

SUPREME COURT
STATE OF LOUISIANA
NO. 2010-C-2605

CRAIG STEVENS ARABIE, ET AL.
PLAINTIFF/APPELLEES

VERSUS

CITGO PETROLEUM CORPORATION AND
R&R CONSTRUCTION, INC.
DEFENDANTS/APPELLANTS

MOTION TO FILE AMICUS CURIAE BRIEF

Pursuant to Rule VII, Section XII of the Louisiana Supreme Court Rules, and on motion of the Louisiana Surplus Lines Association (“LSLA”) and American Insurance Association (“AIA”), representing to the court that they desire to file the attached *Amicus Curiae* Brief in support of CITGO. In Support of their Motion for Leave to file *Amicus Curiae* Brief, LSLA and AIA further represent to the Court that they have a substantial, legitimate interest that will likely be affected by the outcome of the case and they believe that their interests will not be adequately protected by those already party to the case.

The LSLA represents the interests of numerous surplus lines brokers of insurance for entities such as the appellant in this matter. It is greatly concerned about the imposition of punitive damages on companies and individuals arising out of business activities in Louisiana. The result will be an increased difficulty in placing insurance and increased expense of obtaining coverage for an exposure that appears to be unbounded considering the wide latitude to impose punitive damages under the decision of the Third Circuit Court of Appeals.

The American Insurance Association is a leading national trade association that counts among its members major property and casualty insurance companies writing business in Louisiana, nationwide, and globally. AIA members collectively underwrote almost \$1,800,000,000 in direct property and casualty premiums in Louisiana in 2008, including nearly 30 percent of Louisiana’s commercial insurance market. AIA’s members, including companies based in Louisiana and most other states, range in size from small and regional insurers to the largest insurers with global operations. On issues of importance to the property and casualty insurance industry and marketplace, AIA advocates sound and progressive public policies on behalf of its members in legislative and

regulatory forums at the federal and state levels, and files *amicus curiae* briefs in significant cases before federal and state courts.

The brief supplements CITGO's Brief by providing important reasons for his Honorable Court to closely examine and provide guidance to state courts and federal *Erie* courts on these important issues affecting the public interest. The public policy considerations and a full consideration of all material issues are important to the Louisiana judicial system.

IT IS ORDERED that the Louisiana Surplus Lines Association and American Insurance Association be granted leave to file the attached *Amicus Curiae* brief in support of CITGO.

New Orleans, Louisiana, this _____ day of _____, 2011.

JUSTICE, LOUISIANA SUPREME COURT

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ASSOCIATION**

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**AMICUS CURIAE BRIEF
IN SUPPORT OF CITGO**

**DIRECTED TO THE THIRD CIRCUIT COURT OF APPEAL,
APPEAL NO. 2010-00244-CA,
AND 14TH JUDICIAL DISTRICT COURT, PARISH OF CALCASIEU
DOCKET NO. 2007-2738
THE HON. G. MICHAEL CANADAY**

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BMW of North America v. Gore, 517 U.S. 559, 575 (1996)12

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La. Civ. Code Art. 3546(1)8, 9

La. Civ. Code Art. 35484, 7, 8, 9, 15

*Louisiana State Law Institute Revision of the Civil Code of 1870, Conflicts Law: Chapter V. Law
Governing Delictual and Quasi-Delictual Obligations*, Council Draft #2, p. 7 (May 14, 1988).....6

Treatises and Other Secondary Sources

Louisiana’s New Law of Choice of Law for Tort Conflicts: an Exegesis
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I. STATEMENT OF THE CASE AND PROCEEDINGS

A. Factual Background

Amicus adopts and incorporates the Statement of the Case set forth by CITGO in its Brief. Amicus only emphasizes issues it deems of importance to its position in support of CITGO.

This case arises from an oil spill that occurred at CITGO's Lake Charles, Louisiana, refinery on June 19, 2006. The Waste Water Treatment Unit ("WWTU") was built in 1994 to comply with environmental regulations and to handle a 25-year, 24-hour rain event, a common industry standard.

In 2004 and 2005, the Lake Charles Refinery expanded, and the Lake Charles refinery submitted requests for funding to build a third waste water tank. These budgetary requests were approved by corporate management and at the time of the spill construction was already underway. Ironically, the construction of this third tank indirectly caused the spill.

Corporate management never turned down a funding request made by the Lake Charles refinery. Between 1995 and 1999, there was some concern that an overflow could occur in the event of a 25-year rain event – the industry standard. After a study commissioned by the Lake Charles refinery, the concrete lined levee was built in lieu of a third tank, and solved the problem of capacity.

The sole cause of the overflow was negligence in the maintenance of the tanks in Lake Charles and the ongoing construction of a third tank by R&R Contractors, who replaced a section of the concrete levee with a temporary mud levee and, without any knowledge of CITGO management, installed an inadequately sealed junction box with culverts, through which slop oil improperly stored in the waste water tank escaped. Without those omissions, no overflow would have occurred because the evidence is that the slop oil and waste water did not top the existing concrete levee.

Under a duty-risk analysis, regardless of budgetary approval, corporate management in Oklahoma or Texas could not foresee the prospect of an oil spill caused by multiple, future errors at the Louisiana refinery.

On September 17, 2008, CITGO pled to a misdemeanor under the Clean Water Act. It paid a \$13 million punitive, criminal fine.

The spill was caused by decisions made at the Lake Charles Refinery

(1) The massive amount of rainfall strained the capacity of the WWTU. It exceeded the 25-year, 24 hour rain event design of the refinery WWTU. Nonetheless, the water would have been contained in the concrete levee but for activities and maintenance problems exclusively at Lake Charles.

(2) In 1999, corporate headquarters in Oklahoma approved the recommendations of the Lake Charles refinery for a concrete levee around the two tanks to capture overflow if a 25-year rain event occurred. The levee was constructed. After a plant expansion in 2004, management approved a request by Lake Charles for construction of the third waste water tank. As the construction was ongoing in 2006, the contractor, R & R Contractors, removed a portion of the concrete lined levee, substituting a temporary earthen levee and included a junction box containing two culverts which allowed the overflow to escape containment. CITGO's Houston corporate management had no knowledge of the method of construction of the third tank, removal of the concrete levee, or installation of an improperly sealed junction box through which the slop oil leaked. These decisions were made solely by CITGO Lake Charles refinery personnel and R & R Contractors. There is no evidence that even CITGO Lake Charles personnel knew that R & R Contractors failed to seal the junction box. Plaintiffs' expert agreed with CITGO that the decisions made in Lake Charles were responsible for the spill.

(3) Prior to the date of the accident, and against corporate policy, seventeen feet of slop oil had accumulated in each of the two waste water tanks due to the failure of the skimmers in each tank to be properly maintained. Responsibility for the day-to-day operations of the WWTU was appropriately left to personnel in Lake Charles.

B. Trial Proceeding

The 14 plaintiffs were all employees of Ron Williams Construction Company ("Ron Williams"), which was building a new unit at Calcasieu Refining Company ("CRC"), more than two miles downriver from CITGO. Suit was filed in the 14th Judicial District Court bearing Docket Number 2007-2738, with the Honorable G. Michael Canaday presiding.

CITGO moved for summary judgment on plaintiffs' punitive damages claims. On February 3, 2009, the District Court denied the motion. The Third Circuit and this Honorable Court denied supervisory writs.

CITGO admitted fault and agreed to pay all compensatory damages proximately caused by the June 19, 2006 overflow. CITGO denied liability for punitive damages.

Trial began on March 9, 2009 and ended on March 24, 2009. Judgment was entered on October 22, 2009, awarding the plaintiffs general damages ranging from \$7,500 to \$15,000, which included "fear of developing disease." Additionally, each plaintiff was awarded \$30,000 for punitive damages under the *laws of Texas or Oklahoma*.

These plaintiffs are the first to go to trial. About 900 other plaintiffs have filed suits.

C. Appellate Proceeding

After argument, the Louisiana Third Circuit Court of Appeal, Honorable Judges Thibodeaux, Chief Judge, Decuir, and Genovese, affirmed the District Court, but found significant shortcomings with the trial court's opinion, which required the Court to add lengthy analyses to supplement the lower court's written reasons.¹ The Third Circuit's opinion makes several errors and omissions:

- The Third Circuit found that “the trial court should have clarified whether Texas or Oklahoma law should be applied when it recorded its written reasons, and that it should have provided further legal analysis in that regard” and back-filled the District Court's opinion.²
- The Third Circuit erroneously states that CITGO uses 30-year old cases for the proposition that Louisiana prohibits punitive damages, which impliedly undermines Louisiana's strong public policy.³
- The Third Circuit erroneously reasoned that Louisiana statutes that permit punitive damages for drunk driving and child pornography somehow undermines Louisiana's general prohibition against the imposition of punitive damages.⁴
- The Third Circuit erroneously ignores the fact that the Louisiana State Legislature repealed Article 2315.3, (allowing for punitive damages to be imposed on parties transporting hazardous substances) claiming that the article was in Book III of the Civil Code, and therefore, ineffective on the analysis under Article 3546.⁵
- The Third Circuit applies Civil Code Article 3543, where neither the District Court nor any party had even suggested that it applied to this litigation.⁶
- In its discussion of Article 3542, the Third Circuit failed to analyze the Texas interests in imposing punitive damages against Louisiana's public policy against punitive damages.⁷
- The Third Circuit, *sua sponte*, incorporated and misconstrued facts not found by the District Court to support the proposition that CITGO after 1999 (when the concrete levee was built) had knowledge of a potential overflow of the existing containment of waste water at the Waste Water Treatment facility.⁸

This Honorable Court granted CITGO's Writ Application on February 4, 2011.

II. ASSIGNMENT OF ERROR

The Court of Appeal erred in affirming the District Court's judgment awarding punitive damages to the plaintiffs under the laws of Texas using Louisiana Civil Code Articles 3515, 3542, 3543, 3546, 3547, and 3548. The Court of Appeal failed to consider Constitutional issues of double-penalty and due process that must be satisfied to uphold this award. Furthermore, the Third Circuit draws from the record, *sua sponte*, to support its findings with exhibits that it misinterprets.

¹ *Arabie v. CITGO Petroleum Corp.*, CA10-244, pp. 35 – 49 (La. App. 3d Cir. October 27, 2010).

² *Id.* at p. 49.

³ *Id.* at p. 41.

⁴ *Id.* at p. 35.

⁵ *Id.* at pp. 41-42.

⁶ *Id.* at pp. 43-44.

⁷ *Id.* at p. 42.

⁸ *Id.* at p. 39.

III. LAW AND ARGUMENT

We underscore the adverse impact upon out-of-state companies who presently conduct business in Louisiana or may consider doing so in the future. The Third Circuit misinterprets the specific standards set forth in Article 3546 in part by its refusal to follow the mandate of Article 4548 that CITGO's domicile shall be Louisiana, in part by misapplying the clear guidance of both Article 3542 and 3515. The Third Circuit did not analyze on what basis the public policy of Texas was more seriously impaired if its law was not applied to this case considering the clear public policy of Louisiana, the location of the tort and the relationship of the parties, and of the injuries to people and the environment. The Third Circuit's *sua sponte* reliance on Article 3543 is plain error as it has no application to punitive damages but governs only conduct and safety, not damages. Further, the parties were denied the opportunity to brief the issue as the Article was not cited by the District Court.

This Amicus Brief also underscores the Constitutional issues in imposing different liabilities under standards arising from in-state and out-of-state corporations transacting business in Louisiana. Finally, the appellate court erred in lifting new facts from the record and cited these facts incorrectly, which is subject to *de novo* review by this Court.

A. The Third Circuit Court of Appeal erroneously applied Louisiana Conflicts-of-Laws Articles to award punitive damages to the plaintiffs under the laws of Texas

The Third Circuit Court of Appeals affirmed the District Court award of punitive damages under the laws of Texas over express statutory direction that proscribes the award of punitive damages in this case. The Court of Appeal misapplied Articles 3546 and 3548, ignoring the Legislature's directive that punitive damage awards are only available under the most narrow circumstances, requiring that the tort occur in a state that allows punitive damages and that the domicile of the tortfeasor also be in that state. To the contrary, the oil spill occurred in Louisiana, and the tortfeasor, CITGO, shall be considered a Louisiana domiciliary under the principles of Article 3542. The Third Circuit misapplied Article 3543, which has no bearing on this suit as it applies to issues of conduct and safety, not damages.

Background of Louisiana Conflicts of Laws Articles 3542 – 3548.

The history of the Louisiana Conflicts of Laws rules reinforces the state's general proscription of punitive damages. The Louisiana Law Institute and the Louisiana state legislature never intended for punitive damages to be awarded by the courts of Louisiana against tortfeasors who cause damage from business activity in Louisiana. For emphasis, the *précis* of these articles included

the bold statements that the revised rules do not introduce punitive damages “through the back door” and do not favor punitive damages. Indeed, the historical context of the revised conflicts rules are against the imposition of punitive damages.

Louisiana revamped its Conflicts of Laws rules by Act No. 923 of 1991. The new provisions in Code IV of the Louisiana Civil Code took effect January 1, 1992. It was the first comprehensive attempt at conflicts codification in United States history.⁹ The Louisiana conflicts’ premise is to “strive for ways to minimize the impairment of the involved states’ interests, rather than to maximize one state’s interests at the expense of those of the other state.”¹⁰

The “catch phrase” of Louisiana’s chosen scheme refers to “the state whose interests would be most seriously impaired if its law were not applied to the particular issue.” For example, Article 3542 provides, “. . . an issue of delictual or quasi-delictual obligations is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.”¹¹ A court should identify the state which, in light of its relationship to the parties and the dispute and its general policies, would bear the most serious legal, social, economic and other consequences if its law were not applied to that issue.¹²

An entrenched, current tenet of Louisiana law is that punitive damages are not allowable unless expressly authorized by statute.¹³ Louisiana law does not allow for the imposition of punitive damages in this case. In fact, the statute that may have allowed for it, former La. Civ. Code Art. 2315.3, was repealed in 1996, over seven years before this accident occurred.

Book IV speaks to punitive damages in Article 3546, which was adopted after extensive debate by the Louisiana Law Institute.¹⁴ Article 3546 is the result of a compromise within the Louisiana Law Institute. It provides:

Punitive damages may not be awarded by a court of this state unless authorized:

- (1) By the law of the state where the injurious conduct occurred and by either the law of the state where the resulting injury occurred or the law of the place where the person whose conduct caused the injury was domiciled; or

⁹ Symeon C. Symeonides, *Louisiana’s New Law of Choice of Law for Tort Conflicts: an Exegesis* 66 Tul. L. Rev. 677, 678 (1992).

¹⁰ *Id.* at 690.

¹¹ La. Civ. Code Art. 3542 (2010) (*emphasis added*).

¹² Symeon C. Symeonides, *Problems and Dilemmas in Codifying Choice of Law for Torts: The Louisiana Experience in Comparative Perspective*, 38 Am. J. Comp. L. 431, 437 (1990).

¹³ The Third Circuit’s statement that CITGO relies on thirty year old cases is patently incorrect. *See*, generally, *Ross v. Conoco, Inc.*, 02-0299, p. 14 (La. 10/15/02), 828 So. 2d 546 555, *Ramsey v. Bell Helicopter Textron, Inc.*, 704 F. Supp. 1381, 1382 (E.D. La. 1989), *In re: Train Derailment near Amite, Louisiana*, 2004 Dist. Ct. Motions 1531; 2003 Dist. Ct. Motions Lexis 11580 (E.D. La. 2003).

¹⁴ Symeon C. Symeonides, *Louisiana’s New Law of Choice of Law for Tort Conflicts: an Exegesis* 66 Tul. L. Rev. 677, 735 (1992); *See also* Symeon C. Symeonides, *Problems and Dilemmas in Codifying Choice of Law for Torts: The Louisiana Experience in Comparative Perspective*, 38 Am. J. Comp. L. 431, 435, n. 16 (1990).

- (2) By the law of the state in which the injury occurred and by the law of the state where the person whose conduct caused the injury was domiciled.¹⁵

When the text of Article 3546 was considered by the Institute, it contained the following disclaimers in capital letters:

(1) IT DOES NOT CHANGE THE SUBSTANTIVE LAW OF LOUISIANA ON THE ISSUE OF PUNITIVE DAMAGES;

(2) IT DOES NOT INTRODUCE PUNITIVE DAMAGES THROUGH THE BACK DOOR;

(3) IT DOES NOT FAVOR PUNITIVE DAMAGES

(4) EXCEPT FOR CASES WHERE LOUISIANA SUBSTANTIVE LAW IMPOSES PUNITIVE DAMAGES, THIS ARTICLE WILL NOT IMPOSE PUNITIVE DAMAGES ON A LOUISIANA DOMICILIARY FOR CONDUCT WITHIN THIS STATE.¹⁶

With these disclaimers, the article passed as written in the *Louisiana Law Institute Projet*.¹⁷

The Louisiana Law Institute intended for punitive damages to be considered only after an examination of numerous factors regarding the tortfeasor, its relationship with the states involved, and the states' policies. Tellingly, Article 3546 was originally incorporated in Article 3543 ("Issues of Conduct and Safety"). However, because the Council of the Louisiana State Law Institute felt the proposed Article 3543 had a pro-victim tilt, which the Council considered undesirable in the punitive damages conflicts, the Council re-codified punitive damages into a separate article.¹⁸

The drafters of the conflicts articles intended for the laws of another state to be imposed only under clearly defined circumstances that would require the enforcement of that state's punitive damage laws. The compromise allows for punitive damages to be imposed only when two of the three Article 3546 considerations are satisfied. Significantly, it instructs the court when to apply another state's laws on whether the defendant may be liable for punitive damages. The District Court omitted any analysis of the laws of Texas or Oklahoma in imposing punitive damages. The Third Circuit's opinion fills in the gaps, but this was not properly briefed by either party due to the shortcomings of the District Court's opinion.

Given that the statute creates a narrow exception to Louisiana's policy not to allow punitive damages, unless specifically authorized by statute, the statute here should be strictly construed.¹⁹

¹⁵ La. Civ. Code Art. 3546 (2010).

¹⁶ Symeon C. Symeonides, *Problems and Dilemmas in Codifying Choice of Law for Torts: The Louisiana Experience in Comparative Perspective*, 38 Am. J. Comp. L. 431, 459, n. 100 (1990), citing *Louisiana State Law Institute Revision of the Civil Code of 1870, Conflicts Law: Chapter V. Law Governing Delictual and Quasi-Delictual Obligations*, Council Draft #2, p. 7 (May 14, 1988).

¹⁷ Symeon C. Symeonides, *Problems and Dilemmas*, 38 Am. J. Comp. L. 431, 473 Appendix (1990).

¹⁸ *Id.* at 460.

¹⁹ *Hebard v. Dillon*, 97-0221 (La. App. 4 Cir. 09/03/97); 699 So.2d 497.

Any statute allowing punitive damages requires narrow construction of the statute.²⁰ The Third Circuit has broadly construed Articles 3546 and 3543 to affirm the award of punitive damages.

The Louisiana Law Institute clearly intended Article 3546 only be applied in circumstances where another state's policies would be more seriously impaired.²¹ Contrary to the views expressed by the Third Circuit Court of Appeals in this case, the Institute understood: (1) that Louisiana law does not favor punitive damages; and (2) punitive damages will not be imposed upon a Louisiana domiciliary for conduct that occurred within this state. This limitation was deliberately expanded under Article 3548 by requiring that a corporation otherwise domiciled outside the state, who transacts business within the state and whose delictual liability arises from activity within the state, to be treated as a Louisiana domiciliary. CITGO's domicile is appropriately in Louisiana.

Domicile of the Tortfeasor under Article 3548.

Article 3548 provides:

For the purposes of this Title, and provided it is appropriate under the principles of Article 3542, a juridical person that is domiciled outside this state, but which transacts business in this state and incurs a delictual or quasi-delictual obligation arising from activity within this state, shall be treated as a domiciliary of this state.²²

This Article treats foreign juridical persons as Louisiana domiciliaries for the purposes of this Section, when the court determines that, under the principles of Article 3542, such treatment is appropriate in the particular case.²³

Article 3542 provides:

Except as otherwise provided in this Title, an issue of delictual or quasi-delictual obligations is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.

That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the events giving rise to the dispute, including the place of conduct and injury, the domicile, habitual residence, or place of business of the parties, and the state in which the relationship, if any, between the parties was centered; and (2) the policies referred to in Article 3515, as well as the policies of deterring wrongful conduct and of repairing the consequences of injurious acts.²⁴

Only Louisiana meets these principles. Article 3548, comment (c) is instructive on the application of this article when applied to a juridical person, such as CITGO:

[U]nder Article 44(1), loss distribution issues between a Texas tortfeasor and a Texas victim injured in Louisiana by the tortfeasor's Louisiana conduct

²⁰ *Franklin v. Ram, Inc.*, 576 So.2d 546 (La. App. 2 Cir. 1991).

²¹ See Articles 3515 and 3542.

²² La. Civ. Code. Art. 3548 (2010).

²³ *Id.* at cmt. (a).

²⁴ La. Civ. Code Art 3542 (2010).

would be governed by Texas law. But, if the tortfeasor were a juridical person that met the qualifications prescribed in Article 48, the court could decide to treat that person as a Louisiana domiciliary for the purposes of the particular case. This would render inoperative the common domicile rule of Article 44(1) and would render applicable clause (a) of subparagraph (2) of the same Article. This would mean that the case would be governed by Louisiana law, irrespective of whether that law favored the plaintiff or the defendant, because both the conduct and the resulting injury would have occurred in the state of "domicile" of one of the two parties.²⁵

This scenario is plainly evident in the instant litigation. CITGO's corporate headquarters was in Oklahoma and thereafter Texas. However, CITGO must be considered a Louisiana domiciliary after a 3548 and 3542 analysis.

Under Article 3548, CITGO is (1) a juridical person, (2) that is domiciled outside this state, (3) which transacts business in this state, and (4) incurred a delictual obligation arising from activity within this state. Under Article 3542, Louisiana is the state whose policies will be most seriously impaired if the law is not applied: (1) Louisiana is the only state with pertinent contacts to both parties and the events giving rise to the dispute in Lake Charles; (2) Louisiana's citizens were injured and it has the most interest in deterring wrongful conduct, and (3) Louisiana is the only state interested in "repairing the consequences of injurious acts" – the clean-up and protection of its environment. CITGO and plaintiffs had a reasonable expectation that Louisiana's laws will be applied, including its prohibition of punitive damages.²⁶

Proper Analysis under Article 3546(1)

The Third Circuit erred in affirming the District Court's application of La. Civ. Code Article 3546(1), which requires that punitive damages be authorized (1) by the law of the state where the injurious conduct occurred, and (2) by the law of the place where the person whose conduct caused the injury was domiciled. Also, the Third Circuit erred in affirming the District Court's application of Texas/Oklahoma law under Article 3546(1) on two bases: (1) the injurious conduct arose from CITGO's activities within the state of Louisiana, and (2) under the principles of Article 3542 and 3548, CITGO shall be treated as domiciled in Louisiana.

Regarding Article 3546(1), the injurious conduct occurred in Louisiana because the accident could not foreseeably result from the decisions in Texas or Oklahoma. In 1999, the lined concrete levee around the two water storage tanks was completed. This satisfied the capacity requirements of the refinery and addressed concerns previously expressed to management by the Lake Charles

²⁵ Article 3548, cmt(b)

²⁶ See Article 3515, *supra*, p. 9,16.

personnel. The plaintiffs' injuries could not be foreseen by an alleged failure to build a third tank after 1999 when the concrete-lined levee was built having a capacity greater than a third tank.

The conduct that caused plaintiffs' injuries occurred in Louisiana. No overflow of waste water, even more so of slop oil, was foreseeable by Texas management under a duty risk analysis.²⁷ Thus, there was no reasonably foreseeable injury to persons such as plaintiffs.²⁸ The trial court's imposition of punitive damages does not comport with the intended purpose of Article 3546.

The Third Circuit erred in not applying Article 3548 to find that CITGO was domiciled in Louisiana for purposes of Article 3546(1). CITGO transacted business in the state and it incurred a delictual liability "arising out of"²⁹ activity within the state. *The Institute intended to extend protection to CITGO as a Louisiana domiciliary from punitive damages under these circumstances as long as it was consistent with the principles of Article 3542 because Louisiana policies against punitive damages will be seriously impaired if its law is not applied to an out of state corporation transacting business in Louisiana where its liability arises out of that business activity.* The District Court's opinion neglects to acknowledge that a plaintiff wanting to apply the punitive damage law of another state bears the burden of proving a significant relationship and interest in the foreign state so compelling as to transcend Louisiana's interest in application of its substantive law.³⁰ The Third Circuit affirmed with its own analysis, *sua sponte*, without proper briefing from either party.³¹

The Third Circuit's Incorrect Analysis under Article 3543

The appellate court's opinion relies primarily on Article 3543 and the comments thereto.³² This article is simply not intended to cover the imposition of punitive damages, which is the primary reason that the Louisiana Law Institute recommended Article 3546 be created separately and distinctly from Article 3543.³³ Significantly, Article 3543 does not mention damages – instead, a

²⁷ *PPG Industries, Inc. v. Bean Dredging*, 447 So.2d 1058 (La. 1984); *Consolidated Aluminum Corp. v. C.F. Bean Corp.*, 833 F.2d 65 (5th Cir. 1985); *Palsgraf v. Long Island R.R.*, 162 NE 99, 248 N.Y. 339 (N.Y. 1928). Management had no knowledge of storage of 17 feet of slop oil in each waste water tank; it had no knowledge that the skimmer system to eliminate any excess slop oil or waste water was not properly working; it did not know that the level of fluid in the tanks exceeded the proper level; it had no knowledge of removal of part of the lined concrete levee by R&R Contractors in connection with construction of a third tank; it had no knowledge of the improper unsealed junction box installed by R&R through which the slop oil leaked; and it had no knowledge that waste water in a heavy rain event could not be temporarily diverted into the surge ponds in the event of an unprecedented emergency. All of these activities occurred in Lake Charles.

²⁸ See Restatement (Second) Torts, §281(b) and cmt.: "If the actor's conduct creates such a recognizable risk of harm only to a particular class of persons, the fact that it in fact causes harm to a person in a different class, to whom the actor could not reasonably have anticipated injury, does not make the actor liable to the person so injured."

²⁹ "Arising out of" only requires a substantial connection between the activities and the cause of action. *Mede v. Milestone Technology, Inc.*, 269 F. Supp. 2d 246 (S.D.N.Y. 2003); *Colony Ins. Co. v. Pinewoods Enterprises, Inc.*, 29 F. Supp. 2d 1079 (E.D. Mo. 1998)

³⁰ District Court Opinion, p. 20

³¹ *Arabie v. CITGO Petroleum Corp.*, CA10-244, pp. 45-48.

³² *Arabie v. CITGO Petroleum Corp.*, CA10-244, pp. 43-44.

³³ Symeon C. Symeonides, *Louisiana's New Law of Choice of Law for Tort Conflicts: an Exegesis* 66 Tul. L. Rev. 677, 735, n. 17 (1992).

plain reading of the article shows that it governs issues of conduct and safety.³⁴ This Court's consideration of the imposition of punitive damages is not an issue of conduct or safety – it is a consideration of damages, which is governed by Article 3546, which does not reference Article 3543.

A Proper Analysis of Interests under Article 3542

The Courts of Texas similarly recognize that their state's authorization of punitive damages does not give rise to a significant policy that must trump the laws of sister states. The Third Circuit's opinion discussing Article 3542.³⁵ The *Arabie* decision fails to consider the requirement of Article 3542 that the Court consider whether Texas policies would be more seriously impaired if its law was not applied. Had it done so, the Court would have certainly applied Louisiana substantive law.

For example, *Prairie Producing Company and Perry Holding Company v. Angelina* supports the conclusion that Texas would have no desire to apply its law of punitive damage in this proceeding.³⁶ There, plaintiff was a corporation with offices in Texas, owned by Texas domiciliaries. A formal lease of Louisiana land was executed in Texas, with prior negotiations in Louisiana. Defendant was found guilty of fraud in a Texas trial because it failed to perform its leases with plaintiff in good faith. The District Court awarded actual and punitive damages. The Texas Appellate Court reversed, holding that under the most significant relationship test of the Restatement (Second) of Conflicts, Louisiana law controlled. Nowhere did the court indicate that Texas public policy was significantly impaired by not awarding punitive damages against the Texas corporation or by denying its citizens the right to collect punitive damages

Similarly, in *Union Natural Gas Co. v. Enron Gas Marketing*, a Dallas company, Union, entered into a contract with the city of Alexandria, Louisiana, to sell the city natural gas.³⁷ Union contracted with a Louisiana company, LGM, to sell gas to Union. The contracts included a provision that the city would not bypass Union and buy gas directly from LGM. Enron bought LGM in 1993. In 1994, the city cancelled its contract with Union and began buying gas from Enron. Union sued Enron in Texas state court alleging breach of contract and tortious interference. Union sought to apply Texas law to the tort claims, while Enron argued that Louisiana law should apply. Using the most significant relationship test, the court held that Louisiana law applied. The Texas court concluded that Texas policy does not care much about the application of Texas law when the affects of the wrongdoing are felt out-of-state:

³⁴ La. Civ. Code Art. 3543 (2010).

³⁵ *Arabie v. CITGO Petroleum Corp.*, CA10-244, pp. 37-38.

³⁶ 882 SW 2d 640 (Court of Appeals Texas 9th Cir. 1994).

³⁷ No. 14-98-00183-CV, 2000 Tex. App. LEXIS 2241 (Tex. App. – Houston [14th Dist.] April 6, 2000, no pet.).

Moreover, because many Louisiana citizens were dependent on the contracts in question for their supply of gas, any torts committed with regard to those contracts was [sic] of far greater significance to the State of Louisiana than to the State of Texas.³⁸

Texas courts give deference to other states' laws, as well. In *Spence v. Glock, Inc. USA*, the court, applying Texas law, addressed an appeal from the United States District Court for the Eastern District of Texas.³⁹ In this case, the guns were assembled, tested for quality control and sent to distributors from Georgia by Glock, Inc. USA. The punitive class members resided in all fifty states and the District of Columbia, but the named plaintiffs were all residents of Texas, who owned various Glock hand guns. Glock, Inc. USA was a Georgia corporation. The Texas plaintiffs sought punitive damages under Georgia law. The District Court ruled in their favor reasoning that the negligent acts occurred in Georgia, Glock USA had numerous contacts with Georgia, and Georgia regulated the company. The Fifth Circuit reversed and held that the District Court failed to perform a proper choice of law analysis. Under §145, the Restatement emphasizes that, with the exception of where the place of injury is fortuitous or there is little relation to the events or particular issue, in the case of personal injuries, the place where the injury occurred is a contact that plays a defining role in the selection of the state of the applicable law.

In sum: (1) there is no Texas policy substantially impaired; (2) had suit been filed in Texas, under the Restatement, Texas would apply Louisiana prohibitions of punitive damages; and (3) Texas has no public policy interest and, even so, there is no evidence that Texas policy is more seriously impaired than the entrenched public policy of Louisiana.

B. The Punitive Damage Award is Unconstitutional

The constitutionality of a punitive damage award requires *de novo* appellate review of whether the trial court's punitive damage award is constitutional.⁴⁰ The punitive damage award in this case is unconstitutional for two reasons: (1) the lower courts failed to evaluate the punitive damage award using constitutionally mandated guideposts, under which the verdict is unconstitutionally excessive⁴¹; and (2) punitive damages were assessed under a novel interpretation of Louisiana's choice of law rules which renders the rules unconstitutionally vague.⁴²

³⁸ *Id.* at *11.

³⁹ 227 F.3rd 308 (5th Cir. 2000).

⁴⁰ *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 431 (2001).

⁴¹ *See, BMW of North America v. Gore*, 517 U.S. 559, 575 (1996) Instructing courts to evaluate the constitutionality of punitive damages using three guideposts: (1) the degree of reprehensibility of the defendant's conduct, (2) the ratio between punitive and compensatory damages, and (3) a comparison between the punitive damage award and civil penalties authorized for similar conduct.

⁴² *See, Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964) There is a "potentially greater deprivation of the right to fair notice . . . where . . . a statute precise on its face has been unforeseeably and retroactively expanded by judicial construction, than in the typical 'void for vagueness' situation."); *Smith v. Goguen*, 415 U.S. 566, 572 n. 86 (1974)

(a) Failure to Meet Federal Constitutional Guidepost Requirements

The trial court violated due process by failing to analyze its award of punitive damages under the guideposts articulated by the Supreme Court of the United States. *BMW of North America v. Gore*, (instructing courts to evaluate the constitutionality of punitive damages using specific guideposts, including, a comparison between the punitive damage award and civil penalties authorized for similar conduct).⁴³ This Court has an independent duty to evaluate the punitive damages award using the constitutional guideposts under a *de novo* standard of review.⁴⁴ Under the facts of this case, analysis using the constitutional guideposts indicates that no amount of punitive damages would pass constitutional muster.

The “comparison guidepost” requires comparison between the punitive damage award and “the civil or criminal penalties that could be imposed for comparable misconduct.”⁴⁵ In addressing this issue, the Court specified that substantial deference should be accorded to “legislative judgments concerning appropriate sanctions for the conduct at issue.”⁴⁶ In this case, CITGO already has paid a \$13,000,000 civil fine for this conduct, and there has been no showing that further punishment is needed to protect Louisiana’s legitimate interests. Accordingly, the comparison guidepost does not support the punitive damage award.

(b) As Interpreted by the Trial Court, Louisiana’s Choice of Law Rules are Unconstitutionally Vague in Violation of Due Process

Despite affirming the Trial Court’s ruling that applied the law of “Texas or Oklahoma”, the Court of Appeal noted that “the trial court should have clarified whether Texas or Oklahoma law should be applied.”⁴⁷ The trial court and Third Circuit listed a number of facts, noting conduct in Texas and Oklahoma.⁴⁸ Specifically, the trial court and Third Circuit found that CITGO’s headquarters were located in Texas at the time of the spill, and some decisions were made in Texas and Oklahoma.⁴⁹ On the basis of these minimal contacts to the Louisiana casualty, the lower courts concluded that CITGO is subject to punitive damages under Texas and Oklahoma law.

Second, the trial court used an unusual definition of the term “exceptional” in its application of the “exceptional case provision” of Louisiana Civil Code Article 3547 to award punitive damages

(quoting *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) (“A law is void for vagueness if persons of common intelligence must necessarily guess at its meaning and differ as to its application”)

⁴³ 517 U.S. 559, 575 (1996)

⁴⁴ *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 431 (2001).

⁴⁵ *BMW of North America v. Gore*, 517 U.S. 559, 583 (1996).

⁴⁶ *Id.*

⁴⁷ *Arabie v. CITGO Petroleum Corp.*, CA10-244, p. 49. (La. App. 3d Cir. October 27, 2010).

⁴⁸ *Trial Court’s Written Reasons*, at p. 21.

⁴⁹ *Id.*

against CITGO under Texas or Oklahoma law.⁵⁰ In adopting the unusual definition of “exceptional,” the trial court articulated its reasoning as follows:

Finally, Louisiana Civil Code Article 3547 allows the trier of fact to apply another state’s law when, ‘from the totality of the circumstances of an exceptional case, it is clearly evident under the principles of Article 3542 that the policies of another state would be more seriously impaired if its law were not applied to the particular issue.’ In other words, if the Court is convinced, from the totality of the circumstances, that the policies of a state other than the one indicated by Civil Code Articles 3543 through 3546 would be significantly more impaired if its law were not applied, the Court may deviate from those articles and apply the law of another state. [Citation omitted.] **The word “exceptional” in Article 3547 may not necessarily mean the extraordinarily rare case. [Citation omitted.] It may also mean that reasonable people would agree that the policies of one state would be more impaired than the policies of the state indicated in the application of Articles 3543 through 3546. [Citation omitted.]**⁵¹

(emphasis added). As interpreted by the trial court, nearly unbounded discretion permits a court to apply another state’s substantive law merely by deeming the case “exceptional” where there is any contact with another state. This novel interpretation invites arbitrary, capricious, and unequal application, particularly where an out-of-state or unpopular defendant is involved.

The lower courts’ decisions provide an example of the arbitrary way in which this “exception” may be applied, as the trial court merely stated that:

Additionally and alternatively, this Court finds that the exceptional case provision found in Louisiana Civil Code Article 3547 applies in this case and permits application of Texas and Oklahoma law.⁵²

No further analysis of the reasons for applying Texas or Oklahoma law was provided, nor did the trial court specify whether it applied Texas law or Oklahoma law.⁵³

By contrast, the Third Circuit’s Opinion denies that this is an “exceptional case”. The Court, “[applies] the punitive damage law of Texas because it is appropriate under [the Choice of Law articles], and **it is not inappropriate under article 3547**, to which ... the articles are subject.”⁵⁴

With this clear disparity being plainly evident, it will be difficult, if not impossible, to predict what jurisdiction’s law, if any, will be applied in other cases using Louisiana’s choice of law rules. Under the lower courts’ application of Louisiana’s choice of law rules, any operation with a corporate headquarters outside of Louisiana coupled with any decision made outside of Louisiana may be subject to punitive damages for injury caused wholly within Louisiana from an operation located wholly within Louisiana. This application of Louisiana’s choice of law rules unfairly

⁵⁰ *Id.* at p. 21.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Arabie v. CITGO Petroleum Corp.*, CA10-244, p. 45.

subjects individuals or entities with the status of non-Louisiana residence to punitive damages that would not be available against a corporation or individual Louisiana resident.⁵⁵

Louisiana choice of law effectively will be determined by a trial court's caprice rather than by reliable application of the rule of law to factual circumstances. Thus, the lower courts' interpretations of Louisiana's choice of law rules violates the basic tenets of due process as articulated in *Roberts v. United States Jaycees*: "The requirement that government articulate its aims with a reasonable degree of clarity ensures that state power will be exercised only on behalf of policies reflecting an authoritative choice among competing social values, reduces the danger of caprice and discrimination in the administration of the laws, enables individuals to conform their conduct to the requirements of law, and permits meaningful judicial review,"⁵⁶ and *Grayned v. City of Rockford*: "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."⁵⁷

The lower courts' use of Louisiana choice of law rules to select Texas and/or Oklahoma punitive damages law in this case, using the factors articulated under Louisiana choice of law rules or the "exceptional case provision," violated CITGO's due process rights and should be reversed.

C. Erroneous, *Sua Sponte* Fact Findings by the Third Circuit Court of Appeals

The Third Circuit *sua sponte* incorporated and interpreted facts into its opinion to buttress the imposition of punitive damages by the District Court.⁵⁸ While it did not specify an exhibit number in its opinion, the Third Circuit presumably relies on Exhibit D-532 to demonstrate that CITGO management in Texas was negligent.⁵⁹ Although this is a primary basis for the Third Circuit's affirming of the award of punitive damages, the court provides no analysis of the study and its recommendations. An analysis of Exhibit D-532 demonstrates that the 2004 study is inapplicable to an "overflow" event, as is the subject of this litigation.

The Third Circuit's opinion asserts that "permit exceedences" reported by the refinery to Houston management establish that CITGO knew of the alleged "capacity" shortcomings.⁶⁰

Contrary to this erroneous factual conclusions, **these exceedences only relate to the ability of the**

⁵⁵ See e.g., *Lindsey v. Normet*, 405 U.S. 5677, 92 S. Ct. 862 (1972) (holding that procedural rights "cannot be granted to some litigants and capriciously denied to others without violating the Equal Protection Clause.")

⁵⁶ 468 U.S. 609, 629, 104 S. Ct. 3244, 3256, 82 L.Ed.2d 462 (1984) (citations omitted)

⁵⁷ 408 U.S. 104, 108-09, 92 S. Ct. 2294, 2298-99, 33 L.Ed.2d 222 (1972) (footnote omitted)

⁵⁸ We note that the District Court did not find that the exceedences discussed in the 2004 study had any role in the 2006 overflow that is the subject of this litigation. The Third Circuit cites this study *sua sponte*, which permits this Court to review the appellate court's finding *de novo*.

⁵⁹ *Arabie v. CITGO Petroleum Corp.*, CA10-244, p. 39 (La. App. 3d Cir. October 27, 2010)

⁶⁰ *Id.*

treatment plant to process “suspended solid particles.”⁶¹ Simply stated, Exhibit D-532 is a study and recommendation on the ability of the WWTU’s capacity to handle particles in the waste water. Furthermore, the discussion of “capacity” refers to the capacity to clarify the waste water of solid particles, not “capacity” regarding overflow of waste water and slop oil during a storm event.⁶² The 2004 study and recommendation is inapplicable to this accident, which was caused by an overflow of the WWTU that caused slop oil to escape from the refinery.

These fact findings are an erroneous basis for the Third Circuit to find that CITGO management had knowledge of the potential for overflow of either waste water or of slop oil.

IV. CONCLUSION

The District Court and Third Circuit opinions erroneously interpret the Louisiana choice-of-law rules and the application of punitive damages using another state’s laws under Civil Code Article 3546. Book IV of the Louisiana Civil Code (Conflicts of Laws) was not intended to allow punitive damages unless two of the three factors in Article 3546 were satisfied, which the plaintiffs fail to meet. The background and context of the Louisiana Civil Code Revision of its conflicts of laws articles clearly demonstrate that the intent of the Louisiana legislature was to underscore Louisiana’s prohibition against punitive damages except in very limited circumstances. The court erred in not following the dictates of Article 3548, wherein CITGO is domiciled in Louisiana. Louisiana’s interest far outweighs any interest of Texas in imposing punitive damages. The Third Circuit’s reliance on Article 3543 is entirely incorrect.

Furthermore, the application of punitive damages against CITGO is unconstitutional because (1) CITGO suffers a “double penalty” having already paid a substantial civil fine, and (2) the laws used by the Court to impose punitive damages are unconstitutionally vague, which is clearly evident based on the divergent opinions of the two lower courts.

The Court of Appeals plainly over-reaches in its interpretation of the facts and evidence in its attempt to justify its opinion supporting the imposition of punitive damages. The opinion is an attempt to change the public policy of this state and permit the incorporation of punitive damages as a remedy available to plaintiffs, which this Court has repeatedly struck down. The Third Circuit must be reversed by this Court.

⁶¹ Exhibit D-532, Bates No. CIT0095389.

⁶² *Id.*

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing Amicus Brief has this date been served via postage-prepaid U.S. Mail upon all parties and counsel listed below:

New Orleans, Louisiana, this 1st day of March, 2011.

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