No. ___

IN THE

Supreme Court of the United States

LEXON INSURANCE CO., INC.,

Petitioner,

v.

CHEVRON U.S.A. INC., SOJITZ ENERGY VENTURE, INC. and BP AMERICA PRODUCTION CO.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

LISA A. LECOURS
Counsel of Record
KYLE D. GOOCH
BRUCE L. MAAS
DALE A. WORRALL
HARRIS BEACH MURTHA
CULLINA PLLC
445 Hamilton Avenue, Suite 1206
White Plains, New York 10601
(518) 427-9700
llecours@harrisbeachmurtha.com

Counsel for Petitioner

394119

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QUESTION PRESENTED

The Outer Continental Shelf Lands Act (OSCLA), 67 Stat. 462, 43 U.S.C. § 1331 *et seq.*, extends the "Constitution and laws and civil and political jurisdiction of the United States" to the outer Continental Shelf (OCS), *id.* § 1333(a)(1)(A), and permits gaps in existing federal law to be filled using state law in limited circumstances, *id.* § 1333(a)(2)(A). Interpreting that statute, this Court recently made clear that where federal law addresses an issue, state law is "necessarily inconsistent" and "inapplicable" because there is no gap to fill. *Parker Drilling Mgmt. Servs., Ltd.* v. *Newton*, 587 U.S. 601, 610, 614 (2019) (OSCLA "does not adopt state law where there is no gap to fill"). And in *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473 (1981), this Court observed that the OSCLA makes no distinction between judge-made law and statutory law. *Id.* at 487–88.

This case raises an issue not presented in *Parking Drilling* and not clearly resolved in *Gulf Offshore*. The question presented is:

Whether long-established federal common law—specifically, a paying surety's right to equitable subrogation, *see Pearlman* v. *Reliance Ins. Co.*, 371 U.S. 132 (1962)—is part of the "laws . . . of the United States" extended to the OCS under 43 U.S.C. § 1333(a)(1)(A), precluding the application of inconsistent state law restricting that right.

PARTIES TO THE PROCEEDING

Petitioner is Lexon Insurance Co., Inc. (Lexon). Lexon was the plaintiff in the district court and the appellant in the court of appeals.

Respondents are Chevron U.S.A. Inc. (Chevron); Sojitz Energy Venture, Inc. (Sojitz); and BP America Production Co. (BP). Respondents were defendants in the district court and appellees in the court of appeals.

RULE 29.6 STATEMENT

Plaintiff Lexon Insurance Co., Inc. is a wholly owned subsidiary of Endurance U.S. Holdings Corp., which is a wholly owned subsidiary of Endurance Specialty Insurance Ltd., which is a wholly owned subsidiary of Sompo International Holdings Ltd., which is a wholly owned subsidiary of Sompo Japan Insurance Inc., which is a wholly owned subsidiary of Sompo Holdings, Inc., a publicly traded company listed on the Tokyo Stock Exchange (TYO: 8630).

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Lexon Insurance Co., Inc.* v. *Chevron U.S.A. Inc.,* et al., No. 4:21-CV-00990 (S.D. Tex. July 3, 2024) (partial final judgment); and
- *Lexon Insurance Co., Inc.* v. *Chevron U.S.A. Inc.,* et al., No. 24-20347 (5th Cir. Aug. 19, 2025) (opinion and judgment).

Petitioner is not aware of any other proceedings that are directly related to this case within the meaning of Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Lexon Insurance Co., Inc., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion is reported at 151 F.4th 786. App. 1a–19a. The Fifth Circuit's order denying rehearing en banc is unreported but is reproduced at App. 53a–54a.

The report and recommendation of the magistrate judge on the parties' respective motions for summary judgment is available at 2024 WL 1287814. App. 22a–52a. The district court's order adopting the report and recommendation is available at 2024 WL 1291522. App. 20a–21a. The district court's order directing entry of a partial final judgment is available at 2024 WL 3666257. App. 15a–19a.

JURISDICTION

The Fifth Circuit issued its opinion on August 19, 2025, and denied Lexon's timely petition for rehearing en banc on March 2, 2026. App. 1a, 53a. Justice Alito extended the time for Lexon to file a petition for writ of certiorari until June 30, 2026. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

43 U.S.C. § 1333(a)(1)(A) provides, in relevant part, that:

> The Constitution and laws and civil and political jurisdiction of the United States are extended, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State, to . . . the subsoil and seabed of the outer Continental Shelf . . . ."

43 U.S.C. § 1333(a)(2)(A) provides, in relevant part:

> To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations . . . , the civil and criminal laws of each adjacent State . . . are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf . . . which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf . . . .

INTRODUCTION

In enacting the OSCLA, Congress extended "all federal law" to the OCS. *Parker Drilling Mgmt. Servs., Ltd.* v. *Newton*, 587 U.S. 601, 610 (2019). If federal law exists that speaks to an issue, it controls. Only if federal law is absent is there a gap to be filled using the law of the adjacent state, which is borrowed as surrogate federal law. As this Court held in *Chevron Oil Co.* v. *Huson*, 404 U.S. 97 (1971), this borrowing provision prevents federal courts from filling in gaps in existing federal law by "creating new federal common law." *Id.* at 104–05.

This case raises the issue of what it means for there to be a gap in federal law. If "all federal law" is extended to the OCS, *Parker Drilling*, 587 U.S. at 610, that should include existing federal common law. And if an existing rule of federal common law governs a claim, then there is no gap in federal law to be filled by potentially inconsistent state law.

In *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S.C. 473 (1981), this Court considered whether a state-law rule could be borrowed under OSCLA if it conflicted with an existing federal common-law rule. This Court suggested that, if a conflict existed, state law could not apply because OSCLA only borrows state law that is not inconsistent with federal law and "does not distinguish between federal statutory and judge-made law." *Id.* at 487. But this Court did not squarely decide the issue in *Gulf Offshore*, instead remanding the matter to determine in the first instance whether there was, in fact, a conflict between state and federal law in that case.

The analysis in *Gulf Offshore* hinged on whether there was an inconsistency between the two bodies of law because the parties in that case "agree[d] that the substantive law of Louisiana applie[d] . . . unless it [was] inconsistent with federal law." *Id.* at 486. But this Court later made clear in *Parker Drilling* that the operative inquiry under OSCLA is not whether there is an inconsistency between state and federal law (as would be the case under a preemption analysis) but, rather, "whether federal law has already addressed the issue." *Parker Drilling*, 587 U.S. at 610.

This case thus presents a question not clearly decided by *Gulf Offshore*—whether an established rule of federal common law constitutes federal law for purposes of OSCLA, such that there is no "gap" in federal to be filled by state law. As the Court's opinion in *Gulf Offshore* suggests, a straightforward application of OSCLA's text and this Court's precedent provides an answer: established federal common law is federal law for purposes of OSCLA. Thus, where existing federal common law addresses an issue, state law is necessarily inconsistent and cannot be borrowed as surrogate federal law.

The Fifth Circuit's judgment below failed to recognize that "all federal law" includes federal common law, including the federal common-law right of equitable subrogation on which Lexon bases its cause of action. Instead, the Fifth Circuit's approach categorically excludes even established federal common law from applying to matters on the OCS. The court of appeals held that "[b]ecause no federal *statute* governs the precise issue . . . a gap in federal law exists." App. 10a (emphasis added). Such a ruling is impossible to square with this Court's observation in *Gulf Offshore* that OSCLA's choice-of-law provision "does not distinguish between federal statutory and judge-made law," 453 U.S. at 487, or this Court's more recent observation in *Parker Drilling* that the statute "extends *all* federal law to the OCS," 587 U.S. at 610 (emphasis added).

The Fifth Circuit's judgment below declined to apply the established federal common-law right of equitable subrogation. Instead, the court of appeals applied Louisiana law—specifically, Article 1829 of the

Louisiana Civil Code—as surrogate federal law under OSCLA.

This case is a good vehicle to answer the question presented. Lexon, as surety, executed performance bonds on behalf of nonparty Linder Oil, as principal, and the United States, as obligee. The bonds guaranteed Linder Oil's decommissioning obligations under OSCLA. After Linder Oil filed for bankruptcy, the United States ordered the forfeiture of the bonds and Lexon paid the full aggregate penal sum of more than $11.1 million to fund those decommissioning obligations. After that payment, Lexon commenced this action against Respondents under the federal common-law doctrine of equitable subrogation, which allows Lexon, as a paying surety, to step into the shoes of the United States and to recover its payment from those (like Respondents) who were jointly and severally liable to the government on the underlying obligation.

This case involves a well-established rule of federal common law. As this Court observed in *Pearlman* v. *Reliance Insurance Co.*, 371 U.S. 132 (1962), "there are few doctrines better established than that a surety who pays the debt of another is entitled to all the rights of the person he paid to enforce his right to be reimbursed." *Id.* at 136–37. That right, known as equitable subrogation, is deeply rooted in the federal law of suretyship.

The Fifth Circuit's application of OSCLA's choice-of-law provision was dispositive to Lexon's claim. The court held that Lexon has no right of equitable subrogation because Louisiana law does not recognize that doctrine. Instead, the court applied the narrower concept of "legal subrogation" under Article 1829 of the Louisiana Civil Code, a doctrine that is "strictly construed" and "circumscribed" compared to the equitable subrogation doctrine articulated by this Court in cases like *Pearlman*. App. 11a, 12a. The Fifth Circuit thus erred by denying Lexon its right to recovery under established federal common law and applying an inconsistent rule of state law in its place.

This Court should grant the petition to definitively resolve the important question of law presented—whether established federal common law constitutes operative federal law under OSCLA (as interpreted in *Parker Drilling*) such that, where existing federal common law addresses an issue, substitution of state law is precluded. Resolution of that issue will have significant impact beyond these parties.

In addition, the Fifth Circuit's improper application of state law here, on the rationale that no federal *statute* addressed the issue, directly conflicts with this Court's statement in *Gulf Offshore* that OSCLA "does not distinguish between federal statutory and judge-made law." 453 U.S. at 487. If left unaddressed, that conflicting and restrictive view of OSCLA will impair the application of federal common law in circumstances beyond the law of suretyship, expanding the importation of state law on the OSC in a manner never intended by Congress.

STATEMENT OF THE CASE

A. Legal Background

OSCLA authorizes the United States, through the Department of the Interior, to lease OCS lands to private parties for purposes of oil and gas exploration and production, and to grant rights-of-way for oil and gas pipelines. 43 U.S.C. §§ 1334, 1337.

When they are no longer being used for operations, oil wells must generally be plugged; pipelines must be decommissioned; and platforms and other facilities must be removed. *See* 30 C.F.R. § 250.1703. These requirements—called "decommissioning obligations"—arise whenever an oil well is drilled, or a platform, pipeline, or other facility is installed. *Id.* §§ 250.1700, 1702.

Lessees and owners of operating rights are jointly and severally liable for meeting decommissioning obligations. *Id.* § 250.1701(a). Likewise, all holders of a right-of-way are jointly and severally liable for meeting decommissioning obligations. *Id.* § 250.1701(b).

Sale of an interest in a lease or right-of-way does not extinguish accrued decommissioning obligations. All predecessors of lessees and owners of operating rights remain jointly and severally liable for decommissioning "as the obligations accrue and until each obligation is met." *Id.* § 250.1701(a). The same is true for right-of-way holders. *Id.* § 250.1701(b).

Federal regulations require that lessees provide surety bonds or alternative forms of financial security sufficient to secure compliance with all of their lease obligations, including decommissioning obligations. *See* 30 C.F.R. §§ 556.900–907.

B. Factual Background

In 1983, BP leased a 5,000-acre parcel of submerged land on the OCS known as West Cameron Block 168, located in the Gulf of Mexico about 65 nautical miles off the coast of Louisiana.[1] The same year, BP drilled the first well on Block 168, for which it accrued decommissioning obligations.

In 1988, Chevron acquired the Block 168 lease. The following year, it was granted a right-of-way to permit the construction of a pipeline to transmit hydrocarbons from Block 168. Chevron went on to drill a variety of wells and install various pipelines and other facilities on Block 168.

In 2005, Chevron assigned the Block 168 lease and the related right-of-way to nonparty Linder Oil.[2] The following year, Linder Oil assigned 50% of its interest in the lease to Sojitz. In 2015, Sojitz sold its interest in the lease back to Linder Oil.

It is undisputed that, as a result of these transactions, BP, Chevron, and Sojitz each accrued various

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[1] The original lessee was Amoco Production Company, one of BP's predecessors-in-interest. The distinction is not material to the issues presented here. Accordingly, in this petition, actions taken by a party's predecessor-in-interest will be attributed to that party.

[2] "Linder Oil" collectively refers to Linder Oil Company, A Partnership, as well as its affiliates Reserves Management, L.C. and Destin Resources, LLC.

decommissioning obligations to the United States in connection with the Block 168 lease.

In 2016, Lexon, as surety for Linder Oil, issued eight performance bonds in favor of the United States in the aggregate penal sum of $11,163,300, to secure decommissioning and other lease obligations for Block 168 and the right-of-way.

In 2017, Linder Oil and its affiliates filed petitions for bankruptcy. As a result of Linder Oil's inability to finance decommissioning operations, the government ordered the forfeiture of Lexon's bonds. Lexon surrendered the full penal sum of its bonds to the United States. The government then entered into a decommissioning agreement with Sojitz, which used the money to offset most of the cost of decommissioning the lease and right-of-way facilities, the total cost of which was approximately $13.6 million.

C. Procedural History

Lexon commenced this action in 2021. Its primary claim against BP, Chevron, and Sojitz was for equitable subrogation. As a paying surety, Lexon sought to stand in the shoes of the government, the obligee, to recover the amount it paid under its bonds from BP, Chevron, and Sojitz, each of which was jointly and severally liable with Linder Oil to the United States for various accrued decommissioning obligations.[3]

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[3] Lexon also asserted other claims against two individuals associated with Linder Oil. Those claims were severed by the district court under Rule 54(b) of the Federal Rules of Civil Procedure and remain pending in the district court.

In 2022, after agreeing to a stipulated set of facts, the parties each moved for summary judgment. The district court referred the motions to a magistrate judge, who recommended that Respondents' motions be granted and that Lexon's motion be denied on the basis that Lexon's claim was governed by Louisiana law, which did not permit a claim for subrogation under the facts presented. App. 30a–39a. Over Lexon's objections, the district court (Bennett, J.) adopted the magistrate judge's report and issued an order granting summary judgment in Respondents' favor. App. 20a–21a. The district court subsequently severed the dismissed claims and entered a partial final judgment.

Lexon timely appealed the district court's judgment to the Fifth Circuit. A panel of the Fifth Circuit affirmed dismissal of Lexon's claim for equitable subrogation, holding that, under OCSLA, established federal common law is not extended to the OCS. App. 9a–10a. Applying Louisiana law as surrogate federal law, the panel held that Lexon had no right to subrogation under a strict construction of Article 1829 of the Louisiana Civil Code, which provides a remedy for "legal subrogation" only in limited circumstances. App. 10a–12a.

The Fifth Circuit denied Lexon's timely petition for rehearing en banc. App. 53a–54a.

REASONS FOR GRANTING THE PETITION

I. This case presents an important question of federal law that should be resolved by this Court.

OSCLA's text and structure both suggest that established rules of federal common law are part of the "laws . . . of the United States" that are extended to the OCS, which cannot be displaced by inconsistent state law. Such an interpretation accords with this Court's prior decisions concerning OSCLA's choice-of-law provision in *Parker Drilling* and *Gulf Offshore*, as well as this Court's interpretation of the phrase "laws of the United States" in other contexts. In fact, the Court stated in *Gulf Offshore* that OSCLA "does not distinguish between federal statutory and judge-made law." *Gulf Offshore*, 453 U.S. at 487.

Left undisturbed, the Fifth Circuit's contrary holding, limiting "laws . . . of the United States" under 43 U.S.C. § 1333(a)(1)(A) to include only federal statutes, will deprive all persons and businesses operating on the OCS of the benefit of all established rules of federal common law, including rules recognized in decisions of this Court. This petition therefore raises an important question of federal law that should be resolved by this Court. *See* Sup. Ct. R. 10(c).

A. The Fifth Circuit's opinion misapplies OSCLA to preclude the application of all existing federal common law on the OCS.

OSCLA "defines the body of law that governs the OCS" in two steps. *Parker Drilling*, 587 U.S. at 607. First, it "extends '[t]he Constitution and laws and civil and political jurisdiction of the United States' to the OCS." *Id.* (quoting 43 U.S.C. § 1333(a)(1)(A)). Next, it provides that state laws are "declared to be the law of the United States" on the adjacent portions of the OCS "[t]o the extent that they are applicable and not inconsistent with [OSCLA] or with other Federal laws and regulations." 43 U.S.C. § 1333(a)(2)(A). As this Court explained in *Parker Drilling*, "state laws can be 'applicable and not inconsistent' with federal law under § 1333(a)(2)(A) only if federal law does not address the relevant issue." *Parker Drilling*, 587 U.S. at 609.

At the first step, the Fifth Circuit's judgment narrowly (and erroneously) interprets the phrase "laws . . . of the United States" in § 1333(a)(1)(A) to mean only federal statutes. App. 10a ("Because no federal statute governs the precise issue of a surety's right to seek subrogation from non-parties to bonds given to the United States . . . a gap in federal law exists."). By excluding established federal common law from the definition of "laws," this approach deems there to be gaps in federal law even if an established rule of federal common law exists. The Fifth Circuit's rule then allows for the use of inconsistent state law to fill such gaps.

There is no textual basis to exclude established principles of federal common law from the phrase "laws" in § 1333(a)(1)(A). In *Illinois* v. *Milwaukee*, 406 U.S. 91 (1972), this Court interpreted the phrase "laws . . . of the United States" in the federal-question jurisdiction statute, 28 U.S.C. § 1331, to encompass "claims founded upon federal common law as well as those of a statutory origin." *Id.* at 100. As the Court explained, "to give 'laws' its natural meaning" is to construe it to include rules of substantive law adopted by federal courts, including "federal common law." *Id.* Such rules "are as fully 'laws' of the United States as if they had been enacted by Congress." *Id.* (quoting *Romero* v. *Int'l Terminal Operating Co.*, 358 U.S. 354, 393 (1959)); *see also Nat'l Farmers Union Ins. Cos.* v. *Crow Tribe*, 471 U.S. 845, 850 (1985) ("Federal common law as articulated in rules that are fashioned by court decisions are 'laws' as that term is used in [28 U.S.C.] § 1331.").

Other textual clues in OSCLA confirm that the phrase "laws" should be given a broad meaning. For example, the statute commands that federal law applies on the OCS "to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State." 43 U.S.C. § 1333(a)(1)(A). Federal law cannot be applied to the "same extent" if it is stripped of all established, substantive common-law rules.

Other uses of the word "laws" within § 1333 itself also demonstrate its broad meaning. The first sentence of § 1333(a)(2)(A) states that, to the extent applicable and not inconsistent with "this subchapter or with other Federal laws and regulations of the Secretary . . . the civil and criminal laws of each adjacent state" may be treated as federal law on the OCS. This sentence uses the word "laws" twice, first to refer to "other Federal laws" and then to refer to "the civil and criminal laws of each adjacent state." Under the Fifth Circuit's view, the first use of the word "laws" is limited to describing federal statutory law, whereas the second use of the word encompasses all state law, including state common law. It would be anomalous for Congress to use the same word twice in the same sentence but to give that word vastly different meanings. *See IBP, Inc.* v. *Alvarez*, 546 U.S. 21, 34 (2005) ("[I]dentical words used in different parts of the same statute are generally presumed to have the same meaning.").

B. This Court's prior decisions interpreting OSCLA's choice-of-law provision support extension of established federal common law to the OCS.

This Court considered this issue in *Gulf Offshore*. While the Court's holding did not apply federal common law to resolve the issue presented, the Court's analysis and reasoning support an interpretation of "laws . . . of the United States" that encompasses established federal common law.

Gulf Offshore involved a personal injury claim arising on the OCS. One of the questions before the Court was whether the jury should have been instructed that damages awards were not subject to federal income taxation. On the one hand, this Court's precedent established that, as a matter of federal common law, a defendant would be entitled to such an instruction. *See Norfolk & Western R. Co.* v. *Liepelt*, 444 U.S. 490, 497 (1980). It was unclear whether Louisiana law, if borrowed as surrogate federal law, would similarly require such an instruction.

If federal common law were categorically not part of the laws of the United States under § 1333(a)(1)(A), then there would have been little question that

Louisiana law governed the issue. But this Court began its analysis with the observation that OSCLA "does not distinguish between federal statutory and judge-made law." *Gulf Offshore*, 453 U.S. at 487. The Court further noted that if there was a conflict between the two rules that made them inconsistent,"[i]t would seem then that" the federal common law precedent "controls." *Id.* However, the Court noted that the state law question had not been addressed below, determining that the proper course was to remand for further proceedings as to whether there was a conflict and, if so, how that conflict should be resolved. *Id.* at 487–88. The Court conducted this preemption-style "inconsistency" inquiry—later eschewed in *Parker Drilling*—because the parties agreed "that the substantive law of Louisiana applie[d] . . . unless it [was] inconsistent with federal law. *Id.* at 486.

The Fifth Circuit's decision below is not only at odds with this Court's reasoning in *Gulf Offshore*, but also with the analysis in this Court's subsequent decision in *Parker Drilling*. There, the parties proposed two competing views as to how state law should be treated under OSCLA. The respondents argued that state law ought to apply unless it was "inconsistent" and preempted. *See Parker Drilling*, 587 U.S. at 608. The petitioner argued that state law played a narrower role, applicable only where there is a gap in federal law that needs to be filled using state law. *Id.* This Court agreed with the latter approach, explaining that the statute "extends all federal law to the OCS, and instead of also extending state law writ large, it borrows only certain state laws." *Id.* at 610. Thus, "state law serves a supporting role, to be adopted only where there is a gap in federal law's coverage." *Id.* at 616. This Court explained that the threshold, operative "question is whether federal law has already addressed the relevant issue; if so, state law addressing the same issue would necessarily be inconsistent with existing federal law and cannot be adopted as surrogate federal law." *Id.* at 610. "[T]o the extent federal law applies to a particular issue, state law is inapplicable." *Id.*

In the wake of *Parker Drilling*, courts must inquire whether existing federal law addresses the issue in question. If so, the analysis is at an end. And, as this Court suggested in *Gulf Offshore*, existing federal law includes federal common law because OSCLA "does not distinguish between federal and statutory judge-made law." 453 U.S. at 487.

A clear conflict is presented by this analysis and the Fifth Circuit's approach below, which held that the only federal law extended to the OCS is statutory law. That approach categorically excludes all federal common law, no matter how well established. The court of appeals' holding is directly at odds with this Court's holding in *Parker Drilling* that "OSCLA extends *all* federal law to the OCS." *Id.* at 610 (emphasis added).

The Fifth Circuit relied upon—and overread—this Court's decision in *Chevron Oil Co.* v. *Huson*, 404 U.S. 97 (1971). There, the question presented was whether the timeliness of a personal injury claim arising on an oil rig in the OCS should be determined by applying federal admiralty law or a borrowed state-law statute of limitations. This Court held, as it had previously, that OSCLA "does not make admiralty law applicable" in such cases. *Id.* at 99 (citing *Rodrigue* v. *Aetna Cas. & Sur. Co.*, 395 U.S. 352 (1969)). Therefore, there was no preexisting federal statute of limitations applicable to that claim. This Court further held that federal courts applying OSCLA lacked the discretion, exercised in other contexts, to determine appropriate limitations periods for federal claims as a matter of federal common law. To do so, the Court explained, "amounts to an inappropriate creation of federal common law." *Id.* at 104. In essence, the Court held that, under the OSCLA, "'gaps' in federal law" cannot be filled "by creating new federal common law." *Id.* at 104–05.

Given that Congress directed the use of state law as a means to fill gaps in federal law, *see Parker Drilling*, 587 U.S. at 616, it makes sense that federal courts cannot create new federal common law rules to avoid using state law as a gap-filler, *see Huson*, 404 U.S. at 104–05. But it does not follow that federal courts must deny effect to existing, well-established federal common law, including rules established by decisions of this Court.

C. Established rules of federal common law should control suretyship relationships involving the United States' commercial interests.

Although there is no general federal common law, *Erie R. Co.* v. *Tompkins*, 304 U.S. 64, 78 (1938), "the Court has recognized the need and authority in some limited areas to formulate what has come to be known as ‘federal common law.’” *Texas Indus., Inc.* v. *Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981). One such area involves “the rights and obligations of the United States.” *Id.* (citing, *inter alia*, *Clearfield Trust Co.* v. *United States*, 318 U.S. 363 (1943)). With respect to surety bonds issued in favor of the United States in connection with oil-and-gas leases on the OCS, the extent to which a paying surety may subrogate to the rights of the government is a question that should be resolved consistently by application of federal common law.

Sureties play a vital role in many different types of transactions. For oil-and-gas leases on the OCS, surety bonds provide financial assurance to regulators that lessees and operators will fulfill their decommissioning obligations, thereby ensuring that taxpayers are not left to pay for removing abandoned wells, pipelines, and other lease facilities.

One of a surety’s considerations when agreeing to execute a bond is its right of subrogation—the right to step into the shoes of the obligee and enforce the obligee’s rights in order to secure reimbursement. In cases involving bonds issued in favor of the government, this Court’s cases have long recognized a paying surety’s right to subrogate to the rights of the United States as the obligee.

In *Prairie State Nat’l Bank* v. *United States*, 164 U.S. 227 (1896), the Court held that it was “elementary” that a paying surety on an underlying government contract “was entitled to assert the equitable doctrine of subrogation.” *Id.* at 231. The right of subrogation included the surety's "right to resort to the securities and remedies which the creditor (the United States) was capable of asserting against its debtor," *id.* at 232, that is, to step into the shoes of the government. *See also Henningsen* v. *U.S. Fid. & Guar. Co.*, 208 U.S. 404, 411 (1908).

In the seminal case of *Pearlman* v. *Reliance Ins. Co.*, 371 U.S. 132 (1962), a contractor performing work on the government's St. Lawrence Seaway project was required by the Miller Act (*see* 40 U.S.C. § 3131 *et seq.*) to furnish performance and payment bonds for the project. The contractor later defaulted on its obligations and filed for bankruptcy. Its surety paid $350,000 to discharge its obligations on the bonds. The government, which had retained a portion of the contract sum, delivered the money to the trustee of the contractor's bankruptcy estate. The surety argued that it was the owner of that sum by right of subrogation. This Court agreed, observing that "probably there are few doctrines better established than that a surety who pays the debt of another is entitled to all the rights of the person he paid to enforce his right to be reimbursed." *Id.* at 136–37. The Court held that the surety was subrogated to the rights of the government and was entitled to the disputed sum. *Id.* at 141–42.

When a surety issues a bond in favor of the United States to secure decommissioning obligations on the OCS, that surety should be able to rely on well-settled principles of equitable subrogation as applied by this Court and other federal courts. By allowing the application of inconsistent state law to supplant the federal law of equitable subrogation, the Fifth Circuit's rule denies sureties on government bonds the certainty and predictability of the doctrine of equitable subrogation as articulated by this Court in decisions dating back more than 100 years.

II. This case presents an ideal vehicle for resolving the question presented.

This case presents an ideal vehicle for determining the question presented.

The facts are straightforward, fully developed, and undisputed. Indeed, the parties stipulated to all material facts in advance of their respective motions for summary judgment.

The question presented is dispositive to Lexon's claim against Respondents. It is undisputed that each Respondent accrued decommissioning liability to the United States on the Block 168 lease, as former lessees, owners of operating rights, or both. As a paying surety, Lexon has an equitable right to be subrogated to the rights and remedies of the United States against Respondents with respect to the Block 168 decommissioning obligations.

Respondents argued below that the choice-of-law question is not dispositive because Lexon would not be entitled to recover under federal common law. Respondents are wrong.

Under traditional rules of equitable subrogation, a paying surety is subrogated to the rights of the obligee (here, the United States) against parties who are liable to the obligee on the underlying obligations (here, Respondents). As one venerable treatise on the law of suretyship explains:

> The right of subrogation to the remedies of the creditor on payment of the debt of the principal, is not restricted to the remedies which the creditor had as against the principal, but extends to all the remedies which [it] had against the principal and others liable for the debt.

Edwin Baylies, A TREATISE ON THE RIGHTS, REMEDIES, AND LIABILITIES OF SURETIES AND GUARANTORS 358 (1881). Another treatise likewise explains:

> Upon full payment a surety is subrogated to the remedies of a creditor, not only against his principal, but against others who are liable for the debt.

George E. Harris, A TREATISE ON THE LAW OF SUBROGATION: LEGAL, EQUITABLE, AND CONVENTIONAL 124 (1889).

Consistent with these authorities, the American Law Institute, in its 1941 Restatement of the Law of Security, likewise described equitable subrogation as broad enough to entitle a paying surety to obtain reimbursement from parties other than its principal:

> Where others than the principal and the surety are liable to the creditor for the principal's default, and the surety has satisfied the duty of the principal, the surety is subrogated to the creditor's rights against the others, if and to the extent that such

> subrogation is equitable, taking into account the position of the creditor and that of the others.

RESTATEMENT OF THE LAW OF SECURITY § 141 cmt. h (Am. Law Inst. 1941). The latest Restatement likewise adopts a broad rule:

> Upon total satisfaction of the underlying obligation, the [surety] is subrogated to all rights of the obligee with respect to the underlying obligation to the extent that performance of the secondary obligation contributed to the satisfaction.

RESTATEMENT OF THE LAW (THIRD) OF SURETYSHIP & GUARANTY, § 27(1) (Am. Law Inst. 1996).

While Respondents below pointed to contractual limitations on liability that agreed to by the bond principal (Linder Oil), those arrangements did not impair the government's right, upon nonpayment, to pursue claims against each and every entity that accrued decommissioning obligations on the Block 168 or right-of-way. Because Lexon stepped into the shoes of the government, as obligee, upon full payment of the debt, it acquired the government's right to recovery, as if the debt had not been paid. *See Pearlman*, 371 U.S. at 137 ("a surety who pays the debt of another is entitled to all the rights of the person he paid"). Lexon's right of recovery against Respondents thus rests on established, black-letter principles of federal equitable subrogation law.

This case therefore presents an important issue of law that ought to be resolved by this Court: whether established federal common law constitutes operative federal law under OSCLA. Resolution of the question presented will have significant impact beyond these parties. The Fifth Circuit's improper application of state law here, on the rationale that no federal statute addressed the equitable subrogation issue, directly conflicts with this Court's statement in *Gulf Offshore* that OSCLA "does not distinguish between federal statutory and judge-made law." 453 U.S. at 487. If left unaddressed, that conflicting and restrictive view of the OSCLA will impair the application of federal common law in circumstances beyond the law of suretyship, expanding the importation of state law on the OSC in a manner never intended by Congress.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Lisa A. LeCours
Counsel of Record
Kyle D. Gooch
Bruce L. Maas
Dale A. Worrall
HARRIS BEACH MURTHA
CULLINA PLLC
445 Hamilton Avenue, Suite 1206
White Plains, New York 10601
Tel. (518) 427-9700
llecours@harrisbeachmurtha.com

Counsel for Petitioner
Lexon Insurance Co., Inc.

June 30, 2026

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED AUGUST 19, 2025

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-20347

LEXON INSURANCE COMPANY, INCORPORATED,

Plaintiff-Appellant,

v.

CHEVRON U.S.A. INCORPORATED;
SOJITZ ENERGY VENTURE, INCORPORATED;
BP AMERICA PRODUCTION COMPANY,

Defendants-Appellees.

Filed August 19, 2025

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-990

Before Southwick, Oldham, and Ramirez, *Circuit Judges.*

Irma Carrillo Ramirez, *Circuit Judge*:

After the holder and operator of an offshore oil and gas lease defaulted on its well decommissioning obligations, its surety was required to pay the federal government over $11 million. The surety, Lexon Insurance Company, Inc., sued the prior leaseholders for reimbursement, but the district court dismissed its claims. We AFFIRM the dismissal.

I

In 1983, a predecessor of BP America Production Company obtained from the United States an oil and gas lease for West Cameron Block 168, a portion of the Outer Continental Shelf (OCS) located off the Louisiana coast. Chevron U.S.A. Inc. ultimately acquired the lease, and it was granted a right-of-way (ROW) for construction of a pipeline in connection with the lease. Chevron assigned record title to the lease and ROW to Linder Oil Company under the terms of a subsequent Purchase and Sale Agreement in 2005, but it retained the deep operating rights. Linder Oil in turn agreed to assume all decommissioning obligations[1] under the lease and to indemnify Chevron for any related liability.

1. Applicable federal regulations mandate that all offshore wells, platforms, pipelines, and other facilities on the OCS must be decommissioned after the lease ends. *See* 30 C.F.R. §§ 250.1702-1703. All lessees and operators, past and present, are jointly and severally liable for these decommissioning obligations. *See id.* at §§ 250.1701; 556.604; *see also id.* at § 556.710 ("Even after assignment, BOEM . . . may require [an assignor] to bring the lease into compliance if your assignee or any subsequent assignee fails to perform any obligation under the lease, to the extent the obligation accrued before approval of your assignment.").

Linder Oil immediately assigned its interest in the lease to Reserves Management, L.C. and Destin Resources, LLC, which designated Linder Oil as the operator of the shallow rights under the lease (excluding Chevron's deep operating rights), but it held the ROW. Reserves and Destin each conveyed half of their respective interests in the lease to Sojitz Energy Venture, Inc., which also designated Linder Oil as the operator for the shallow rights; in 2015, Sojitz transferred its interests in the lease back to Reserves and Destin. Linder Oil agreed to release Sojitz from all decommissioning obligations arising under the lease and to indemnify it for any related claims.[2]

The Bureau of Ocean Energy Management (BOEM) subsequently required Linder Oil to provide performance bonds to secure the decommissioning obligations under the lease. Its surety, Lexon, issued eight performance bonds with an aggregate penal sum of $11,163,300 in favor of the United States in March 2016, to secure Linder Oil's decommissioning obligations. Lexon required Linder Oil to post collateral as security for its bond obligations, and Linder Oil obtained two letters of credit totaling $9,985,500, with Lexon as beneficiary, from a Louisiana bank. After the bank was closed by Louisiana regulators, the FDIC took over, and it notified Lexon that it was repudiating the letters of credit.

2. The parties agreed that Sojitz would be responsible for no more than $2,700,000 for decommissioning obligations, and that payment was contingent on Linder Oil providing an Authority for Expenditure (AFE) approved by Sojitz. It is undisputed that Linder Oil never submitted an AFE prior to its bankruptcy.

Linder Oil, Reserves, and Destin filed a Chapter 7 bankruptcy proceeding in 2017. Destin and Reserves held record title interest in the lease and Linder Oil held the ROW when both ended in 2018. BOEM notified the bankruptcy trustee that Linder Oil had failed to complete its decommissioning obligations under the lease and ROW and ordered forfeiture of the bonds. Lexon paid the aggregate penal sum of the bonds to BOEM, which transferred the funds to Sojitz and Chevron, and they completed the decommissioning work at a cost exceeding the sum of the bonds.

Lexon sued Chevron, Sojitz, and BP America (Defendants) for reimbursement of the full amount of the bonds under theories of subrogation, contribution, and unjust enrichment.[3] The parties both moved for summary judgment based on a joint stipulation of facts. A magistrate judge recommended entry of summary judgment for Defendants, finding that Lexon was not entitled to reimbursement based on subrogation because (1) Louisiana does not recognize equitable subrogation; (2) Lexon, as surety of the principal obligor, has no right to legal subrogation under Louisiana law; and (3) 31 U.S.C. § 9309 does not provide subrogation rights against anyone other than a surety's principal. He also found that Lexon was not entitled to contribution from Defendants because it does not have a right of contribution from sub-sureties who are indemnified by the surety's principal, and that Lexon could not recover based on unjust

3. Lexon also sued two individuals affiliated with Linder Oil who had executed an indemnity agreement in favor of Lexon, but its claims against them are not at issue here.

enrichment because any enrichment to Defendants for decommissioning obligations was contractually justified. Over Lexon's objections, the district judge adopted the magistrate judge's recommendation in its entirety and dismissed Lexon's claims against Defendants.[4]

On appeal, Lexon argues that (1) it is entitled to reimbursement from Defendants based on subrogation under federal law; (2) even if Louisiana law applies, it is entitled to relief under the state's "legal subrogation" remedy; and (3) it is entitled to recover on its alternative claims for contribution and unjust enrichment under Louisiana law.

II

We review grants of summary judgment de novo, applying the same legal standards as the district court. *See Colony Ins. Co. v. First Mercury Ins. Co.*, 88 F.4th 1100, 1106 (5th Cir. 2023). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "On cross-motions for summary judgment, we review each party's motion independently, viewing the evidence and inferences in the light most favorable to the nonmoving party." *Discover Prop. & Cas. Ins. Co. v. Blue Bell Creameries USA, Inc.*, 73 F.4th 322, 327 (5th Cir. 2023) (citation omitted).

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4. Lexon also asserted a claim for equitable subordination, but by not challenging its dismissal, Lexon has forfeited the claim. *See Rollins v. Home Depot USA*, 8 F.4th 393, 398 (5th Cir. 2021).

III

The Outer Continental Shelf Lands Act (OCSLA) extends the laws and jurisdiction of the United States to the subsoil and seabed of the OCS, including any artificial structures permanently or temporarily attached thereon. 43 U.S.C. § 1333(a)(1). "All law on the OCS is federal, and state law serves a supporting role, to be adopted only where there is a gap in federal law's coverage." *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 616, 139 S.Ct. 1881, 204 L.Ed.2d 165 (2019). When there is a gap to fill in federal law, the law of the adjacent state applies as surrogate federal law to the extent that it is not inconsistent with federal laws and regulations. *Id.* § 1333(a)(2)(A); *see also Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 358-60, 89 S.Ct. 1835, 23 L.Ed.2d 360 (1969). But if a federal law has addressed a particular issue, a state law addressing the same issue cannot be adopted as surrogate federal law because it would "necessarily be inconsistent with existing federal law." *Parker Drilling*, 587 U.S. at 610, 139 S.Ct. 1881.

All parties agree that OCSLA governs this dispute and that Louisiana law applies to fill any federal-law gaps. Lexon contends that federal law, either through 31 U.S.C. § 9309 or federal common law of equitable subrogation, addresses all relevant aspects of its subrogation claim.

A

Section 9309, titled "Priority of sureties," states in full:

> When a person required to provide a surety bond given to the United States Government is insolvent or dies having assets insufficient to pay debts, the surety, or the executor, administrator, or assignee of the surety paying the Government the amount due under the bond—(1) has the same priority to amounts from the assets and estate of the person as are secured for the Government; and (2) personally may bring a civil action under the bond to recover amounts paid under the bond.

31 U.S.C. § 9309. Lexon argues that § 9309 addresses its subrogation claim because the statute "enables a surety who is compelled to pay the government under a bond securing its principal's governmental obligations to obtain reimbursement from any party whom the government lawfully could have forced to satisfy those obligations." Its reliance on this statute is misplaced.

Section 9309, by its plain text and title, establishes the priority and recovery rights of a surety that has paid the United States the amount due under a bond. *See In re Tri-Union Dev. Corp.*, 479 B.R. 425, 443 (Bankr. S.D. Tex. 2012) ("The statute codifies the priority of sureties when a principal obligor is insolvent or dies having assets insufficient to pay debts."); *cf. Almendarez-Torres v. United States*, 523 U.S. 224, 234, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998) ("[T]he title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute." (internal quotation marks omitted)). When read in its entirety,

§ 9309 confers on a surety that pays its principal's debt to the United States the same priority as the United States to the insolvent principal's assets and estate; it authorizes the surety to bring a civil action personally "under the bond" for the recovery of the amount paid. *See In re J. Menist Co.*, 289 F. 229, 231 (2d Cir. 1923) (explaining that the predecessor statute to § 9309[5] "merely gives to the surety the right to bring suit in its own name for the recovery of all moneys which the surety has paid, and it gives him in addition the same priority in the assertion of that right which is given to the United States").

Contrary to Lexon's suggestion, § 9309 does not broadly authorize a surety to file suit against *any* party for the recovery of amounts paid to the government. Instead, the surety is limited to bringing "a civil action *under the*

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5. The predecessor statute, § 3468 of the Revised Statutes, is substantially similar to the current version:

> Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator, or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator, or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States, and may bring and maintain a suit upon the bond, in law or equity, in his own name, for the recovery of all moneys paid thereon.

bond." 31 U.S.C. § 9309 (emphasis added). Generally, "[a] surety bond creates a three-party relationship, in which the surety becomes liable for the principal's debt or duty to the third party obligee." *Matter of Falcon V, L.L.C.*, 44 F.4th 348, 351 (5th Cir. 2022) (quoting *Ins. Co. of the W. v. United States*, 243 F.3d 1367, 1370 (Fed. Cir. 2001)). Because Defendants are not parties to the bonds, Lexon cannot seek subrogation against them under § 9309.

B

Lexon next argues that the laws of the United States that the OCSLA extends to the OCS encompass "established federal common" like equitable subrogation. It is true that "there are few doctrines better established than that a surety who pays the debt of another is entitled to all the rights of the person he paid to enforce his right to be reimbursed." *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 136, 83 S.Ct. 232, 9 L.Ed.2d 190 (1962). "Congress made clear provision for filling in the 'gaps' in federal law [with state law, however]; it did not intend that federal courts fill in those 'gaps' themselves by creating new federal common law." *Chevron Oil Co. v. Huson*, 404 U.S. 97, 104-05, 92 S.Ct. 349, 30 L.Ed.2d 296 (1971). "This policy of federal deference reflects the Congress's recognition of the special relationship which exists between the [OCS] and the adjacent states." *Matte v. Zapata Offshore Co.*, 784 F.2d 628, 631 (5th Cir. 1986). Indeed, both the Supreme Court and this circuit have consistently recognized that state law, not "federal common law," applies as surrogate federal law under the OCSLA. *See* id. at 104 & n.8, 92 S.Ct. 349 ("[F]ederal courts should not create interstitial federal common law when the Congress has directed that a whole body of state law shall apply."); *Fontenot v. Dual Drilling Co.*, 179 F.3d 969, 977 (5th Cir. 1999) ("[O]ur Circuit has consistently rejected attempts of litigants to have 'federal common law' override rules of Louisiana tort law in actions arising on fixed platforms on the [OCS]." (citing cases)).

Because no federal statute governs the precise issue of a surety's right to seek subrogation from non-parties to bonds given to the United States that secure the performance of obligations on the OCS, a gap in federal law exists. The OCSLA mandates that this gap be filled by the laws of the adjacent state, "to the extent they are applicable and not inconsistent with" federal law. 43 U.S.C. § 1333(a)(2)(A). Lexon does not assert that Louisiana law is inconsistent with federal law. The district court was therefore correct to turn to Louisiana law to analyze the substance of Lexon's subrogation claim.

IV

Lexon asserts that the district court erred in concluding that it is not entitled to recover from Defendants under Louisiana's "legal subrogation" remedy. We disagree.

Under Louisiana law, a "surety who pays the principal obligation is subrogated by operation of law to the rights of the creditor." La. CIA. Code Art. 3048. Article 1829 of the Louisiana Civil Code, in turn, specifies the limited circumstances where subrogation occurs by operation of law. *See Wilhite v. Schendle*, 92 F.3d 372, 377 (5th Cir. 1996) ("The five instances in which 'legal' subrogation may occur are specifically listed in La. Civ. Code Art. 1829."). As relevant here, "[s]ubrogation takes place by operation of law . . . [i]n favor of an obligor who pays a debt he owes with others or for others and who has recourse against the others as a result of the payment." La. Civ. Code Art. 1829(3).

"Article 1829(3) is an exception to the general rule that subrogation does not take place when a third person pays the debt of another." *Martin v. La. Farm Bureau Cas. Ins. Co.*, 638 So.2d 1067, 1068 (La. 1994); *accord A. Copeland Enters., Inc. v. Slidell Mem'l Hosp.*, 657 So. 2d 1292, 1297 (La. 1995); *see also* La. Civ. Code Art. 1855 (stating general rule that "[p]erformance rendered by a third person effects subrogation only when so provided by law or agreement"). For legal subrogation to exist under the provision, "the obligor must have a recourse against the other obligors with whom or for whom he is bound." Saul Litvinoff, *Subrogation*, 50 La. L. Rev. 1143, 1170 (1990). "Due to the exceptional nature of subrogation by operation of law, the right is strictly construed." *Martin*, 638 So.2d at 1068.

Here, the district court determined that Lexon was not entitled to legal subrogation under Article 1829(3) because it had failed to show it has any right of recourse against them "as a result of" its payment under the bonds. Lexon does not challenge the court's conclusion that it lacks recourse against Defendants based on its payment. It instead argues that the district court misconstrued the scope of its legal subrogation rights under the Civil Code. This argument lacks merit.

Lexon asserts that Article 1829(3) does not specifically limit the scope of rights to which a paying surety is subrogated under Article 3048, but the Louisiana Supreme Court has made clear that "the effects of legal subrogation are circumscribed and carefully spelled out in the Civil Code." *State Farm Mut. Auto. Ins. Co. v. Berthelot*, 732 So. 2d 1230, 1233 (La. 1999). Further, Civil Code articles on the same subject matter must be interpreted in reference to each other. La. Civ. Code Art. 13 ("Laws on the same subject matter must be interpreted in reference to each other."); *see also St. James Bank & Tr. Co. v. S & H Enters., Inc.*, 532 So. 2d 915, 916 (La. Ct. App. 1988) (reading Article 3048 in conjunction with a different subrogation provision because they deal with the same subject matter). The district court correctly applied Louisiana law when it concluded that Lexon was not entitled to legal subrogation.

V

Lexon asserts an alternative claim for contribution under Article 3055. It states:

> Co-sureties are those who are sureties for the same obligation of the same obligor. They are presumed to share the burden of the principal obligation in proportion to their number unless the parties agreed otherwise or contemplated that he who bound himself first would bear

> the entire burden of the obligation regardless of others who thereafter bind themselves independently of and in reliance upon the obligation of the former.

La. Civ. Code Art. 3055. “The presumption that each surety owes his or her virile share may be rebutted upon the showing of either of two circumstances: (i) the parties agreed otherwise or (ii) there was an understanding that the first surety to bind himself would bear the entire burden.” *Scarborough v. Scarborough*, 25 So. 3d 941, 944 (La. Ct. App. 2009).

Lexon argues it is entitled to judgment as a matter of law on Defendants’ liability for their proportional share of amounts it paid under the bonds. But the very premise of the claim—a shared, equal burden—is absent here. Lexon does not point to any evidence showing it was a “co-surety” with any defendant. Even if Defendants were co-sureties under Article 3055, Linder Oil’s agreement to assume the decommissioning obligations and to indemnify Defendants for claims based on the obligations rebuts any presumption that they agreed to “share the burden of the principal obligation.”

VI

Lexon generally argues that the record evidence establishes all the elements for unjust enrichment.

In Louisiana, “[a] person who has been enriched without cause at the expense of another person is bound to compensate that person." La. Civ. Code Art. 2298. To establish a claim for unjust enrichment, a plaintiff must show "(1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) an absence of justification or cause for the enrichment and impoverishment; and (5) no other available remedy at law." *Zeising v. Shelton*, 648 F. App'x 434, 437 (5th Cir. 2016) (quoting *Pinegrove Elec. Supply Co. v. Cat Key Const., Inc.*, 88 So.3d 1097, 1100 (La. Ct. App. 2012)). "If there is a contract between the parties it serves as a legal cause, an explanation, for the enrichment. Only the unjust enrichment for which there is no justification in law or contract allows equity a role in the adjudication." *Edwards v. Conforto*, 636 So.2d 901, 907 (La. 1993), *on reh'g* (May 23, 1994) (citation modified).

Here, the undisputed summary judgment evidence shows that Lexon's payment is based on bonds it issued to secure Linder Oil's decommissioning obligations, and any enrichment enjoyed by Defendants in avoiding those costs resulted from their bargained-for indemnity agreements with Linder Oil. Given these business transactions, there is a sufficient "justification in law" for any enrichment of Defendants by Lexon paying for decommissioning obligations arising out of the lease. *See Edwards*, 636 So. 2d at 907 ("The justification or cause for the lessor's enrichment was the contractual agreement between the parties.").

* * *

The judgment of the district court is AFFIRMED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION, FILED JULY 3, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 4:21-CV-00990

LEXON INSURANCE COMPANY, INC., *et al.*,

Plaintiffs,

v.

CHEVRON U.S.A. INC., *et al.*,

Defendants.

Filed July 3, 2024

ORDER

Before the Court is Plaintiff's Unopposed Motion for Certification of Partial Final Judgment Pursuant to Federal Rule of Civil Procedure 54(b) and to Sever (the "Motion"). Doc. #129. On March 26, 2021, Plaintiff filed its Complaint against Defendants Chevron U.S.A. Inc. ("Chevron"), Sojitz Energy Venture, Inc. ("Sojitz"), BP America Production Company ("BP"), Roger D. Linder ("Linder"), and General Miles Biggs, Jr. ("Biggs"). Doc.

#1. Specifically, Plaintiff asserted claims against Chevron, Sojitz, and BP (collectively, the "Corporate Defendants") for a declaratory judgment (Count One), subrogation (Count Two), contribution (Count Three), and equitable subordination and unjust enrichment (Count Four). *Id.* ¶¶ 89-116. Plaintiff also asserted a breach of contract claim (Count Five) against Linder and Biggs (collectively, the "Individual Defendants") based on an indemnity agreement that the Corporate Defendants were not involved in. *Id.* ¶¶ 83-88, 117-22.

On October 14, 2022, Plaintiff moved for summary judgment against the Corporate Defendants and for partial summary judgment against the Individual Defendants. Doc. #81. The Corporate Defendants also each individually moved for summary judgment on all of Plaintiff's claims. Doc. Nos. 75, 77, 79. The case was referred to United States Magistrate Judge Peter Bray for all pretrial matters, including issuance of a Memorandum and Recommendation on any dispositive motions. Doc. #109. Judge Bray issued a Memorandum and Recommendation on February 28, 2024, as to each of the parties' summary-judgment motions. Doc. #121. On March 25, 2024, the Court adopted Judge Bray's Memorandum and Recommendation in its entirety. Doc. #124. In doing so, the Court denied Plaintiff's Motion for Summary Judgment against the Corporate Defendants and granted each of the Corporate Defendants' respective Motions for Summary Judgment. *Id.* The Court also granted partial summary judgment against the Individual Defendants with respect to Plaintiff's breach of contract claim (Count Five) as to liability only. *Id.* Thus, the

Court has resolved Counts One, Two, Three, and Four of Plaintiff's Complaint and all causes of action asserted against the Corporate Defendants. However, the issue of damages remains pending with respect to Count Five of the Complaint, as the Court has only resolved the issue of the Individual Defendants' liability. Plaintiff now moves for (1) certification of a partial final judgment as to Counts One, Two, Three, and Four of the Complaint against the Corporate Defendants, and (2) severance of Count Five, which is asserted only against the Individual Defendants, so that the issue of damages can be adjudicated. Doc. #129.

Federal Rule of Civil Procedure 54(b) allows courts to "direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b). "A court may direct entry of a Rule 54(b) partial final judgment only if more than one claim for relief is presented or multiple parties are involved." *Lloyd's Syndicate 457 v. Floatec LLC*, No. CV H-16-03050, 2018 WL 722589, at *1 (S.D. Tex. Feb. 6, 2018). In evaluating a motion under Rule 54(b), courts must determine whether (1) it is dealing with a "final judgment," or an "an ultimate disposition of an individual claim entered in the course of a multiple claims action," and (2) "whether there is any just reason for delay." *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7-8 (1980) (internal quotations and citation omitted).

Here, the Court's March 25 Order adopting Judge Bray's Memorandum and Recommendation served as a final judgment with respect to all causes of action asserted against the Corporate Defendants because summary judgment was granted in their favor on Counts One, Two, Three, and Four. *See* Doc. #124. The next issue is "whether there is any just reason for delay." *Curtiss-Wright Corp.*, 446 U.S. at 8. District courts in this Circuit consider several factors in making this determination, such as:

> (1) the relationship between the adjudicated and the unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; [and] (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.

Lloyd's Syndicate 457, 2018 WL 722589, at *1 (cleaned up). Here, Count Five only involves the Individual Defendants and is entirely separate from the now-resolved claims Plaintiff asserted against the Corporate Defendants. Moreover, Count Five is discreet from Counts One through Four, which did not involve the Individual Defendants. Thus, no future developments on Count Five will moot appellate review of Counts One through Four, and the reviewing court will not be obligated to consider the same issue a second time. There are also no claims or counterclaims involving the Individual Defendants that could result in a set-off against the judgment sought to be made final. Finally, there are no miscellaneous factors that counsel against granting Plaintiff's Rule 54(b) Motion. Thus, the Court finds there is "no just reason for delay." *See* Fed. R. Civ. P. 54(b).

Therefore, Plaintiff's Motion is hereby GRANTED. Doc. #129. The Court will enter a separate Order certifying partial final judgment as to Counts One, Two, Three, and Four of Plaintiff's Complaint against the Corporate Defendants. It is further ORDERED that Count Five of the Complaint—Plaintiff's breach of contract claim against the Individual Defendants—is hereby severed pending further adjudication as to damages.

It is so ORDERED.

Date July 3, 2024

/s/ Alfred H. Bennett
The Honorable Alfred H. Bennett
United States District Judge

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION, DATED MARCH 25, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION NO. 4:21-CV-00990

LEXON INSURANCE COMPANY, INC., *et al.*,

Plaintiffs,

v.

CHEVRON U.S.A. INC., *et al.*,

Defendants.

Before the Court are United States Magistrate Judge Peter Bray's Memorandum and Recommendation filed on February 28, 2024 (Doc. #121), Defendants Roger D. Linder and General Miles Biggs, Jr.'s (collectively, the "Individual Defendants") Objections (Doc. #122), and Plaintiff Lexon Insurance Company Inc.'s ("Plaintiff") Objections (Doc. #123). The Magistrate Judge's findings and conclusions are reviewed de novo. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Having reviewed the parties' arguments and applicable legal authority, the Court adopts the Memorandum and Recommendation as its Order.

Accordingly, Plaintiff's Motion for Summary Judgment Against the Corporate Defendants and Partial Summary Judgment Against the Individual Defendants is GRANTED IN PART. Doc. #81. Specifically, Plaintiff's Motion for Summary Judgment against Defendants Chevron U.S.A., Inc., BP America Production Company, and Sojitz Energy Venture, Inc. is DENIED. *Id.* However, Plaintiff's Motion for Partial Summary Judgment against the Individual Defendants is GRANTED. *Id.* Moreover, Chevron, U.S.A., Inc.'s Motion for Summary Judgment (Doc. #75), BP America Production Company's Motion for Summary Judgment (Doc. #77), and Sojitz Energy Venture, Inc.'s Motion for Summary Judgment (Doc. #79) are GRANTED.

It is so ORDERED.

Date March 25, 2024

/s/ Alfred H. Bennett
The Honorable Alfred H. Bennett
United States District Judge

APPENDIX D — MEMORANDUM AND RECOMMENDATION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION, FILED FEBRUARY 28, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Civil Action H-21-990

LEXON INSURANCE COMPANY, INC.,

Plaintiff,

v.

CHEVRON U.S.A. INC., SOJITZ ENERGY VENTURE, INC., BP AMERICA PRODUCTION COMPANY, ROGER D. LINDER, AND GENERAL MILES BIGGS JR.,

Defendants.

Filed February 28, 2024

MEMORANDUM AND RECOMMENDATION

Plaintiff Lexon Insurance Company, Inc. (Lexon) filed this lawsuit against Defendants Chevron U.S.A. Inc. (Chevron), Sojitz Energy Venture, Inc. (Sojitz), BP America Production Company (BP), Roger D. Linder (Mr. Linder), and General Miles Biggs Jr. (Mr. Biggs) (collectively, Defendants). ECF No. 1. Pending before the court are Motions for Summary Judgment filed by Defendants' Chevron, BP, and Sojitz (collectively, Corporate Defendants),[1] ECF Nos. 75, 77, 79, and Plaintiff Lexon's Motion for Summary Judgment Against the Corporate Defendants and Partial Summary Judgment Against the Individual Defendants, ECF No. 81. On June 27, 2023, the District Judge referred the case to the undersigned magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and Federal Rule of Civil Procedure 72. ECF No. 109. The court recommends that Lexon's Motion for Summary Judgment Against the Corporate Defendants, ECF No. 81, be **DENIED**, that Lexon's Partial Motion for Summary Judgment Against the Individual Defendants, ECF No. 81, be **GRANTED**, and that the Corporate Defendants' Motions for Summary Judgment, ECF Nos. 75, 77, 79, be **GRANTED.**

I. Background and Facts

Lexon filed this action on March 26, 2021. ECF No. 1. Lexon asserts claims for declaratory judgment (Count I); subrogation (Count II); contribution (Count III); equitable subordination and unjust enrichment (Count IV); and breach of contract (Count V). *Id.* ¶¶ 89–122.

On July 1, 1983, the United States issued oil and gas Lease No. OCS-G 5283 (the Lease) under the Outer Continental Shelf Lands Act (OCSLA) to Amoco

1. Corporate Defendants' Motions for Summary Judgment, ECF Nos. 75, 77, 79, are nearly identical. Chevron and BP filed a joint response and reply. ECF Nos. 91, 96. Thus, the court refers collectively to the Corporate Defendants' arguments except as otherwise indicated.

Production Company (Amoco). ECF No. 74 ¶ 2. Outer Continental Shelf leases and rights-of-way are managed by the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE). ECF No. 1 ¶ 3. On July 1, 1987, Amoco assigned 100% of its record title interest in the Lease to Tenneco Oil Company (Tenneco). ECF No. 74 ¶ 6. By merger, Amoco became BP. *Id.* ¶ 7. On September 30, 1988, Tenneco assigned its record title interest in the Lease to TOC-Gulf of Mexico Inc. (TOC). *Id.* ¶ 8. On December 31, 1988, TOC merged with Chevron. *Id.* ¶ 9. Via the merger, Chevron acquired 100% of the record title interest in the Lease. *Id.* ¶¶ 9–10. In 1989, Chevron was granted Right-of-Way No. OCS-G 11685 (ROW), which allowed for a pipeline associated with the Lease to transmit hydrocarbons to a third-party line. *Id.* ¶11.

On January 1, 2005, Chevron, then the sole record title interest owner of the Lease and sole holder of the ROW, entered into a Purchase and Sale Agreement (PSA) with Linder Oil Company (Linder Oil). ECF No. 74 ¶ 15. Pursuant to the PSA, Chevron sold and assigned its interest in the Lease and ROW to Linder Oil, and Linder Oil conveyed to Chevron all of the operating rights in the Lease as to those depths greater than 13,564 feet (Deep Rights). *Id.* ¶ 16. Also pursuant to the PSA, Linder Oil agreed to assume all responsibility for Chevron's decommissioning obligations, and to indemnify Chevron for any future liability, including for decommissioning obligations. ECF No. 75-10 at 6–7.

On January 1, 2005, Linder Oil assigned 50% of its record title interest in the Lease to Reserves Management, L.C. (Reserves) and the other 50% of its record title interest in the Lease to Destin Resources, LLC (Destin), but Linder Oil remained the holder of the ROW. ECF No. 74 ¶ 19. Reserves and Destin then designated (i) Linder Oil as the designated operator for the entire Lease, limited to all depths above the Deep Rights (the Shallow Rights) and (ii) Chevron as the designated operator for the Lease as to the Deep Rights. *Id.* ¶ 20. On July 1, 2006, Reserves and Destin conveyed 25% record title interest in the Lease to Sojitz. *Id.* ¶ 22. On April 1, 2015, Sojitz assigned 50% record title interest in the Lease back to Reserves and Destin equally. *Id.* ¶ 28.

As a result of the foregoing transactions, as of April 2015:

- Reserve held 50% record title interest in the Lease;
- Destin held 50% record title interest in the Lease;
- Chevron remained the operating rights owner and designated operator for the Lease as to the Deep Rights;[2]
- Linder Oil was the designated operator as to the Shallow Rights; and
- Linder Oil remained the holder of the ROW.

ECF No. 1 ¶¶ 55–59.

2. The Deep Rights are not at issue in this case.

After Sojitz conveyed its rights in the Lease and the ROW, BOEM required Linder Oil to provide financial assurance in the form of performance bonds to secure its Lease obligations, including decommissioning, to the United States. ECF No. 74 ¶ 36. In March 2016, Lexon, acting as surety for its principal, Linder Oil, issued eight Outer Continental Shelf (OCS) Mineral Lessee's or Operator's Supplemental Bonds (collectively, the Bonds) with an aggregate penal sum of $11,163,300 in favor of the United States, acting through BOEM, as obligee. *Id.* ¶ 37. The Bonds secured Linder Oil's Lease and ROW obligations, including decommissioning obligations. *Id.* ¶ at 38. In addition, Lexon claims that Mr. Linder and Mr. Biggs (collectively, the Individual Indemnitors) agreed to fully indemnify Lexon from "loss incurred as a consequence of having executed the Bonds" via General Agreement of Indemnity (Indemnity Agreement). *Id.* ¶ 39. The Individual Indemnitors dispute that they are liable to Lexon under the Indemnity Agreement. *Id.*

In 2017, Linder Oil, Reserves, and Destin filed for bankruptcy. ECF No. 74 ¶¶ 44–46. The Lease terminated on June 6, 2018, and the ROW expired in September 2018. *Id.* ¶¶ 58–59. When the Lease terminated and the ROW expired, Reserves and Destin "each held 50% record title interest in the Lease[,] Chevron held the operating right as to the Deep Rights in the lease[,]" and Linder Oil was the holder of the ROW. *Id.* ¶ 60. On June 2, 2020, BOEM notified the Chapter 7 Trustee that Linder Oil did not complete its decommissioning obligations under the Lease and ROW, and BOEM therefore ordered forfeiture of the Bonds by Lexon. *Id.* ¶ 63.

On February 11, 2021, Lexon paid the sum of the Bonds to BOEM. ECF No. 74 ¶ 66. BOEM and BSEE entered into a Decommissioning Agreement, effective December 3, 2021, with Sojitz and Chevron pursuant to which BOEM would provide the forfeited Bonds funds to Sojitz, and Sojitz would conduct the required decommissioning. *Id.* ¶ 67. The United States transferred $11,163,300, representing the forfeited penal sum of the Bonds, to Sojitz, and Sojitz spent $13,641,844.68, including the $11,163,300 from the Bonds, to complete the decommissioning obligations. *Id.* ¶¶ 72–74.

II. Legal Standards

A. Summary Judgment

"Summary judgment is appropriate only if, viewing the evidence in the light most favorable to the nonmovant, 'the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." ' *Davenport v. Edward D. Jones & Co.*, 891 F.3d 162, 167 (5th Cir. 2018) (quoting Fed. R. Civ. P. 56(a)). No genuine issue of material fact exists if a rational jury could not find for the nonmoving party based on the complete record. *McMichael v. Transocean Offshore Deepwater Drilling, Inc.*, 934 F.3d 447, 455 (5th Cir. 2019) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

Initially, "[t]he movant bears the burden of identifying those portions of the record it believes demonstrate the absence of a genuine issue of material fact." *Lincoln Gen.*

Ins. Co. v. Reyna, 401 F.3d 347, 349 (5th Cir. 2005) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986)). If this burden is met, the nonmovant must then "go beyond the pleadings," using competent summary judgment evidence to cite "specific facts" showing a genuine issue for trial. *McCarty v. Hillstone Rest. Grp., Inc.*, 864 F.3d 354, 357 (5th Cir. 2017) (quoting *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005)).

The court views all evidence and reasonable inferences in the light most favorable to the opposing party. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970)). The court, however, does not have a duty "to search the record for material fact issues," *RSR Corp. v. Int'l Ins. Co.*, 612 F.3d 851, 857 (5th Cir. 2010) ("Rather, the party opposing the summary judgment is required to identify specific evidence in the record and to articulate precisely how this evidence supports [the] claim.").

"[C]onclusory allegations, unsubstantiated assertions, [and] 'only a scintilla of evidence'" are not enough to defeat a properly supported motion for summary judgment. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)). Nor is the "mere existence of a scintilla of evidence" sufficient; "there must be evidence on which the jury could reasonably find for the [nonmovant]." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

B. OCSLA

This court's federal jurisdiction is premised on OCSLA. 43 U.S.C. § 1333. OCSLA "extends federal law to the subsoil and seabed of the Outer Continental Shelf and all attachments thereon (OCS)." *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 139 S. Ct. 1881, 1886 (2019). As such, "[f]ederal law governs actions brought under OCSLA, unless there is a gap in the federal law, wherein the law of the adjacent state will be used as surrogate federal law." *Total E & P USA, Inc. v. Marubeni Oil & Gas (USA), Inc.*, 389 F. Supp. 3d 478, 482 (S.D. Tex. 2018) (internal quotations omitted) (quoting *Danos & Curole Marine Contractors, Inc. v. BP Am. Prod. Co.*, 61 F. Supp. 3d 679, 683 (S.D. Tex. 2014)). It is undisputed that Louisiana is the adjacent state in the instant case and that Louisiana law is not inconsistent with federal law. ECF No. 75 at 11; ECF No. 77 at 11; ECF No. 79 at 12; ECF No. 81 at 16. As such, Louisiana law applies to any gaps in federal law.

III. Analysis

Corporate Defendants set forth three grounds to support their respective motions for summary judgment. ECF Nos. 75, 77, 79. First, Corporate Defendants argue that Louisiana and federal law do not entitle Lexon to be subrogated to the rights of the United States as against the Corporate Defendants under the facts and circumstances of this case. ECF No. 75 at 11–20; ECF No. 77 at 11–21; ECF No. 79 at 13-23. Second, Corporate Defendants argue that Lexon cannot recover on the basis of contribution because Lexon has no greater rights against them than Linder Oil had, and Linder Oil agreed to indemnify the Corporate Defendants for any decommissioning obligations it owed the United States. ECF No. 75 at 21–22; ECF No. 77 at 21–23; ECF No. 79 at 23–24. Third, Corporate Defendants argue that Lexon cannot recover based on theories of unjust enrichment or equitable subordination because Corporate Defendants have not received an unjust benefit. ECF No. 75 at 22–23; ECF No. 77 at 23–24; ECF No. 79 at 24–25.

Conversely, Lexon sets forth two grounds to support its motion for summary judgment. ECF No. 81. Lexon claims it is subordinated to all rights that the United States has against the Corporate Defendants, including for recovery of the costs to decommission the equipment on the lease. Second, Lexon argues it is entitled to partial summary judgment against the Individual Indemnitors under the Indemnity Agreement. *Id.* at 15–25.

A. Subrogation

The parties agree that Linder Oil owed the United States the duty to decommission its wells and other equipment upon termination of the Lease and the ROW. The Corporate Defendants agree that, upon Linder Oil's failure to perform its decommissioning obligations, they owed the United States the obligation to decommission the wells in Linder Oil's stead. The parties further agree that Lexon, as surety who paid the United States on the Bonds, is subrogated to the United States' rights as against Linder Oil. That is, there appears to be no disagreement that Lexon stepped into the United States' shoes vis-a-vis Linder Oil. The parties' disagreement centers around whether Lexon also steps into the United States' shoes vis-a-vis the Corporate Defendants. Lexon argues that once it paid the United States on the Bonds, it obtained all the rights the United States had to obtain payment from all entities that owed the United States any decommissioning obligation on the Lease and ROW. The Corporate Defendants argue that the law does not allow recovery against them because their obligation to decommission was triggered only by Linder Oil's failure, and thus their obligations to the United States are secondary to Linder Oil's. The Corporate Defendants argue that they are essentially in the position of a sub-surety and that Lexon cannot recover from them because their obligation to the United States is secondary to Lexon's.

1. Equitable Subrogation Under Louisiana Law

Corporate Defendants argue that Lexon is not entitled to equitable subrogation because equitable subrogation is not recognized under Louisiana law, ECF No. 75 at 11–12; ECF No. 77 at 12; ECF No. 79 at 13. "[T]he common-law theory of equitable subrogation does not exist in Louisiana." *Soc'y of Roman Cath. Church of Diocese of Lafayette, Inc. v. Interstate Fire & Cas. Co.*, 126 F.3d 727, 743 (5th Cir. 1997) (citing *Inst. of London Underwriters v. First Horizon Ins. Co.*, 972 F.2d 125, 127 (5th Cir. 1992)). Because Louisiana does not recognize equitable subrogation, Lexon is not entitled to relief based on equitable subrogation under Louisiana law.

2. Conventional and Legal Subrogation Under Louisiana Law

Louisiana law recognizes conventional subrogation (i.e., subrogation by contract) and legal subrogation (i.e., subrogation specifically recognized by the Civil Code). *Soc'y of Roman Cath. Church of Diocese of Lafayette, Inc.*, 126 F.3d at 743 (citing *Inst. of London Underwriters*, 972 F.2d at 127). "Conventional subrogation contemplates the obligee's consent and affirmative action to transfer his rights; it takes place by virtue of an agreement whereby the obligee transfers his rights in a debt to a third person." *Gilbert v. Gottsegen*, 14-593 (La. App. 5 Cir. 5/21/15), 171 So. 3d 289, 296, *writ denied*, 2015-1406 (La. 10/2/15), 178 So. 3d 993. Here, there is no evidence of conventional subrogation because the United States, as obligee, did not transfer its rights by an agreement or contract to Lexon. As such, Lexon cannot seek conventional subrogation.

The court turns to legal subrogation. Article 3048 of the Louisiana Civil Code—found in Title XVI, which covers Suretyship—states, "The surety who pays the principal obligation is subrogated by operation of law to the rights of the creditor." La. Civ. Code art. 3048. Article 3048 does not specify *which* of the creditor's rights the surety is subrogated to and Title XVI does not define subrogation by operation of law. Lexon appears to believe this section means that the surety is subrogated to "all" of the creditor's rights. The next Code section in the same Title is relevant but does not directly answer the question. "A surety who pays the creditor is entitled to reimbursement from the principal obligor," and "A surety for multiple solidary obligors may recover from them reimbursement of the whole amount he has paid the creditor." La. Civ. Code art. 3049. Thus, the surety certainly has the creditor's full rights against the principal obligor(s), i.e. here Lexon has all the United States' rights as against Linder Oil. But neither of the cited Articles delineates the extent to which the surety has the obligee/creditor's rights against parties other than the principal obligor.

Article 1829 of the Civil Code—found in Chapter 4 of Title III, which governs subrogation generally—delineates the circumstances in which subrogation occurs by operation of law:

> (1) In favor of an obligee who pays another obligee whose right is preferred to his because of a privilege, pledge, or mortgage;
>
> (2) In favor of a purchaser of movable or immovable property who uses the purchase money to pay creditors holding any privilege, pledge, or mortgage on the property;
>
> *(3) In favor of an obligor who pays a debt he owes with others or for others and who has recourse against those others as a result of the payment*;

> (4) In favor of an heir with benefit of inventory who pays debts of the estate with his own funds; and
>
> (5) In the other cases provided by law.

La. Civ. Code art. 1829 (emphasis added).

Relevant here is the emphasized third situation. The court reads Article 1829(3) to allow the surety in Lexon's shoes to seek payment from others, such as the Corporate Defendants, who also owe the debt it secured, but only if Lexon has a right against those others "as a result of the payment." Assuming Lexon and the Corporate Defendants' mutual obligations to the United States satisfy the first clause of Article 1829(3), there is no evidence in this case that any agreement or understanding existed either between Lexon and the United States or between Lexon and Linder Oil that would trigger a right of recovery by Lexon against the Corporate Defendants "as a result of" Lexon's payment under the Bonds. In fact, the opposite is true. Linder Oil had, by the time Lexon issued the Bonds, agreed to indemnify the Corporate Defendants for any decommissioning obligations they might owe the United States.

Lexon argues that because Louisiana Civil Code Article 3048 does not specifically limit the scope of the obligee's rights to which the surety is subrogated, the surety is subrogated to all of the obligee's rights. That is, Lexon argues it has all of the United States' rights to recover from any person who owes decommissioning obligations to the United States under the lease. Lexon does not cite, and the court has not found, any authority supporting such a broad reading of the law. Moreover, as discussed, Article 1829(3)'s "and who has recourse against those others" clause suggests that there is a limit on the surety's rights against those other than the obligor it secured. If it were the law that a surety attains all the rights of the creditor upon default by the obligor, the phrase "and who has recourse against those others" would be superfluous. The court declines to read Article 3048 in a way that would render other sections of the Civil Code meaningless.

The Restatement (Third) of Suretyship & Guaranty (1996) (the Restatement) also provides useful guidance here. "Although the Restatement is not binding on Louisiana courts, the restrictions and guidelines established therein for policy reasons do provide guidance to [Louisiana's] courts in the adjudication of these claims." *Nicholas v. Allstate Ins. Co.*, 765 So. 2d 1017, 1021 n.4 (La. 2000) (applying the Restatement (Second) of Torts); *see also Glob. Int'l Marine, Inc. v. US United Ocean Servs., LLC*, No. CIV. A. 09-6233, 2011 WL 2550624, *11 (E.D. La. June 27, 2011) (relying the Restatement § 18 cmt. a in deciding a subrogation issue under Louisiana law).

The Restatement is consistent with the court's reading of the Louisiana Civil Code. According to the Restatement, when "the secondary obligor is subrogated to the rights of the obligee, the secondary obligor may enforce, for its benefit, the rights of the obligee as though the underlying obligation had not been satisfied" in four instances. Restatement § 28(1). These instances are:

> (a) against the principal obligor pursuant to the underlying obligation;
>
> (b) against any other secondary obligor for the same underlying obligation, unless the other secondary obligor is a subsurety for the subrogated secondary obligor;
>
> (c) against any interest in property securing either the obligation of the principal obligor or that of any other secondary obligor against whom the rights of the obligee may be enforced; and
>
> (d) against any other persons whose conduct has made them liable to the obligee with respect to the default on the underlying obligation.

Id.

Subsections (b) and (d) are relevant here. Restatement § 28(1)(d) allows for a surety (such as Lexon) to be subrogated to the rights of an obligee (such as the United States) "against any other persons [such as the Corporate Defendants] whose conduct has made them liable to the obligee with respect to the default on the underlying obligation." The court reads this section to mean that the Corporate Defendants' liability to Lexon would only be triggered if they had some hand in Linder Oil's default.[3]

3. An example of this is found in *Lyndon Prop. Ins. Co. v. Duke Levy & Assocs., LLC*, 475 F.3d 268, 270–71 (5th Cir. 2007). In

Otherwise, subsection (d) could simply read “against any other person liable to the obligee on the underlying obligation.” Here, there is no evidence that Corporate Defendants did anything to cause Linder Oil’s default.

Restatement § 28(1)(b) also does not help Lexon. That section allows for a secondary obligor to be subrogated to the rights of an obligee “against any other secondary obligor for the same underlying obligation, unless the other secondary obligor is a sub-surety for the subrogated secondary obligor.” *Id.* Lexon argues that the Corporate Defendants are primary co-obligors, and, as such, Lexon can recover its losses from the Corporate Defendants. ECF No. 81 at 23–24. The court disagrees. Restatement § 53 defines the distinction between co-suretyship and sub-suretyship. Restatement § 53(3) states,

> in the absence of an agreement between or among them, secondary obligors for the same underlying obligation are cosureties unless a subsuretyship relationship is established

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Lyndon a utility district contracted to construct a sewage collection system. *Id.* at 270. Lyndon Property Insurance Company (Lyndon) acted as surety for the builder. *Id.* The district contracted with Duke Levy and Associates (DLA) for engineering and inspection services. *Id.* The district terminated the builder for performance reasons and Lyndon was required to fund the completion of the project. *Id.* The court held that Lyndon was subrogated to the rights of the district against DLA for DLA’s negligent failure to properly inspect and approve the builder’s work. The court’s rationale is consistent with Restatement § 28(1)(d). Because DLA contributed to the default, Lyndon was permitted to assert the district’s rights against DLA via subrogation.

> by circumstances that demonstrate that, as between themselves, one secondary obligor (the "principal surety") rather than the other (the "subsurety") should perform or bear the cost of performance.

The circumstances of this case strongly suggest that the Corporate Defendants are analogous to sub-sureties with respect to Lexon. Under 30 C.F.R. § 556.710, the Corporate Defendants' duty to decommission the equipment on the lease was triggered only upon Linder Oil's default. The regulation states in part "BOEM or BSEE may require you to bring the lease into compliance *if your assignee or any subsequent assignee fails to perform* any obligation under the lease . . . ." 30 C.F.R. § 556.710 (emphasis added). Moreover, when Lexon issued the Bonds, Linder Oil had already agreed to indemnify the Corporate Defendants for any decommissioning obligations. Lexon's Bonds only secured Linder Oil's performance. Thus, the circumstances clearly demonstrate that the Corporate Defendants' duties were triggered only when Linder Oil defaulted. Lexon, as surety, had the duty to perform upon Linder Oil's default. Lexon had the primary duty to perform Linder Oil's obligations.

Under the Restatement, when the relationship between two sureties is that of sub-suretyship, the principal occupies the position of the principal obligor and the sub-surety occupies the position of a secondary obligor. Restatement § 59. The principal obligor has the duty to perform. Restatement § 21(1). The sub-surety has rights of contribution against the principal surety, not the other way around. Restatement § 55.

The single reported case to deal with this issue takes the same view. In circumstances materially indistinguishable from this case, Bankruptcy Judge Isgur found that the surety had no cause of action for subrogation against the leaseholder's predecessor-in-interest, even though the predecessor-in-interest still owed decommissioning duties to the United States. *In re Tri-Union Dev. Corp.*, No. 03–44908, 2012 WL 3821870 (Bankr. S.D. Tex. Sept. 3, 2012) ("*Tri-Union II*"). Lexon does not cite any factually similar cases coming to a different conclusion.

The court concludes that legal subrogation under Louisiana law does not permit Lexon to recover from the Corporate Defendants under the facts of this case.

3. Statutory Subrogation Based on 31 U.S.C. § 9309

Lexon argues that a surety's right of subrogation has been codified by 31 U.S.C. § 9309, which provides:

> When a person required to provide a surety bond given to the United States Government is insolvent or dies having assets insufficient to pay debts, the surety, or the executor, administrator, or assignee of the surety paying the Government the amount due under the bond--(1) has the same priority to amounts from the assets and estate of the person as are secured for the Government; and (2) personally may bring a civil action under the bond to recover amounts paid under the bond.

Corporate Defendants argue that Lexon's statutory subrogation claim fails because the statute has no bearing on subrogation as to anyone other than a surety's principal. ECF No. 79 at 12; ECF No. 77 at 12; ECF No. 79 at 13. The court agrees with the Corporate Defendants. As Judge Isgur put it, "Section 9309 does not implicitly exclude a surety from subrogation against third parties; it simply does not mention it." *Tri-Union II*, 2012 WL 3821870, at *12. Because the statute does not create a federal right of subrogation under the facts of this case, Lexon is left to rely on state law, which the court has explained does not provide Lexon an avenue of relief.

The court recommends that the Corporate Defendants' motion for summary judgment on Lexon's subrogation claim be granted, and that Lexon's motion for summary judgment on its claim for subrogation be denied.

B. Contribution

Lexon seeks to recover from Corporate Defendants under a theory of contribution. ECF No. 1 ¶ 109. Lexon cites two Articles of the Louisiana Civil Code in support of its claim—Articles 1804 and 3055. Article 3055 states that "co-sureties are those who are sureties for the same obligation of the same obligor." Co-sureties "are presumed to share the burden of the principal obligation in proportion to their number," absent agreement to the contrary. La. Civ. Code art. 3055. Article 1804 states that "Among solidary obligors, each is liable for his virile portion." Under Article 1794, "An obligation is solidary for the obligors when each obligor is liable for the whole performance."

Lexon does not cite any cases applying these Code sections. The court reads these sections to allow contribution among cosureties. The court has already found that, as between Lexon and the Corporate Defendants, the relationship is more akin to that of sub-surety. Under the Restatement, the principal surety bears the burden of performance. Restatement § 21(1)(a). The sub-surety has rights, including contribution, from the principal surety in the event the principal surety fails to perform. Restatement §§ 21(2), 55(2). Lexon does not present any legal theory under which it has a right of contribution. To the extent that Lexon seeks to step into Linder Oil's shoes to seek contribution from Linder Oil's predecessors-in-interest, as discussed above, Lexon cannot recover from the Corporate Defendants in Linder Oil's stead because Linder Oil indemnified the Corporate Defendants.

The court recommends that summary judgment be granted in favor of Corporate Defendants on Lexon's contribution claim. The court recommends that Lexon's motion for summary judgment on its contribution claim be denied.

C. Unjust Enrichment or Equitable Subordination

Corporate Defendants argue that Lexon cannot recover based on a theory of unjust enrichment or equitable subordination[4] because Linder Oil "agreed to fully satisfy

4. Equitable subordination is a remedy in a bankruptcy proceeding that is warranted when there is "(1) fraud, illegality or breach of fiduciary duties; (2) undercapitalization; and (3) a claimant's use of the debtor as a mere instrumentality or alter

all abandonment obligations and to indemnify" Chevron and Sojitz for decommissioning obligations and because Lexon agreed to pay for decommissioning obligations upon default by Linder Oil. ECF No. 75 at 22–23; ECF No. 77 at 23–24; ECF No. 79 at 24–25. BP argues that "Chevron's indemnity obligations to predecessors extend up the chain of title to" BP. ECF No. 77 at 24. Lexon argues[5] that the Corporate Defendants would be unjustly

ego." *Matter of Clark Pipe & Supply Co.*, 893 F.2d 693, 699 (5th Cir. 1990). The instant case is not a bankruptcy proceeding, and Lexon has not set forth facts to support any of the elements of equitable subordination. Additionally, Lexon has abandoned the equitable subordination claim by failing to address equitable subordination in its response (ECF No. 89) to Sojitz's Motion for Summary Judgment (ECF No. 79). *See Terry Black's Barbecue, L.L.C. v. State Auto. Mut. Ins. Co.*, 22 F.4th 450, 459 (5th Cir. 2022) ("A plaintiff abandons claims when it fails to address the claims or oppose a motion challenging those claims.") (internal citations omitted).

5. Lexon also argues that Sojitz is responsible for paying $2.7 million for decommissioning obligations under an agreement with Linder Oil, Destin, and Reserves, provided that Linder Oil submit an Authorization for Expenditure (AFE). ECF No. 89 at 20. It is undisputed that Linder Oil never undertook any decommissioning activity and that an AFE was never submitted. *Id.* at 20–21; ECF No. 95 at 15. Lexon further claims that Linder Oil was excused from meeting the condition of submitting an AFE because Linder Oil "filed for bankruptcy before it could undertake any decommissioning activities." ECF No. 89 at 21. The argument is entirely speculative. Moreover, Linder Oil undertook no decommissioning activity, and an AFE was not submitted. Sojitz's contractual duty to pay was not triggered. For the reasons discussed above, this is not an enrichment without contractual cause.

enriched if permitted to keep the funds paid by Lexon for decommissioning. ECF No. 89 at 19. Again, neither side cites any relevant cases to aid the court in its analysis.

"A person who has been enriched without cause at the expense of another person is bound to compensate that person." La. Civ. Code art. 2298. Under Louisiana law, a plaintiff must show the following to establish unjust enrichment:

> (1) there must be an enrichment; (2) there must be an impoverishment; (3) there must be a connection between the enrichment and the resulting impoverishment; (4) there must be an absence of 'justification' or 'cause' for the enrichment and impoverishment; and (5) there must be no other remedy at law available to the plaintiff.

JP Mack Indus. LLC v. Mosaic Fertilizer, LLC, 970 F. Supp. 2d 516, 520-21 (E.D. La. 2013) (citing *Carriere v. Bank of La.*, (La.12/13/96) 702 So.2d 648, 671). "[I]f there is a contract between the parties it serves as a legal cause, an explanation, for the enrichment. '[O]nly the unjust enrichment for which there is no justification in law or contract allows equity a role in the adjudication.'" *Edwards v. Conforto*, 636 So. 2d 901, 907 (La. 1993), *on reh'g* (May 23, 1994) (quoting *Edmonston v. A–Second Mortg. Co. of Slidell*, 289 So.2d 116, 122 (La. 1974)).

Here, Lexon issued the Bonds to secure Linder Oil's Lease and ROW obligations, including decommissioning obligations. EOF No. 74 ¶¶ 36–38; ECF No. 75–13. Lexon was contractually bound to pay on the Bonds upon Linder Oil's default. Moreover, Linder Oil had, years before the bonds were issued, agreed to indemnify Chevron and its successors for their decommissioning obligations. Lexon's payment of the Bonds to the United States is exactly what was supposed to happen in the event of Linder Oil's default. To the extent that the Corporate Defendants have been enriched, there is justification in contract for the enrichment, and Lexon's claim for unjust enrichment fails. *Edwards*, 636 So. 2d at 907 ("The justification or cause for the lessor's enrichment was the contractual agreement between the parties.").

It is also not clear to the court that the Corporate Defendants have been enriched. The Corporate Defendants remained liable to the United States to perform Linder Oil's decommissioning obligations. The BOEM and BSEE entered into an agreement with Sojitz and Chevron pursuant to which BOEM would provide the forfeited bond funds to Sojitz, and Sojitz would conduct the decommissioning work. ECF No. 79 at 11, Sojitz incurred $13,641,844,68 in costs to complete the decommissioning obligations. *Id.* The Corporate Defendants are in no better a position as they would have occupied had Linder Oil not defaulted.

The court recommends that summary judgment be granted in favor of Corporate Defendants on Lexon's claim for unjust enrichment.

D. The Individual Indemnitors' Liability Under the Indemnity Agreements

Lexon seeks partial summary judgment against the Individual Indemnitors on its fifth cause of action—breach of contract. ECF No. 81 at 24. The Individual Indemnitors jointly oppose Lexon's partial motion for summary judgment. ECF No. 90. The Individual Indemnitors argue that genuine issues of material fact exist as to: (1) whether the Individual Indemnitors signed the Indemnity Agreement in their individual capacities; (2) which Indemnity Agreement is effective; (3) whether failure to execute the Indemnity Agreement prior to issuance of the Bonds invalidates the Bonds; and (4) whether the Indemnity Agreement is authentic. *Id.* at 4–7.

1. Factual Background

The timeline of events leading to the execution of the Indemnity Agreement is critical to understanding the parties' arguments. Stephen Scott Sewell (Sewell) brokered the surety Bonds for Linder Oil. ECF No. 81-39 ¶ 4. Lexon required that Mr. Linder and Mr. Biggs execute an indemnity agreement both on behalf of Linder Oil, Destin, and Reserves, as well as in their individual capacities. *Id.* ¶ 7. Sewell communicated with both Mr. Linder and Mr. Biggs about their obligation to personally indemnify Lexon. *Id.* ¶ 8. On March 29, 2016, Sewell went to Mr. Linder and Mr. Biggs' offices to obtain signatures on the indemnity agreement. That earlier signed indemnity agreement was dated effective March 29, 2016. *Id.* ¶ 10; ECF No. 81-42. It turned out that the signatures on that agreement were not in the correct places and were not properly witnessed, so that version of the agreement could not be submitted to Lexon. ECF No. 81-39 ¶ 11.

The version of the agreement that was submitted to Lexon is dated March 25, 2016. ECF No. 81-39 ¶ 14. Sewell witnessed Mr. Linder and Mr. Biggs sign the agreement. Both Mr. Linder and Mr. Biggs agree that their signatures appear on the agreement under the heading "Individual Indemnitors." *See* ECF No. 81-33 at 3 (Mr. Linder's deposition testimony); ECF No. 81-34 at 1–2 (Mr. Biggs' deposition testimony). The final version of the agreement that was submitted to Lexon is attached as an exhibit to Sewell's declaration. ECF No. 81-43. It is also attached as an exhibit to Lexon's motion for summary judgment with a "Received" stamp in the top right-hand comer. ECF No. 81-37.

2. Signatory Capacity of the Individual Indemnitors

The Individual Indemnitors argue that the version of the agreement that was first signed, but which has the later date, ECF No. 81-36, is the version of the agreement that is binding if any agreement is binding at all. According to the Individual Indemnitors, because that earlier signed agreement does not have Mr. Linder's and Mr. Biggs' signatures under the heading "Individual Indemnitors," they are not bound individually.

There are two problems with this argument. First, the earlier version of the agreement shows both Mr. Linder's and Mr. Biggs' signatures above both their individual names as well as above the names of their companies. ECF No. 81-36 at 5; *cf. Hohensee v. Turner*, 2013-0615 (La. App. 4 Cir. 1/22/14), 133 So. 3d 141, 143 (holding that individuals signed in their individual capacities and not as members of an LLC because the signature lines did not indicate that they were signing as members, but rather only included their signatures).

Moreover, the facts above demonstrate that both Individual Indemnitors intended to be bound in their individual capacity and signed a final version of the agreement in their individual capacity. Although the Individual Indemnitors do not concede that they are individually bound, the unrebutted summary judgment evidence shows that they did sign the final agreement that was submitted to Lexon in their individual capacities. A mere refusal to concede an issue does not raise a fact issue.

3. Integration Clause

The Individual Indemnitors argue that the final version of the Indemnity Agreement, ECF Nos. 81-37, 81-43, is not enforceable because it contains an integration clause which states that no other agreements between the parties exist that would "in any way lessen our obligations as set forth [in the agreement]." *See* ECF No. 81-37 at 5. The Individual Indemnitors appear to argue that the earlier signed agreement does not bind them individually and that the integration clause in the final agreement precludes any alteration of the earlier agreement. The court disagrees.

First, as discussed, the earlier signed agreement clearly shows both Mr. Linder and Mr. Biggs signed in their individual capacities. Second, the clause at issue means what it says. There are no other agreements that would in any way lessen the Individual Indemnitors' obligations as set forth in the final version of the agreement. They are bound by the final version of the agreement they signed and which Sewell submitted to Lexon—ECF No. 81-37.

4. Suspensive Condition

The Individual Indemnitors argue that the Bonds are not effective because the Indemnity Agreement states that indemnity is a condition precedent to issuance of the Bonds, but that the Bonds were issued before the Indemnity Agreement was signed. The language the Individual Indemnitors rely on is found in a "whereas" clause at the beginning of the Indemnity Agreement, which states, "as a prerequisite to the execution of such Bond or Bonds, the Surety requires complete indemnification." ECF No. 81-37 at 1. Individual Indemnitors also cite Sewell's Declaration in which he states "[t]here was no specific importance to the effective date, other than the agreement was to be signed before the issuance of bonding."[6] ECF No. 81-39 ¶ 15. Lexon counters that the Individual Indemnitors agreed to indemnify Lexon against all liability arising from any Bonds issued before or after the execution of the Indemnity Agreement. ECF No. 94 at 16.

6. Because the Indemnity Agreement is not ambiguous, the court need not consider Sewell's Declaration. *See Cenac v. Orkin, L.L.C.*, 941 F.3d 182, 190 (5th Cir. 2019) ("If the text is clear and unambiguous, the court may not go beyond the text for further interpretation.").

There is no disagreement that the Bonds were issued on March 23, 2016, and March 25, 2016, and that the final version of the indemnity agreement was signed thereafter and made effective as of March 25, 2016. The question is whether the introductory statement in a "whereas" clause *in an indemnity agreement* indicating that indemnity is a prerequisite to issuance of the Bonds can invalidate the Bonds themselves. The court concludes that it cannot.

First, the court finds that the clause in question does not set out any contractual obligations of the parties. It merely sets out the parties' reasons for entering into the contract. The plain language of the contract is in accord with Louisiana law. A contract with introductory paragraphs commencing with the word "whereas" "simply means 'when in fact', 'considering that', 'because', [or] 'by reason of.'" *Succession of Ramp*, 252 La. 660, 671 (1968). "The clauses of a contract which begin with the word 'whereas' simply state the reasons for the confection and the mental intent of the parties." *Id.* "That portion of a contract which follows the word 'therefore' is simply the response to the reasoning and the mental intention of the parties." *Id.* The premises set out in the "whereas" clause are not binding promises between the parties. *Cf. McCary v. Oceaneering Int'l, Inc.*, 2017-1163 (La. App. 1 Cir. 2/27/18), 243 So. 3d 613, 616–17.

Moreover, the Indemnity Agreement contains language indicating that it contemplates that bonds may be issued before its execution. Even the "whereas" clause itself contains such language. It begins with "WHEREAS, in the transaction of business, certain Bonds, undertakings and other writings obligatory in the nature of a Bond have *heretofore been*, and/or may hereafter be, required . . ." ECF No. 81-43 at 1 (emphasis added). The next paragraph indicates that the Indemnity Agreement is not only required for the future issuance of bonds but also to prevent the cancellation of bonds already issued. It states in part "NOW, THEREFORE, in consideration of the premises, the execution and delivery of one or more Bonds, or *its refraining from attempting to cancel the same by the Surety* [the parties agree as follows]." *Id.* (emphasis added). In a paragraph titled "SURETYSHIP COVERED," the agreement states that "The Indemnitors hereby acknowledge that this Agreement is intended to cover any bonds . . . *heretofore or hereafter* executed by the Surety on behalf of the Indemnitors," *Id.* at 4.

The court concludes that the Indemnity Agreement clearly covers bonds that may have been issued before its execution. The fact that it was executed prior to issuance of the Bonds does not invalidate the Bonds.

5. Authenticity of the Indemnity Agreement

Individual Indemnitors argue that Lexon has failed to authenticate the Indemnity Agreement. "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Fed. R. Evid. 901(a). The standard for authentication is low. *Weinhoffer v. Davie Shoring, Inc.*, 23 F.4th 579, 582 (5th Cir. 2022). Rule 901 of the Federal Rules of Evidence "merely requires some evidence which is sufficient to support a finding that the evidence in question is what its proponent claims it to be." *In re McLain*, 516 F.3d 301, 308 (5th Cir. 2008). Submission of a declaration satisfies the authentication requirement where the declarant has personal knowledge of the facts set out in the declaration. *Crear v. Select Portfolio Servicing Inc.*, 760 F. App'x 291, 295 (5th Cir. 2019).

Here, Lexon produced the declaration of Sewell, in which Sewell authenticated the Indemnity Agreement by attaching a copy of it to his declaration and stating that he witnessed both Mr. Linder's and Mr. Biggs' signatures.

The Individual Indemnitors are bound by a valid indemnification agreement. The agreement requires the Individual Indemnitors to indemnify Lexon for any liability it may incur by reason of having executed the Bonds. There is no dispute that Lexon has suffered losses and damage by having paid the Bonds to the United States. Lexon's motion for summary judgment against the Individual Indemnitors should be granted.

III. CONCLUSION

The court recommends that Lexon's Motion for Summary Judgment Against Corporate Defendants, ECF No. 81, be **DENIED**, that Lexon's Partial Motion for Summary Judgment Against Individual Defendants, ECF No. 81, be **GRANTED**, and that Corporate Defendants' Motions for Summary Judgment, ECF Nos. 75, 77, 79, be **GRANTED.**

The parties have fourteen days from service of this Memorandum and Recommendation to file written objections, 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72. Failure to timely file objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See Thomas v. Arn*, 474 U.S. 140, 147–49 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988).

Signed at Houston, Texas on February 28, 2024.

/s/ Peter Bray
Peter Bray
United States Magistrate Judge

APPENDIX E — ORDER DENYING REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED MARCH 2, 2026

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-20347

LEXON INSURANCE COMPANY, INCORPORATED,

Plaintiff-Appellant,

versus

CHEVRON U.S.A. INCORPORATED;
SOJITZ ENERGY VENTURE, INCORPORATED;
BP AMERICA PRODUCTION COMPANY,

Defendants-Appellees.

Filed March 2, 2026

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CV-990

ON PETITION FOR REHEARING EN BANC

Before Southwick, Oldham, and Ramirez, *Circuit Judges*.

Per Curiam:

Appendix E

Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P.40 and 5th Cir. R.40), the petition for rehearing en banc is DENIED.

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* Judge Jerry E. Smith did not participate in the consideration of the rehearing en banc.

APPENDIX F — RELEVANT STATUTORY PROVISIONS

43 U.S.C. § 1333. Laws and regulations governing lands

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction

(1) Jurisdiction of the United States on the outer Continental Shelf

(A) In general

The Constitution and laws and civil and political jurisdiction of the United States are extended, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State, to—

(i) the subsoil and seabed of the outer Continental Shelf;

* * *

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

* * * *