

SUPREME COURT OF LOUISIANA

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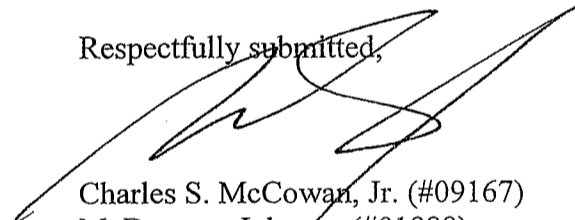
**CRAIG STEVEN ARABIE, ET AL.
VERSUS
CITGO PRETROLEUM CORPORATION, ET AL.**

A CIVIL PROCEEDING

**APPLICATION FOR WRIT OF CERTIORARI AND/OR REVIEW
TO JUDGMENT OF
THE COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA, DOCKET NUMBER 10-244
AFFIRMING
THE JUDGMENT OF THE 14TH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU, STATE OF LOUISIANA
DOCKET NUMBER 2007-2738 - DIVISION "G"
HONORABLE G. MICHAEL CANADAY, DISTRICT JUDGE**

**AMICUS CURIAE BRIEF OF
LOUISIANA CHEMICAL ASSOCIATION, AMERICAN CHEMISTRY COUNCIL, AND
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT
OF WRIT APPLICATION BY CITGO PETROLEUM CORPORATION,
DEFENDANT/APPLICANT**

Respectfully submitted,



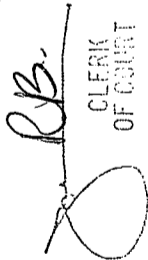
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SUPREME COURT
OF LOUISIANA

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1. Introduction.

A. Amici.

The Louisiana Chemical Association (“LCA”) is a nonprofit Louisiana corporation, composed of 68 member companies, many of whom are incorporated and/or headquartered in states other than Louisiana. LCA members have over 90 chemical manufacturing plant sites in Louisiana, with over 24,000 Louisiana employees.

The American Chemistry Council (“ACC”) is a national trade association that represents the leading U.S. companies engaged in the business of chemistry, a \$689 billion enterprise and a key element of the nation’s economy. The business of chemistry provides jobs for 800,000 Americans. It is one of the nation’s largest exporters, accounting for more than ten cents of every dollar in U.S. exports.

The Chamber of Commerce of the United States of America (“U.S. Chamber”) is the world’s largest business federation. The U.S. Chamber represents more than 300,000 direct members and indirectly represents an underlying membership of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. The U.S. Chamber has filed over 1,700 *amicus* briefs in important business cases at every level of the judicial system.

B. Punitive Damages.

The regulation of punitive damages generally is considered to be a matter subject to policy considerations of the forum state,¹ which are, in turn, subject to procedural and substantive constitutional (due process) limitations.² Louisiana permits a punitive damages award only when specifically authorized by statute.³ Prior to July 1, 1984, Louisiana did not have a statute specifically authorizing punitive damages with regard to the storage, handling, or transportation of hazardous or toxic substances. The Louisiana Legislature’s passage of former

¹ See, e.g., *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605, 2622 (U.S. 2008).

² See, *State Farm Mutual Automobile Insurance Company v. Campbell*, 123 S. Ct. 1513, 1519-1523 (U.S. 2003). See, also, *Philip Morris USA v. Williams*, 127 S. Ct. 1057, 1062-1065 (U.S. 2007).

³ See, e.g., *Ross v. Conoco, Inc.*, 02-0299, p. 14 (La. 10/15/02), 828 So. 2d 546, 555.

Louisiana Civil Code article 2315.3 changed this.⁴ Former Civil Code article 2315.3 specifically authorized punitive damages where it was proved “that the plaintiff’s injuries were caused by the defendant’s wanton and reckless disregard for public safety in the storage, handling, or transportation of hazardous or toxic substances.”

This punitive damages chapter in the history of Louisiana law was closed after twelve years by the 1996 legislative repeal of Article 2315.3.⁵ This repeal of Article 2315.3 was a clear statement by the Louisiana Legislature that the public policy of this state is *against* an award of punitive damages in situations involving the storage, handling, or transportation of hazardous or toxic substances. The Louisiana Legislature’s expression of this public policy was made some five years following the enactment of the current Louisiana Civil Code articles on choice of law⁶ and was essentially affirmed in the recent legislative session when the Louisiana Senate overwhelmingly rejected a bill that would have introduced a similar category of punitive damages to Louisiana.⁷

Louisiana courts traditionally have been reluctant to sanction attempts to introduce punitive damages to Louisiana via a choice of law theory, as our courts have recognized Louisiana’s clear and compelling interest in regulating the conduct of parties within its borders.⁸

C. Amici’s Concerns with Punitive Damages.

LCA members and companies represented by ACC and the U.S. Chamber are sometimes sued because of personal injuries allegedly caused by incidents (a) at their Louisiana facilities, and/or (b) by their Louisiana operations. When this happens, they know that if their liability is established, Louisiana courts may award compensatory damages against them. But, with the

⁴ See, former La. Civ. Code art. 2315.3, which had provided: “In addition to general and specific damages, exemplary damages may be awarded, if it is proved that the plaintiff’s injuries were caused by the defendant’s wanton and reckless disregard for public safety in the storage, handling, or transportation of hazardous or toxic substances.”

⁵ 1996 La. Acts No. 2, Section 1 (effective April 16, 1996).

⁶ La. Civ. Code arts. 3515-3548; 1991 La. Acts No. 923 (effective January 1, 1992).

⁷ See, Senate Bill No. 547 of the 2010 Regular Session of the Louisiana Legislature.

⁸ See, e.g., *Karavokiros v. Indiana Motor Bus Company*, 524 F.Supp. 385 (E.D. La. 1981) and *Lee v. Ford Motor Company*, 457 So.2d 193 (La. App. 2d Cir. 1984), *writ denied*, 461 So.2d 319 (La. 1984).

repeal of former Louisiana Civil Code article 2315.3, the Sword of Damocles that even the “small possibility of a punitive damages award”⁹ represents has been removed. The decision by the Louisiana Court of Appeal, Third Circuit (“Third Circuit”) again brings this Damoclean Sword to bear.

If the Third Circuit’s decision is allowed to stand, out-of-state companies doing business in Louisiana (such as many LCA members and companies represented by ACC and the U.S. Chamber) will regularly face the very real threat of punitive damages in this state simply because they were formed or are headquartered in states that allow such punitive damages. LCA, ACC, and the U.S. Chamber (collectively, “Amici”) submit that this is legally impermissible under a correct interpretation of Louisiana’s choice of law principles and, as more fully explained below, this Court should grant the writ application of Defendant/Applicant, CITGO Petroleum Corporation (“CITGO”), so that the Third Circuit’s decision affirming the trial court’s punitive damages awards can be reviewed and reversed, or in the alternative, at least clarified and limited.

2. Issue Presented.

In Louisiana, punitive damages are not favored and must be expressly provided by statute. No Louisiana statute authorizes punitive damages for an oil spill like that at CITGO’s Lake Charles refinery. The Third Circuit nonetheless affirmed the trial court’s decisions holding CITGO liable for punitive damages under the laws of Texas. Did the Third Circuit correctly apply Louisiana’s choice of law principles when affirming the trial court’s punitive damages awards under Texas law?

3. Standard of Review.

Determining the proper choice of law to be applied to an issue (such as punitive damages) is a question of law that this Court reviews de novo, without deference to the rulings of the tribunals below.¹⁰

⁹ Borchers, *Punitive Damages, Forum Shopping, and the Conflict of Laws*, 70 La. L. Rev. 529 (2010).

¹⁰ La. Const. art V, §§10(A) and (B); La. Code Civ. P. art. 2164; *Holly & Smith Architects, Inc. v. St. Helena Congregate Facility, Inc.*, 2006-0582, p. 9 (La. 11/29/06), 943 So. 2d 1037, 1045.

4. Writ Grant Considerations.

The Third Circuit's erroneous decision essentially creates--under the guise of a choice of law analysis--a loophole for plaintiffs to import punitive damages into Louisiana in situations where the Louisiana Legislature has expressly eliminated the award of punitive damages. Whether routine corporate headquarters decisions made in sister states will subject companies doing business in Louisiana to punitive damages awards in this state is an important legal issue particularly appropriate for review by this Court.

This Court has supervisory jurisdiction, under Article V, §5(A) of the Louisiana Constitution and Louisiana Code of Civil Procedure article 2201, to review and reverse an erroneous appellate decision in civil proceedings. To conduct the required review, the Court must first grant writs.¹¹

A. Significant Unresolved Issues of Law.

Under Rule X, § 1(a)2 of the Rules of the Louisiana Supreme Court, this Court may grant writs if a “court of appeal has decided, or sanctioned a lower’s court’s decision of, a significant issue of law which has not been, but should be, resolved by this court.” As noted in the Louisiana Practice Series, “[i]mportant legal problems that are neither ‘academic’ nor ‘episodic’ and that are likely to have a widespread impact are susceptible to a writ of certiorari. . . . *The res nova interpretation of a statute, presenting a significant question of first impression, is also appropriate for review.*”¹²

The Third Circuit is the first Louisiana state appellate court to affirm, under the “new” Civil Code choice of law provisions,¹³ an award of punitive damages to Louisiana plaintiffs

See, also, Wooley v. Lucksinger, 2006-1140, pp. 36-38, 42-48 (La. App 1 Cir. 12/30/08), 14 So. 3d 311, 352-353, 356-359.

¹¹ The “grant or denial of an application for writs rests within the sound judicial discretion of this court.” Rule X, §1(a), Rules of the Louisiana Supreme Court.

¹² Louisiana Practice Series--Louisiana Civil Appellate Procedure, §13:5 (citations omitted). (Emphasis added.) “We . . . granted certiorari in this case because of the significance to the medical profession of the *res nova* issue presented, as evidenced by the numerous *amici curie* briefs filed in this matter.” *Smith v. Our Lady of the Lake Hospital, Inc.*, 93-2512 (La. 7/5/94), 639 So. 2d. 730, 742.

¹³ Including, *inter alia*, La. Civ. Code arts. 3515, 3518, 3542, 3543, 3546, 3547, and 3548.

under the laws of another state.¹⁴ By its decision affirming the trial court's punitive damage awards under Texas law, via the Civil Code's choice of law provisions, the Third Circuit has reintroduced into Louisiana law punitive damages of the type provided for under repealed former Civil Code article 2315.3, based on nothing more than routine business decisions made at out-of-state corporate headquarters.

The Third Circuit's decision will have a very real influence on hundreds of cases currently percolating through the Louisiana judicial system, as well as future cases, involving foreign companies (i.e., companies "domiciled" outside of Louisiana because they were incorporated or are headquartered out of state).¹⁵ The problems presented by the Third Circuit's decision in the instant matter are neither "academic" nor "episodic" and are likely to have a widespread impact; therefore, they are "susceptible to a writ of certiorari."

If this Court does not grant writs to consider the important issues presented by the Third Circuit's *res nova* interpretation of the Civil Code's choice of law provisions as applied in the punitive damages context, great uncertainty will be created in Louisiana courts. Conversely, if the Court grants writs, the Court will save hundreds of thousands of dollars in legal fees and countless hours of needless effort by litigants and Louisiana courts, who otherwise will have to litigate their way to the appropriate interpretation/application of the Civil Code's choice of law provisions as applied in the punitive damages context. Ultimately, this Court will be the final arbiter on these important issues, and the Court should grant writs now so that the Court can provide the clarity and direction that is so much needed by those doing business in Louisiana, Louisiana litigants, and Louisiana courts.

B. Erroneous Interpretation or Application of Law.

(1) General.

Under Rule X, §1(a)4 of the Rules of the Louisiana Supreme Court, this Court may grant writs if a "court of appeal has erroneously interpreted or applied the constitution or a law of this

¹⁴ The Third Circuit's decision conflicts with the decision of the Second Circuit, Court of Appeal in *Nicholas v. Allstate Insurance Company*, 30,735 (La. App. 2 Cir. 5/28/99), 739 So. 2d 830, *reversed*, 1999-2522 (La. 8/31/00), 765 So. 2d. 1017 (where the Second Circuit briefly considered and rejected the application of a foreign state's punitive damages laws).

¹⁵ *See*, La. Civ. Code art. 3548.

state or the United States and the decision will cause material injustice or significantly affect the public interest.” Effective administration of the law can only be achieved when courts correctly construe statutes, and certiorari is appropriate when a court gives a law an erroneous, strained, or unwarranted interpretation.¹⁶

Here, the Third Circuit’s strained interpretation of Louisiana’s choice of law principles and erroneous legal findings effectively reintroduce into Louisiana law a concept of punitive damages that had been expressly removed (with the repeal of former Civil Code article 2315.3). This will lead to material injustice to CITGO, who would not be subject to any punitive damage awards had the Third Circuit correctly applied Louisiana law in this matter. Moreover, the Third Circuit’s erroneous opinion will serve as a beacon to attract punitive damage assertions in Louisiana tort suits involving foreign defendants; this will unnecessarily burden our civil justice system when litigants and/or the courts mistakenly rely on the Third Circuit’s opinion.

(2) *Specific Third Circuit Errors in Applying Louisiana’s Choice of Law Principles.*

Louisiana Civil Code article 3546 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
- (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.

Plaintiffs’ injuries occurred in Louisiana, and Louisiana does not authorize punitive damages for an oil spill like that at CITGO’s Lake Charles refinery. Thus, Plaintiffs could recover punitive damages only if such damages were authorized by the law of the state where the injurious conduct occurred and the law of the place where CITGO was domiciled.¹⁷

¹⁶ See, Louisiana Practice Series--Louisiana Civil Appellate Procedure, §13:7 and cases cited therein.

¹⁷ Amici note that the Third Circuit’s statement to the contrary notwithstanding (*see, Arabie v. CITGO Petroleum Corporation*, 10-244 (La. App. 3 Cir. 10/27/10) (hereinafter “Third Circuit Opinion”), p. 42), Article 3546 is a choice of law provision, not a punitive damages statute. See, Symeon C. Symeonides, *Louisiana’s New Law of Choice of Law for Tort Conflicts: An Exegesis*, 66 Tul. L. Rev. 677, 742-743 (1992).

(a) *The Third Circuit did not correctly apply Article 3546 and determine that the injurious conduct occurred in Louisiana.*

While the Third Circuit's choice of law analysis was more in depth and well-reasoned than the trial court's, it was nonetheless flawed. Like the trial court, the Third Circuit determined that the "injurious conduct" consisted of budget and management decisions made either in Texas or Oklahoma.¹⁸ But the true injurious conduct, if any, was the way that the third stormwater tank was being constructed *in Louisiana*. This was the principal cause of Plaintiffs' alleged injuries--and thus the true injurious conduct under Article 3546--and it occurred in Louisiana, not Texas or Oklahoma.

Amici submit that the Third Circuit failed to reach the same "injurious conduct" conclusion as Amici because, *inter alia*, the Third Circuit did not conduct the analysis required when conduct that may give rise to punitive damages occurs in more than one state. As indicated in comment (d) to Article 3546, when such conduct occurs in more than one state, the court should refer to comment (h) under Article 3543.¹⁹ Comment (h) to Article 3543 provides, in pertinent part:

(h) Conduct in more than one state. Cases in which the injurious conduct occurs in more than one state should be approached under the principles of causation of the law of the forum. Ordinarily, these principles will make it possible to determine which particular conduct was, legally speaking, the principal cause of the injury. . . .

Thus, in the punitive damages context, where injurious conduct occurs in more than one state, the court should determine the state where the injurious conduct occurred for choice of law purposes by applying Louisiana's principles of causation and determining which particular conduct was the "*principal cause of the injury.*"²⁰

¹⁸ See, Third Circuit Opinion, pp. 36-41, 45.

¹⁹ In its opinion, the Third Circuit actually referenced comment (h) to Article 3543, but the Third Circuit did not conduct the analysis required therein to determine the true state in which the injurious conduct occurred. Third Circuit Opinion, pp. 44-45.

²⁰ Except where this would not yield a clear answer. In which case, the applicable law will be determined in accordance with Article 3542. It is also possible that the fact that the injurious conduct was not localized in any single state could, in appropriate circumstances, evoke the escape clause of Article 3547, even without resorting to the principles of causation. See, the remainder of comment (h) to Article 3543.

The *principal cause* of Plaintiffs' injuries, if any, was the way the third stormwater tank was being constructed *in Louisiana*. This was the operative event that resulted in Plaintiffs' alleged injuries (the principal cause of Plaintiffs' injuries) and thus the true injurious conduct under Article 3546. And it occurred in Louisiana, not Texas or Oklahoma.

(b) *The Third Circuit did not correctly apply Article 3548 and treat CITGO as a Louisiana domiciliary.*

Under Louisiana Civil Code article 3548,²¹ the Third Circuit was generally required to treat CITGO as a Louisiana domiciliary, even though it was formed in a foreign state and its principal place of business was a foreign state and CITGO thus generally would be considered a foreign domiciliary,²² because CITGO transacted business in Louisiana and incurred a delictual obligation arising from activity within this state. Of course, this Louisiana domiciliary requirement has an important proviso: treatment of a foreign juridical person as a Louisiana domiciliary must be "appropriate under the principles of Article 3542."

The Third Circuit thus was right to perform an interest analysis under Articles 3542²³ and 3515²⁴ of the Civil Code to determine whether it was appropriate to treat CITGO as a Louisiana

²¹ Louisiana Civil Code 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 See, La. Civ. Code art. 3518, regarding the domicile of a juridical person.

²³ Louisiana Civil Code 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 Louisiana Civil Code article 3515 provides:

Except as otherwise provided in this Book, an issue in a case having contacts with other states is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.

domiciliary.²⁵ But the Third Circuit erroneously determined that the policy interests of Texas and Oklahoma outweighed those of Louisiana and thus under the principles of Article 3542, it was inappropriate to treat CITGO as a Louisiana domiciliary under Article 3548.²⁶

In its interest analysis, the Third Circuit failed to properly consider, *inter alia*, CITGO's substantial presence in Louisiana;²⁷ CITGO's justifiable expectation that its Louisiana operations would be subject to Louisiana law;²⁸ and Louisiana's policy interests in ensuring the fulfillment of those expectations.

(c) *In evaluating the relevant policies of the involved states as part of its choice of law determinations, the Third Circuit did not properly consider Louisiana's policy interests.*

Examined closely, the Third Circuit's choice of law interest analysis seems more an attempt to justify the application of Texas or Oklahoma punitive damages law to CITGO than a careful weighing of the respective policy interests of those states and Louisiana. Other than with respect to its discussion of Article 3543, as discussed below, the Third Circuit's whole discussion of Louisiana's policy interests essentially consists of the following statements:

- "In the present case, CITGO clearly has pertinent contacts with Louisiana because it has a refinery here."²⁹
- "The trial court heard and weighed over 5,000 pages of trial testimony in this case and determined that CITGO was domiciled in Texas and Oklahoma, and the injurious conduct occurred there under La. Civ. Code arts. 3546 and 3542."³⁰

That state is determined by evaluating the strength and pertinence of the relevant policies of all involved states in the light of: (1) the relationship of each state to the parties and the dispute; and (2) the policies and needs of the interstate and international systems, including the policies of upholding the justified expectations of parties and of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state.

²⁵ See, Third Circuit Opinion, pp. 35-45.

²⁶ See, discussion in Sections 4(B)(2)(c)-(f) below for additional problems with the Third Circuit's choice of law interest analysis.

²⁷ CITGO has invested hundreds of millions of dollars in its Lake Charles refinery operations alone; CITGO employs hundreds of Louisiana residents; and CITGO pays multiple millions of dollars annually in Louisiana state and local taxes.

²⁸ See, e.g., *Rigdon v. Pittsburgh Tank & Tower Company, Inc.*, 95 2611 (La. App. 1 Cir. 11/8/96), pp. 9-10, 682 So. 2d 1301, 1307-1308.

²⁹ Third Circuit Opinion, p. 38.

³⁰ Third Circuit Opinion, p. 41.

- “Under its interest analysis argument, CITGO cites thirty-year-old cases for the propositions that Louisiana has had an unswerving interest in rejecting punitive damages and protecting defendants like CITGO who do business in Louisiana. *See Commercial Union Ins. Co. v. Upjohn Co.*, 409 F.Supp. 453 (E.D.La. 1976) and *Karavokiros v. Ind. Motor Bus Co.*, 524 F.Supp. 385 (E.D.La. 1981), respectively. CITGO paints with too broad a brush and too heavy a hand. Louisiana does not have a policy of protecting all out of state defendants from their own state’s laws. Nor does Louisiana have an unswerving interest in rejecting *all* punitive damages, as indicated by the statutes discussed. . . .”³¹

The Third Circuit thus gave amazingly short shrift to the policies of the Louisiana when considering the important punitive damages issues present in this case. Indeed, the Third Circuit never even expressed what policy interests Louisiana has in this situation. The Third Circuit’s analysis thus can hardly be considered the well-reasoned evaluation of state policy interests contemplated in Articles 3548, 3542, and 3515.³²

(d) *In evaluating the relevant policies of the involved states as part of its choice of law determinations, the Third Circuit improperly relied upon Article 3543.*

A choice of law determination under Article 3543, which governs issues pertaining to conduct and safety, is separate and distinct from a choice of law determination under Article 3546, which governs punitive damages.³³ Thus, when a court makes a punitive damages choice of law determination under Article 3546, the court may not rely upon the principles enunciated in Article 3543.³⁴ The Third Circuit confused this precept, as it erroneously relied upon Article 3543 principles to justify its determination that Louisiana does not have a greater policy interest with respect to the punitive damages issue than Texas or Oklahoma.³⁵

(e) *In evaluating the relevant policies of the involved states as part of its choice of law determinations, the Third Circuit did not do a complete analysis of the relevant policy interests.*

³¹ Id.

³² See, Footnotes 21, 23, and 24, respectively.

³³ See, e.g., Symeonides, *supra*, Footnote 17, at 735.

³⁴ While comments (c), (d), and (e) to Article 3546 do refer to *comments* to Article 3543, Article 3546 itself does not refer to Article 3543. Instead, Article 3546 refers to Article 3542, which, in turn, refers to Article 3515. Comments to Articles 3515, et seq., of the Louisiana Civil Code are not part of the law. 1991 La. Acts No. 923, §3. Moreover, even the comments to Article 3546 do not refer to comment (f) to Article 3543, as relied upon by the Third Circuit. Third Circuit Opinion, pp. 43-44.

³⁵ See, Third Circuit Opinion, pp. 42-45.

To evaluate the strength and pertinence of the relevant policies of the involved states under Articles 3542 and 3515, a court must consider:

- 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;
- the relationship of each state to the parties and the dispute;
- the policies and needs of the interstate and international systems, including the policy of upholding the justified expectations of parties and of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state; and
- the policies of deterring wrongful conduct and of repairing the consequences of injurious acts.³⁶

The Third Circuit failed to consider each of these policy interests when it conducted its evaluation of the relevant policies of the involved states under Articles 3542 and 3515 and determined that Louisiana does not have a greater policy interest with respect to the punitive damages issue than Texas or Oklahoma. As very briefly shown below, had the Third Circuit properly considered each of these policy interests, the Third Circuit would have determined that Louisiana does have a policy interest with respect to the punitive damages issue that is greater than the corresponding policy interests of Texas or Oklahoma:

- (i) 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.

The Plaintiffs are Louisiana residents. CITGO although headquartered at alternate times in Oklahoma or Texas, has a very large presence in Louisiana because, *inter alia*, it owns and operates the Lake Charles refinery where the oil spill occurred. Virtually all of the tangible events giving rise to the oil spill and Plaintiffs' alleged injuries occurred at CITGO's Lake Charles refinery, and Plaintiffs' relationship with CITGO was centered entirely within Louisiana.

- (ii) (a) The relationship of each state to the parties and the dispute; and (b) the policies and needs of the interstate and international systems, including the policies of upholding the justified expectations of parties and of minimizing the adverse consequences that might

³⁶ La. Civ. Code arts. 3542 and 3515.

follow from subjecting a party to the law of more than one state, as well as the policies of deterring wrongful conduct and of repairing the consequences of injurious acts.

Texas and Oklahoma have no relationship with the Plaintiffs. Again, although headquartered at alternate times in Oklahoma and Texas, CITGO has a very large presence in Louisiana. Neither Texas nor Oklahoma has expressed any interest in the outcome of the instant litigation. Moreover, no serious impairment of Texas or Oklahoma public policy will occur if their punitive damages laws are not applied in this Louisiana case. Companies doing business in Louisiana expect that Louisiana law will govern their actions and set the parameters of their liabilities; Louisiana plaintiffs likewise expect redress under Louisiana law when injured in Louisiana. Application of Louisiana punitive damages law will not preclude the Plaintiffs' claims for compensatory damages, and if this Court upholds the Plaintiffs' compensatory damage judgments, CITGO's satisfaction of such judgments should certainly deter any future wrongful conduct of a similar nature.

(f) The Third Circuit failed to make a proper exceptional case analysis under Article 3547.

The Third Circuit made *no* detailed exceptional case analysis under Article 3547³⁷ regarding the potential application of Louisiana law, rather than the laws of Texas or Oklahoma, to the punitive damages issue.³⁸ At a minimum, the Third Circuit should have made this type of analysis.

Had the Third Circuit conducted a proper Article 3547 analysis, it would have applied Louisiana law and held that punitive damages were unavailable. Again, Louisiana generally disfavors punitive damages, and as noted above, since 1996, Louisiana has had a strong public

³⁷ Louisiana Civil Code article 3547 provides:

The law applicable under Articles 3543-3546 shall not apply if, 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 such event, the law of the other state shall apply.

³⁸ The Third Circuit did state: "We will apply the punitive damage law of Texas because is is appropriate under articles 3515, 3518, 3542, 3543, 3546, and it is not inappropriate under article 3547, to which many of the articles are subject." Third Circuit Opinion, p. 45.

policy against punitive damage awards arising out of incidents, such as the CITGO oil spill, involving the storage, handling, or transportation of hazardous or toxic substances.³⁹

This Louisiana public policy will be abrogated if punitive damages awards under Texas or Oklahoma law are allowed in this case. Indeed, Plaintiffs should not be allowed to reintroduce punitive damages to Louisiana--under the guise of a choice of law issue--in a situation exactly like that addressed by the legislature's repeal of former Article 2315.3. This is clearly contrary to the express public policy of this state, and if affirmed, the decision will invite a groundswell of claims for punitive damages anytime a Louisiana tort defendant either has corporate headquarters in a foreign state whose law provides for punitive damages or was incorporated in a foreign state whose law provides for punitive damages.

In sum, from the totality of the circumstances, it is clearly evident that if Louisiana law is not applied on the punitive damages issue, Louisiana's strong public policy against punitive damages of this type will be more seriously impaired than any corresponding policies of Texas or Oklahoma requiring the imposition of punitive damages. Thus, if necessary, this Court should apply Louisiana law under the exception clause in Article 3547 and hold that punitive damages are unavailable.

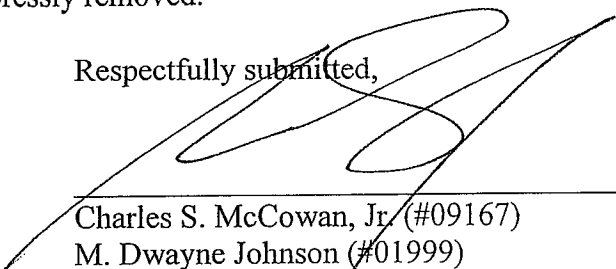
5. Conclusion.

One would have to search long and hard to find a case that more truly presents an issue on which the state's highest court should provide guidance. The issue of how Louisiana's "new" Civil Code articles on choice of law should be interpreted and applied in the punitive damages context is essentially *res nova*. Given this and (a) Louisiana's traditional antipathy to punitive damages of this sort, (b) the need for clarity from this Court to avoid needless legal expense and waste of judicial resources in future cases, (c) the significance of this issue to foreign companies with Louisiana facilities or Louisiana operations, as evidenced by the number of amicus curiae briefs submitted to this Court, and (d) the flawed interpretation of the Third Circuit as described more fully above, Amici submit that this Court should grant CITGO's application for writs and

³⁹ See, also, discussion under Section 4(B)(2)(e) above for a consideration of the other policy interests of the involved states.

reverse, or in the alternative, clarify the Third Circuit's opinion and limit its effect to the particular facts presented, so as to preclude the wholesale reintroduction into Louisiana law of a concept of punitive damages that had been expressly removed.

Respectfully submitted,



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I HEREBY CERTIFY that a copy of the above and foregoing Amicus Curiae Brief of Louisiana Chemical Association, American Chemistry Council, and Chamber of Commerce of the United States of America in Support of Writ Application by CITGO Petroleum Corporation, Defendant/Applicant, has been served on the following by placing the same in the United States mail, properly addressed and postage prepaid:

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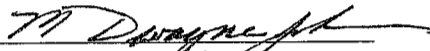
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