code, when there is proof that the lessee has acted “unreasonably or excessively,” it has a duty to correct any damage resulting from its unreasonable or excessive actions. *State v. La. Land & Explor. Co.*, 12-0884, p. 27–28 (La. 1/30/13), 110 So.3d 1038, 1057–58. An inquiry into whether a lessee has acted “unreasonably or

excessively” and the extent to which the lessee is required to correct the damage must be considered on a “case by case” basis and with reference to “the character of the specific rights granted in the lease.” *Id.* at p.28 (citing *Marin v. Exxon Mobil Corp.*, 2009-2368 (La. 10/19/10), 48 So.3d 234; *see also Moore v. Denbury Onshore, LLC*, 159 F.Supp.3d 714, 721 (W.D. La. 2016) (affirming that Act 312 does not preclude damages for “unreasonable or excessive” actions). Here, the Third Circuit undermined the parties’ contract by holding that a finding of “environmental damage” as defined in Act 312, without more, necessitates a finding of “unreasonable or excessive” actions and is, therefore, a breach of the parties’ contract. In essence, the decision converted the conduct-based obligation under the leases into an agreement to apply strict contractual liability for violating a standard that the parties could never have contemplated at the time of their agreement.

The Third Circuit’s decision is untenable under basic principles of contract law. UNOCAL has been operating under the 1935 lease with the understanding that it may be liable for breach of contract and remediation damages if there is evidence that it acted “unreasonably and excessively.” The Third Circuit’s decision removes from the lease agreement the need to provide proof of UNOCAL’s unreasonable or excessive behavior and instead substitutes a different standard based on legislation that did not exist at the time the parties entered the lease agreement and that turns on the meaning of a different term.

Relying on a subsequently enacted statute to alter the meaning of a contractual agreement would be problematic under any circumstances. It raises particular concerns where, as here, the legislation makes clear that the legislature did not intend to create any additional contractual obligations under mineral leases: “This Section shall not be interpreted to create any cause of

action or to impose additional implied obligations under the mineral code or arising out of a mineral lease.” La. R.S. § 30:29(H)(2); *see also M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 2007-2371, p.29 (La. 7/1/08), 998 So.2d 16, 35–36 (holding that Act 312 is procedural and does not change substantive rights). However, the Third Circuit has interpreted the Act to do exactly that.

Compounding the problem presented by the Third Circuit’s decision, reliance on Act 312 to expand liability at contract undermines the purpose for which the legislature enacted Act 312. Prior to 2006, a landowner that collected damages based on the costs of remediating environmental harm caused by a lessee defendant “could not be required by the defendant or the State of Louisiana to actually remediate the damages on which the landowner’s recovery was based.” Loulan Pitre, Jr., “*Legacy Litigation*” and Act 312 of 2006, 20 Tul. Envtl. L.J. 347, 348 (2007). The Louisiana legislature enacted Act 312 to ensure that amounts necessary to remediate environmental damage to regulatory standards are actually used for such remediation. *Id*; *see also Moore*, 159 F.Supp.3d at 717 (“The Legislature passed Act 312 primarily in an effort to ensure that contaminated oil and gas exploration sites were remediated to the extent necessary to protect the public interest.”). In other words, Act 312 is intended to protect the public interest in remediation rather than to create new private-law liability for additional sums. The Act envisions that parties may be liable for additional remediation as required by “an express contractual provision,” La. R.S. § 30:29(M)(1)(b), but such a contractual breach is entirely separate from liability and remediation under the Act and is governed by different provisions. *Moore*, 159 F.Supp.3d at 721 (clarifying that remediation for breach of an express contractual provision is provided directly to landowners as compared with remediation for liability under the Act, which is placed in court’s registry). By leveraging Act 312 to expand contractual obligations and

enhance liability, the Third Circuit's decision thus creates a strong disincentive for voluntary participation in the remedial scheme created by the Louisiana legislature.

If the Court allows the decision of the Third Circuit to stand, the potential ramifications to commercial interests in Louisiana are significant. The predictability of contracts in Louisiana will be called into doubt. Legislative changes, like Act 312, intended to protect the public interest may be misapplied to provide windfall awards in the form of private damages beyond the terms to which the parties agreed. This outcome is inconsistent with the basic principles of contract law.

IV. CONCLUSION

For the foregoing reasons, the Chamber respectfully requests that this Court grant the writ application and reverse the Third Circuit's decision.

Dated: June 9, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the allegations in the foregoing *amicus curiae* brief are true and correct to the best of my knowledge; and that a copy of the above *amicus curiae* brief has been served upon the Louisiana Third Circuit Court of Appeal and the below-listed counsel via next day delivery service, this 9th day of June, 2020, as specified below:

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