

CASENOTE

CIMAREX V. MAUBOULES: THE CONCURSUS CRISIS

I. INTRODUCTION

Concursus is a well-established procedural vehicle in Louisiana law that seeks to protect a person faced with competing claims for a single fund (the stakeholder) from multiple liability¹ and vexatious litigation.² Concursus allows a stakeholder to place the fund (the stake) into the registry of a district court and forces each claimant to assert the merit of its claim in court.³ Concursus is particularly important to industries that often face competing claims for substantial amounts of money. For instance, if an oil and gas company leases property from a landowner who previously sold his royalty interest to a third party, a dispute is likely to arise over whether the landowner or the third party should receive the royalties when they become due. In such a situation, the company is the stakeholder, the royalty amount due is the stake, and the landowner and the third-party purchaser are the claimants. To avoid liability to or litigation with each claimant, the stakeholder would enter the stake into the registry of the district court and begin a concursus proceeding. By use of the concursus proceeding, the stakeholder can protect itself and continue production.

In *Cimarex Energy Co. v. Mauboules*, the Louisiana Supreme Court affirmed the liberal application of concursus proceedings in

1. Throughout the piece, the phrase “multiple liability” is used instead of “multiple liabilities” to maintain consistency with the cited sources.

2. *Am. Surety Co. of N.Y. v. Brim*, 144 So. 727 (La. 1932), cited in *Cimarex Energy Co. v. Mauboules (Cimarex II)*, 09-1170, p. 11 (La. 4/9/10); 40 So. 3d 931, 939; *Hennington v. Petroleum Heat & Power Co. of La.*, 193 So. 583 (La. 1940), cited in *Cimarex II*, 40 So. 3d at 940; *Landry & Passman Realty, Inc. v. Beadle, Swewartwood, Wall & Assocs., Inc.*, 303 So. 2d 761 (La. Ct. App. 1974), cited in *Cimarex II*, 40 So. 3d at 940; *Marquez v. Progressive Ins. Co.*, 06-1024 (La. App. 3 Cir. 12/6/06); 944 So. 2d 876, cited in *Cimarex II*, 40 So. 3d at 940.

3. *Cimarex II*, 40 So. 3d at 939 (citing *Brim*, 144 So. 727).

Louisiana.⁴ There, the court emphasized the two major purposes of the concursus: (1) to prevent the stakeholder from multiple liability; and (2) to prevent the stakeholder from vexatious litigation.⁵ In doing so, the supreme court held that an oral assertion of fraud coupled with a third-party purchaser's claim to royalties constituted a competing claim sufficient to justify filing a concursus.⁶ Moreover, the Louisiana Supreme Court reversed the third circuit's damage award and held that invoking a concursus is a reasonable response to competing demands.⁷ With its decision, the Louisiana Supreme Court set an important precedent regarding the appropriate procedure to invoke concursus, restored the traditional use of concursus, and reaffirmed the role of concursus in Louisiana. This precedent is particularly significant to many major industries in Louisiana that often face competing claims—such as the oil and gas industry, the insurance industry, and the construction industry.

Each aspect of the *Cimarex* decision must be examined to fully understand the significance of the case. Section II explores the complex factual situation that preceded the lawsuit. Section III provides a background of concursus law, the Public Records Doctrine, and the pertinent Mineral Code provisions. Section IV explains how the Louisiana Supreme Court's decision sets an important precedent for future interpretation of concursus law. Finally, Section V emphasizes the effect the *Cimarex* decision has on the legal setting of concursus law and the broad implications of this lawsuit.

II. FACTS AND HOLDING

The underlying dispute in *Cimarex* concerned royalty payments arising from a mineral lease between Cimarex, a drilling company, and the Mauboules family, the owners of the land on which the drilling occurred.⁸ Cimarex was allegedly subject to competing claims for the royalties attached to the oil

4. *Cimarex II*, 09-1170 (La. 4/9/10); 40 So. 3d 931, 946.

5. *Id.* at 939.

6. *Id.*

7. *Id.* at 946-47.

8. *Id.* at 933. At the time of this sale, the Mauboules retained the executive rights of the land; thus, only the Mauboules had the authority to lease the property. *Id.*

produced from the drilling.⁹ The Mauboules claimed that the royalties were rightfully theirs, but Ereunao Oil and Gas, Inc. (Ereunao), which purchased certain royalty rights from the Mauboules, also claimed rightful ownership of the royalties.¹⁰ Because Cimarex, the stakeholder, faced competing claims, it deposited the disputed royalties into the registry of the district court and began a concursus proceeding.¹¹

To fully understand the *Cimarex* opinion, it is necessary to emphasize the relevant facts that led to the lawsuit. In 1997, the Mauboules sold certain royalty rights associated with their property to Ereunao.¹² The parties executed the transfer through five royalty deeds on October 16, 1997.¹³ Each deed contained a prescription clause that stipulated a three-year prescriptive period for non-use.¹⁴ The prescription clause included an interruption provision that allowed off-premise production to maintain the lease.¹⁵ On November 14, 2001, Kenny Privat, the Mauboules's counsel, sent notice of prescription to Ereunao, stating that the deed had prescribed on October 16, 2000, pursuant to the prescription clause therein.¹⁶ Privat sought written confirmation from Ereunao showing the deed's expiration.¹⁷ In response, Ereunao asserted that the deed was still in effect due to the interruption clause.¹⁸ From that point forward, the dispute over the royalty interest continued between the Mauboules and Ereunao.¹⁹

On May 29, 2002, Key Production Company, a drilling company and predecessor to Cimarex, sent Privat an offer for a drilling lease.²⁰ Due to their ongoing royalty dispute, the

9. *Cimarex II*, 09-1170, p. 6 (La. 4/9/10); 40 So. 3d 931, 936.

10. *Cimarex II*, 40 So. 3d. at 936.

11. *Id.* at 937.

12. *Id.* at 933.

13. *Id.*

14. *Id.* at 933.

15. *Id.* at 933-34.

16. *Cimarex II*, 40 So. 3d at 934.

17. *Id.*

18. *Id.* Ereunao asserted that because off-site production had occurred during the three-year period, it retained ownership of the royalty interest. *Id.*

19. *Id.*

20. *Cimarex II*, 09-1170, p. 6 (La. 4/9/10); 40 So. 3d 931, 934. The letter constituted the initial offer from Key Production to Privat. *Id.*

Mauboules were hesitant to lease their property for drilling purposes.²¹ Finally, on February 10, 2003, the Mauboules agreed to a drilling lease with Cimarex.²²

In January 2004, Cimarex's well began successful production.²³ On March 26, 2004, Privat sent correspondence to Cimarex alleging that Ereunao's royalty deeds had prescribed and requesting that Cimarex withhold the royalties.²⁴ Upon receipt of that request, Cimarex's counsel contacted Privat via telephone.²⁵ During their conversation, Privat asserted that Ereunao had fraudulently entered the off-tract production exception into the lease agreement and that it was, thus, unenforceable.²⁶ On that basis, Privat claimed that the royalty interest reverted back to the Mauboules because the three-year prescriptive period had run.²⁷

Cimarex's counsel then advised Cimarex that the Mauboules's claim to the royalties constituted an adverse claim.²⁸ Because of the competing claims, Cimarex's counsel advised Cimarex to suspend royalty payment until the ownership dispute

21. *Id.* (explaining that the Mauboules were hesitant to lease their property for drilling because they were unsure if they would receive the royalties or if Orange River Group would receive the royalties). *See supra* note 8, regarding the Mauboules's ownership of executive rights; *see infra* note 31, regarding an explanation of "Orange River Group."

22. *Cimarex II*, 40 So. 3d at 934. On December 26, 2002, Cimarex extended an offer to the Mauboules that included additional consideration for the lease. *Id.* First, Cimarex offered to pay up to \$7,500 in legal fees if the Mauboules filed suit against Ereunao. *Id.* Second, upon a 150% payout on the well and in the event that the Mauboules pursued an unsuccessful cause of action against Ereunao, Cimarex offered to pay a \$75,000 cash bonus. *Id.* The final lease agreement further stated that if the well proved successful, Privat would execute a lawsuit against Ereunao. *Id.*

23. *Cimarex II*, 40 So. 3d at 935. Logically, royalties became due upon production. Had no production occurred, the entire dispute would have been avoided.

24. *Cimarex II*, 09-1170, p. 5 (La. 4/9/10); 40 So. 3d 931, 935. Privat encouraged Cimarex to withhold royalty payment until the courts determined the royalty ownership because both the Mauboules and Ereunao asserted ownership. *Id.*

25. *Id.* During this telephone correspondence, Privat asserted that the off-tract production clause was ineffective. *Id.* The basis of Privat's assertion was that the clause had been entered into the deeds "either fraudulently or under circumstances tantamount to fraud." *Id.*

26. *Id.*

27. *Cimarex II*, 40 So. 3d at 935.

28. *Cimarex II*, 09-1170, p. 6 (La. 4/9/10); 40 So. 3d 931, 935-36.

over the royalty interest was settled.²⁹ On April 23, 2004, Cimarex's counsel sent a letter to Privat summarizing their communications and stating that he had advised Cimarex to withhold payment.³⁰

In April 2004, assignees of Ereunao sold shares of the royalty interest in the Mauboules's property to Orange River Group.³¹ Following that sale, Orange River Group acquired a portion of the royalty rights previously belonging to Ereunao and its assignees.³² On June 9, 2004, Cimarex informed Orange River Group that it would not render royalty payments until the competing claims were settled.³³ On November 16, 2004, Orange River Group's counsel made a written demand for the royalty payment on the basis that Orange River Group was a good faith purchaser and, thus, was protected by the Public Records Doctrine.³⁴

Cimarex's counsel responded to Orange River Group's written demand on December 2, 2004.³⁵ In its response, Cimarex explained that it faced competing claims for the royalty interest and would withhold payment of that interest until the competing claimants settled proper ownership.³⁶ Further, Cimarex's counsel advised Cimarex to begin a concursus by depositing the disputed funds into the registry of the court, which Cimarex did on December 20, 2004.³⁷ Cimarex named Orange River Group, the Mauboules, Ereunao, and Ereunao's assignees as defendants and claimants in the concursus suit.³⁸

29. *Id.*

30. *Id.* at 936.

31. *Cimarex II*, 09-1170, p. 6 (La. 4/9/10); 40 So. 3d 931, 936. "Orange River Group" refers to "a group of individuals and businesses who purchase mineral royalty interests for the purpose of investment and re-sale in the producing mineral royalties market." *Id.*

32. *Id.*

33. *Id.* At this point, Cimarex was withholding funds but had not yet instituted a concursus. *Id.*

34. *Id.*; see discussion of Public Records Doctrine *infra* Part III.B.

35. *Cimarex II*, 09-1170, p. 6 (La. 4/9/10); 40 So. 3d 931, 936.

36. *Id.*

37. *Id.* at 937.

38. *Cimarex II*, 09-1170, p. 6 (La. 4/9/10); 40 So. 3d 931, 937. Orange River Group was actually added later than the other defendants, but that fact is immaterial for the outcome of the case. *Id.*

Orange River Group filed a motion for summary judgment, which requested that the court award it the unpaid royalties based on its status as a bona fide purchaser.³⁹ The Mauboules filed an opposition to Orange River Group's motion for summary judgment, but the court granted the motion in favor of Orange River Group.⁴⁰ Orange River Group then filed a reconventional demand for penalties pursuant to the Mineral Code asserting that Cimarex had not paid the royalties in a timely manner.⁴¹ The trial court held that Cimarex's failure to pay the royalties was unreasonable and entered a judgment against Cimarex, which allowed Orange River Group to recover penalties.⁴² The trial court calculated the amount owed to Orange River Group as the amount of royalties due plus two times that amount in damages.⁴³

On appeal, the third circuit affirmed the trial court's decision.⁴⁴ First, the third circuit found that Cimarex lacked entitlement to bring the concursus because it failed to meet the "actual concern" requirement.⁴⁵ The court concluded that Cimarex had proposed the concursus as part of a deal with the Mauboules to gain the mineral lease.⁴⁶

39. *Cimarex II*, 40 So. 3d at 937.

40. *Id.*

41. *Cimarex II*, 09-1170, p. 6 (La. 4/9/10); 40 So. 3d 931, 937. The Mineral Code allows thirty days after the demand to pay the royalties due. LA. REV. STAT. ANN. § 31:212.21 (1982). See discussion *infra* Part III.C.

42. *Cimarex Energy Co. v. Mauboules (Cimarex I)*, 08-452, p. 9 (La. App. 3 Cir. 3/11/09); 6 So. 3d 339, 406-07. The third circuit awarded damages pursuant to LA. REV. STAT. ANN. § 31:212.23(C) (2011). *Id.*

43. *Cimarex I*, 6 So. 3d at 407.

44. *Id.*

45. *Cimarex II*, 40 So. 3d at 938. The court also rejected the third circuit's argument regarding the "clean hands" doctrine. *Id.* The clean hands doctrine is a jurisprudential doctrine intended to restrict court services only to parties with "clean hands," or who act in good faith. *Id.* The third circuit held that Cimarex invoked concursus in bad faith, but the supreme court rejected and reversed that holding. *Id.*

46. *Cimarex I*, 08-452, p. 4 (La. App. 3 Cir. 3/11/09); 6 So. 3d 339, 404. To further strengthen this position, the appellate court compared the *Cimarex* facts to the facts in *Bank of Sunset & Trust Co. v. A.J. Charlot*, 614 So. 2d 1386 (La. Ct. App. 1993) in which the court found that a concursus was improper because there was no competing claim under specific statutory provisions. *Cimarex I*, 08-452, p. 4 (La. App. 3 Cir. 3/11/09); 6 So. 3d 339, 404. In *Cimarex*, the supreme court declined to follow this logic, distinguishing the cases based on the fact that in *Cimarex* there was no controlling statutory provision as there was in *Bank of Sunset*. *Cimarex II*, 09-1170 (La. 4/9/10); 40 So. 3d 931, 942.

Moreover, the third circuit found that because the Public Records Doctrine⁴⁷ protected Orange River Group, the Mauboules's claim to the royalties associated with that interest was obsolete.⁴⁸ In so holding, the court relied on the Public Records Doctrine to bestow affirmative rights on Orange River Group as against Cimarex.⁴⁹ The court found that, because the Mauboules sold a royalty interest that was recorded in the public records, Cimarex had no reasonable basis to support its invocation of the concursus.⁵⁰ The third circuit further held that Cimarex was not immune from penalties for late payment because, although the funds were deposited into the registry of the court, the procedure was improperly invoked.⁵¹ Finally, the third circuit upheld the trial court's penalty award.⁵²

The Louisiana Supreme Court granted the defendants' application for supervisory writs.⁵³ After review, the supreme court reversed the appellate court's ruling.⁵⁴ Crucially, the court relied on the well-established history of concursus, holding that Cimarex properly invoked the concursus proceeding in the instant case.⁵⁵ The Louisiana Supreme Court *held* that a stakeholder against whom multiple claims are asserted can properly invoke concursus without having to weigh the validity of the competing claims that it faces.⁵⁶

III. BACKGROUND

Because *Cimarex* deals with the interaction between concursus, the Public Records Doctrine, and the penalty provisions of the Mineral Code, this Section explores each area of the law. Part A gives a thorough explanation of both the development of concursus in Louisiana and its current legal

47. See discussion *infra* Part III.B.

48. *Cimarex II*, 40 So. 3d at 943.

49. *Cimarex I*, 6 So. 3d at 406.

50. *Cimarex I*, 08-452, p. 6 (La. App. 3 Cir. 3/11/09); 6 So. 3d 339, 406.

51. *Id.* The court determined that Cimarex deposited the stake into the registry of the court four days after it became due; thus, it held that penalties began to accrue from the day that the royalties became due. *Id.*

52. *Id.* at 407.

53. *Cimarex II*, 09-1170, p. 1 (La. 4/9/10); 40 So. 3d 931, 931.

54. *Id.* at 945.

55. *Id.* at 946.

56. *Id.*

effects. Part B explains the Public Records Doctrine as it relates to this case. Finally, Part C explains the relevant portions of the Mineral Code.

A. CONCURSUS

Understanding the evolution of concursus law in Louisiana is crucial to fully grasp the importance of the *Cimarex* decision. Thus, it is necessary to review the early jurisprudence from which the procedure developed, the legislative history of the procedure, and, the current state of the law regarding concursus. This section breaks down each of these stages in the development of Louisiana concursus.

1. EARLY JURISPRUDENCE

Concursus developed jurisprudentially in Louisiana as an equitable remedy.⁵⁷ For instance, in its 1910 decision, *Lauterbach v. Seikmann*, the Louisiana Supreme Court held that a judge has great discretion when deciding whether or not to hear a case “en concurso.”⁵⁸ Essentially, the court allowed for concursus as an equitable remedy when it would not discriminate against any party to the suit.⁵⁹ During the early twentieth century, concursus was particularly important in the construction industry. Before the legislature created a separate provision covering concursus, there was already an act within the building law providing the remedy.⁶⁰ The act related to work performed for the state and required a debtor to submit the disputed fund into the registry of the court.⁶¹ Moreover, concursus was also used in private building contracts.⁶² Thus, the proceeding was

57. *Cimarex II*, 09-1170, p. 10 (La. 4/9/10); 40 So. 3d 931, 938.

58. *Lauterbach v. Seikmann*, 51 So. 1008 (La. 1910).

59. *Id.* See *Dunlap v. Whitmer*, 69 So. 189 (La. 1914) (requiring that the plaintiff in the concursus be uninterested in the stake). In its early stages of development, the concursus procedure was substantially narrower than it is currently. See *infra* text accompanying notes 78-80.

60. *Mahoney v. La. Highway Comm'n*, 97 So. 582 (La. 1923) (Act 224).

61. *Mahoney v. La. Highway Comm'n*, 97 So. 582 (La. 1923) (Act 224).

62. *Cook v. Ruston Oil Mills & Fertilizer Co.*, 127 So. 347 (La. 1930). There, the owner filed a concursus, citing the general contractor, his surety, and his subcontractors (“materialmen and laborers”). *Id.* By use of concursus, the parties in *Cook* asserted their claims in court, and the owner was released of any liens upon his deposit of the disputed fund into the registry. *Id.*

important and commonly used even before its initial codification in 1922.

2. LEGISLATIVE DEVELOPMENT

Louisiana concursus is closely based on federal interpleader.⁶³ Federal interpleader allows a stakeholder faced with multiple liability or vexatious litigation to deposit the fund into the registry of the district court and name the claimants as defendants.⁶⁴ On the federal level, interpleader is very broad and allows a stakeholder to invoke an interpleader action even if that stakeholder is not certain that the claims against him will lead to multiple liability.⁶⁵ Moreover, a party can properly invoke federal interpleader even if the claims against the stakeholder are not identical and do not “share a common origin.”⁶⁶ Its liberal application allows a stakeholder to invoke an interpleader action even when the stakeholder partially or fully denies liability.⁶⁷ Finally, both a plaintiff and a defendant can properly invoke interpleader at the federal level.⁶⁸ Accordingly, federal interpleader is a broad procedural tactic that is liberally applied and seeks to protect stakeholders from multiple liability.⁶⁹

In 1922, the Louisiana legislature passed Act 123, which authorized interpleader in Louisiana.⁷⁰ Louisiana’s initial form of concursus was similar to the federal interpleader in that it provided that a stakeholder subject to competing claims could be relieved of liability by depositing the disputed fund into the registry of the district court.⁷¹ The purpose of the Act, which

63. FED. R. CIV. P. 22.

64. *Id.* The federal interpleader rule states: “persons with claims that may expose a plaintiff to . . . multiple liability may be joined as defendants and required to interplead.” *Id.*

65. FED. R. CIV. P. 22. Note the statutory language “may expose a plaintiff to double or multiple liability.” *Id.*

66. FED. R. CIV. P. 22(a)(1) (“Joinder for interpleader is proper even though: (A) the claims of the several claimants . . . lack a common origin . . .”).

67. *Id.* (“Joinder of interpleader is proper even though . . . the plaintiff denies liability in whole or in part . . .”).

68. *Id.*

69. FED. R. CIV. P. 22.

70. LA. CODE CIV. PROC. ANN. art. 4651-62 (1998).

71. *Am. Surety Co. of N.Y. v. Brim*, 144 So. 727, 729 (La. 1932), cited in *Cimarex II*, 40 So. 3d at 939.

stipulated that one proceeding could resolve the issues between all parties, was to avoid a multiplicity of lawsuits.⁷² In such a proceeding, each party acted as both plaintiff and defendant, and no claimant could independently bring an action against the debtor.⁷³ However, in this early stage, Louisiana concursus had two limitations not present in federal interpleader: only the stakeholder could bring a concursus action; and the claimants' right of title had to derive from a common origin.⁷⁴

After the legislature passed Act 123, the Act was incorporated into Louisiana Revised Statute §13:4811.⁷⁵ This statute was amended and re-enacted by Louisiana Acts of 1954, No. 523.⁷⁶ At this stage in its development, the concursus proceeding in Louisiana maintained the restrictions set forth in Act 123.⁷⁷

In 1960, the Louisiana legislature adopted the Louisiana Code of Civil Procedure.⁷⁸ In doing so, the legislature repealed Louisiana Revised Statute §13:4811 and enacted Title X of the Code, which included the concursus proceeding.⁷⁹ With the adoption of Title X, the legislature sought to codify the jurisprudential rules that governed concursus, broaden the scope of those jurisprudential rules, and provide a single set of rules for the proceeding in Louisiana.⁸⁰

The law governing the concursus procedure is currently set

72. *Amerada Petroleum Corp. v. State Mineral Bd.*, 14 So. 2d 61, 65 (La. 1943) (citing *Hennington v. Petroleum Heat & Power Co. of La.*, 193 So. 583, 586 (La. 1940)), *cited in Cimarex II*, 40 So. 3d at 939. Instead of each claimant pursuing an action against the same stakeholder, interpleader (concursus) offers a method of dispute resolution in which all parties having a claim to the same stake argue the merit of that claim before the court at the same time. *Id.*

73. *Cimarex II*, 09-1170, p. 11 (La. 4/9/10); 40 So. 3d 931, 939.

74. *Landry & Passman Realty, Inc. v. Beadle, Sweartwood, Wall, & Assocs., Inc.*, 303 So. 2d 761, 763 (La. Ct. App. 1974), *cited in Cimarex II*, 40 So. 3d at 940.

75. *Damson Oil Corp. v. Sarver*, 346 So. 2d 1304, 1306 (La. Ct. App. 1977), *cited in Cimarex II*, 40 So. 3d at 939.

76. *Cimarex II*, 09-1170, p. 11 (La. 4/9/10); 40 So. 3d 931, 939.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Sewerage & Water Bd. of New Orleans v. Sanders*, 239 So. 2d 414, 417 (La. Ct. App. 1970). Effectively, the legislature sought to make the proceeding more liberal and accessible to stakeholders. *Id.*

forth in articles 4651–4662 of the Louisiana Code of Civil Procedure.⁸¹ Article 4651 defines concursus as a proceeding “in which two or more persons having competing or conflicting claims to money, property, or mortgages or privileges on property are impleaded and required to assert their respective claims contradictorily against all other parties to the proceeding.”⁸² Furthermore, in article 4652, the legislature lifted many of the limitations on the concursus proceeding and integrated broad language and policy from federal interpleader into the Louisiana concursus law.⁸³

3. MODERN CASE INTERPRETATION

Following the legislature’s adoption of Title X, Louisiana courts expounded two major purposes for concursus, both of which protect the stakeholder.⁸⁴ The primary purpose of the procedure is to prevent the stakeholder from multiple liability.⁸⁵ Second, the procedure is meant to prevent the stakeholder from vexatious litigation.⁸⁶ These two protective policy concerns prevent the stakeholder from having to make legal conclusions regarding the legitimacy of competing claims.⁸⁷ The modern courts interpret the codified concursus proceeding in Louisiana as a liberal procedural tool.⁸⁸ Concursus is particularly important to many big industries in Louisiana that often face competing claims. Three such industries are the oil and gas industry, the insurance industry, and the building and construction industry.

81. LA. CODE CIV. PROC. ANN. art. 4651-62 (1998).

82. LA. CODE CIV. PROC. ANN. art. 4651 (1998).

83. LA. CODE CIV. PROC. ANN. art. 4652 (1998) (“Persons having competing or conflicting claims may be impleaded in a concursus proceeding even though the person against whom the claims are asserted denies liability in whole or in part . . .”).

84. *Landry & Passman Realty, Inc. v. Beadle, Sweartwood, Wall, & Assocs., Inc.*, 303 So. 2d 761, 763 (La. Ct. App. 1974), cited in *Cimarex II*, 09-1170, p. 13 (La. 4/9/10); 40 So. 3d 931, 940.

85. *Id.* This is a protective mechanism for stakeholders so that they are not ultimately required to pay the same debt to two different claimants.

86. *Id.* This is also a protective mechanism for stakeholders so that they are not subject to costly litigation with each claimant, which could potentially lead to multiple liability.

87. *Cimarex II*, 09-1170, p. 13 (La. 4/9/10); 40 So. 3d 931, 940.

88. *Id.* at 946. The codification of concursus was a shift towards federal interpleader. *Id.* at 939.

a. Oil and Gas

Concursus is particularly important in the oil and gas industry because drilling companies often find themselves subject to competing claims for royalties. For instance, in *Damson Oil Corp. v. Sarver*, the third circuit litigated a concursus proceeding that Damson Oil Corporation initiated to determine the rightful owner of the royalties at issue.⁸⁹ One of the defendants in that case argued that there was no cause of action for the concursus because that defendant was involved in pending ownership litigation.⁹⁰ There, the court allowed the concursus to proceed, holding that concursus is to be liberally construed.⁹¹

As demonstrated by the aforementioned judicial reasoning, concursus is crucial in the oil and gas industry because a drilling company faced with competing claims can enter the fund into the registry of the district court and begin a concursus in order to prevent multiple liability or vexatious litigation. Moreover, by use of concursus, drilling companies subject to competing claims can continue to operate. Thus, the procedure offers heightened efficiency to the oil and gas industry.

b. Insurance

Concursus is also instrumental in the insurance industry because insurers are often faced with competing claims for insurance proceeds. Concursus offers insurers expedient recovery from such situations and prevents them from having to pay multiple parties for the same claim or becoming involved in multiple lawsuits over the same fund. This situation arises in a variety of insurance settings including casualty insurance, life insurance, and liability insurance.

For example, in *Wills v. National Automobile Insurance*, the second circuit dealt with a concursus proceeding resulting from an adverse claim regarding casualty insurance.⁹² Concursus proceedings provoked from a casualty insurance situation allow a “casualty insurer that admits full liability for its policy proceeds

89. *Damson Oil Corp. v. Sarver*, 346 So. 2d 1304, 1305 (La. 1977).

90. *Id.*

91. *Id.*

92. *Wills v. Nat'l Auto. Ins.*, 41,034-CA (La. App. 2 Cir. 4/12/06); 926 So. 2d 771.

[to] deposit[] those proceeds into the court registry” and implead the necessary parties who have conflicting claims.⁹³ Moreover, in *Clements v. Folse*, the first circuit dealt with a concursus proceeding resulting from competing claims to life insurance benefits.⁹⁴ There, the court determined that the threshold requirement for instigating a concursus is simply two competing claimants to an insurance proceed.⁹⁵ In the insurance industry, concursus allows an insurance company that is faced with competing claims for the same fund to simply surrender that fund to the registry of the court and cite the competing claimants as defendants. This is particularly useful because once the fund is deposited into the registry of the court, the insurer is no longer liable to any of the claimants and can continue business without concern for multiple liability.

c. Building and Construction Contracts

In building and construction contracts, multiple parties are involved—including owners, contractors, subcontractors, etc. Consequently, disputes over funds frequently occur and concursus is often used as the preferred procedural remedy in those disputes. Louisiana Revised Statute § 38:2243, particularly pertaining to public contracts for building and construction, requires a person to bring a concursus in certain building contract settings.⁹⁶ The statute provides that if recorded claims remain unpaid for longer than forty-five days, then the claimant “shall file a petition . . . citing all claimants and the contractor, subcontractor, and surety on the bond and asserting whatever claims it has against any of them, and shall require claimants to assert their claims.”⁹⁷ Thus, concursus is so pervasive in construction and building law that it is an explicit statutory remedy.

This statutory provision fits hand-in-hand with Louisiana Code of Civil Procedure article 4652. In *Sewerage and Water*

93. *Id.* at 773.

94. *Clements v. Folse*, 01-1970 (La. App. 1 Cir. 8/14/02); 830 So. 2d 307.

95. *Id.* at 316.

96. LA. REV. STAT. ANN. § 38:2243 (2010) (“All claims shall be tried concursus and the claims of the claimants shall be paid in preference to the claims of the public entity.”).

97. LA. REV. STAT. ANN. § 38:2243 (2010).

Board of New Orleans v. Sanders, the sewerage and water board brought a concursus action pursuant to this statute and cited a number of claimants, including the prime contractor, its surety, and various sub-contractors.⁹⁸ There, the court broadly construed the concursus provisions and allowed the party invoking concursus to assert his own claims—which broadened the interpretation of concursus before codification—or deny liability in general.⁹⁹

Furthermore, in *C.R. Pittman Construction Co. v. Jefferson Parish Dept. of Water & Public Works*, the court held that the owner was not only entitled to file a concursus, but was required to do so.¹⁰⁰ There, since the state was the owner, the workers filed a lien and credit certificate with the court so that the appropriate parish could arrange payment.¹⁰¹ When the general contractor attempted to file the necessary documents with the court, it learned that one of the subcontractors had already done so.¹⁰² Thus, a dispute arose over which party was the appropriate payee.¹⁰³ In response, the owner (the state) entered the entire amount into the registry of the district court and named the disputing parties as defendants.¹⁰⁴

Concursus has been a crucial part of Louisiana law since the beginning of the twentieth century—it was used in construction law even before its codification in 1922. Since its codification, the procedure has remained crucial in multiple industries including insurance, building, and, most importantly, oil and gas.

B. PUBLIC RECORDS DOCTRINE

The Louisiana Supreme Court, in *Cimarex*, emphasized the appropriate application of the Public Records Doctrine as it

98. *Sewerage & Water Bd. of New Orleans v. Sanders*, 239 So. 2d 414 (La. Ct. App. 1970).

99. *Id.* at 418.

100. *C.R. Pittman Constr. Co. v. Jefferson Parish Dept. of Water & Pub. Works*, 07-CA-1002, p. 5-6 (La. App. 5 Cir. 6/19/08); 989 So. 2d 149, 153.

101. *Id.* at 151.

102. *Id.*

103. *C.R. Pittman Constr. Co. v. Jefferson Parish Dept. of Water & Pub. Works*, 07-CA-1002, p. 4 (La. App. 5 Cir. 6/19/08); 989 So. 2d 149, 151.

104. *C.R. Pittman Constr. Co. v. Jefferson Parish Dept. of Water & Pub. Works*, 07-CA-1002, p. 4 (La. App. 5 Cir. 6/19/08); 989 So. 2d 149, 152.

relates to rights that are and are not recorded in the public records. Louisiana Civil Code article 3338 establishes that, to affect a third party, a legal right related to an immovable must be recorded in the public records.¹⁰⁵ This article seeks to protect third persons from fraud and is jurisprudentially recognized as the Public Records Doctrine.¹⁰⁶ It protects third parties against unrecorded interests and ensures stability of interest in land.¹⁰⁷ The doctrine fundamentally establishes that certain rights are ineffective against third persons unless recorded in the public records.¹⁰⁸ Quintessentially, the doctrine allows a purchaser of immovable property to look to the public records to determine whether or not there is an ownership claim adverse to his own.¹⁰⁹ If no such claim exists, then that purchaser can proceed as a bona fide purchaser and acquire good title.¹¹⁰

Courts have found that this doctrine “does not create rights in a positive sense.”¹¹¹ Moreover, Judge Redmann, the author of a scholarly article on the Public Records Doctrine, urges that the Public Records Doctrine is effectively a negative doctrine.¹¹² Judge Redmann insists that the Public Records Doctrine is intended to protect third parties against interests that are not recorded in the public record.¹¹³ As such, a third person can rely on the absence of public recordation but cannot rely on actual

105. LA. CIV. CODE art. 3338 (2005) (“The rights and obligations established . . . are without effect as to a third person unless the instrument is registered by recording it in the appropriate mortgage or conveyance records . . .”).

106. *Camel v. Waller*, 526 So. 2d 1086, 1089 (La. 1988).

107. *Camel*, 526 So. 2d at 1089-90.

108. *Phillips v. Parker*, 483 So. 2d 972, 975 (La. 1986).

109. *Anglin v. Anglin*, 05-CA-1233, p. 6-7 (La. App. 1 Cir. 6/9/06); 938 So. 2d 766, 770.

110. *Id.*

111. *Id.* (citing *Camel*, 526 So. 2d at 1089-90). For instance, in *Succession of Horn*, the court refused to allow a widow to rely on the recordation of her marriage to regain the decedent’s property from those who purchased it through the estate sale. *Succession of Horn*, 02-CA-430, p. 9-10 (La. App. 5 Cir. 9/30/02); 827 So. 2d 1241, 1246 (citing *Camel*, 526 So. 2d at 1089-90). There, the court held that the widow, as a third party, could not rely on public recordation to establish affirmative rights. *Id.* The courts continue to maintain the core principle established in *Horn*—the Public Record Doctrine does not create positive rights, but rather allows for third parties to rely on the absence of public recordation to deny the effect of certain rights. *Id.*

112. William V. Redmann, *The Louisiana Law of Recordation: Some Principles and Some Problems*, 39 TUL. L. REV. 491 (1965), cited in *Cimarex II*, 40 So. 3d 931, 944.

113. *Id.*

recordation.¹¹⁴ The Public Records Doctrine reflects the public policy that an unrecorded interest in real estate is ineffective against third parties.¹¹⁵ The doctrine does not establish rights; it protects buyers from unrecorded rights.¹¹⁶

C. MINERAL CODE

Finally, the decision in *Cimarex* relied on the Mineral Code as it relates to royalties and timely payment of royalties.¹¹⁷ The Louisiana legislature designed the Mineral Code, set forth in the Louisiana Civil Code, to codify the extensive development of jurisprudential laws regarding minerals.¹¹⁸ In doing so, the legislature retained the jurisprudence, but entered the laws into the code, as is consistent with the majority of Louisiana law.¹¹⁹ The Mineral Code generally establishes the nature of mineral servitudes and the method of creating and extinguishing mineral servitudes.¹²⁰ The Mineral Code stipulates that an obligor has thirty days from receipt of written demand for payment to pay the obligee.¹²¹ Moreover, the Mineral Code provides that if the obligor fails to pay that amount due or state a reasonable cause for nonpayment within the thirty days, the court can award damages “double the amount due.”¹²²

IV. THE COURT’S DECISION

In *Cimarex*, the Louisiana Supreme Court focused on the relationship between the concursus proceeding and the Public Records Doctrine.¹²³ The Louisiana Supreme Court considered

114. *Id.*

115. LA. CIV. CODE art. 3338 (2005).

116. *Phillips v. Parker*, 483 So. 2d 972, 975 (La. 1986).

117. The majority decision glosses over the application of the Mineral Code and the timing restraints that it places on royalty payment; the dissent, however, focuses a great deal on this issue and suggests how it may be handled in the future. *Cimarex II*, 09-1170, (La. 4/9/10); 40 So. 3d 931, 947-49 (Knoll, J., dissenting).

118. Louisiana State Law Institute, *Introduction to Mineral Code*, West’s Louisiana Statutes, Vol. 17C, 59-60 (West 2000).

119. *Id.*

120. *Id.*

121. LA. REV. STAT. ANN. § 31:212.21 (1979).

122. LA. REV. STAT. ANN. § 31:212.23(C) (1982).

123. *Cimarex II*, 09-1170, p. 16-18 (La. 4/9/10); 40 So. 3d 931, 942-44; see *supra* Part III.A-B.

the third circuit's opinion a substantial change in concursus law resulting from the inappropriate application of the Public Records Doctrine.¹²⁴ In its decision, the Louisiana Supreme Court relied heavily on the background and policy of the concursus proceeding in Louisiana to reach its two major holdings.¹²⁵ It is crucial to understand both the majority opinion and the dissent delivered in *Cimarex*.

A. MAJORITY OPINION

First, the Louisiana Supreme Court held that an oral assertion of ownership constituted a sufficient adverse claim and validated Cimarex's institution of a concursus proceeding.¹²⁶ To reach its decision, the court relied on the language of Louisiana Code of Civil Procedure article 4652, which states that a person can invoke a concursus proceeding when he is faced with "competing or conflicting" claims.¹²⁷ The court determined that an adverse claim need not meet any particular formality.¹²⁸ Thus, the court found that the Mauboules's assertion of ownership rights to the royalty interest, whether oral, in writing, or in a formal pleading, constituted an adverse claim and justified Cimarex's filing of the concursus.¹²⁹ When the Mauboules answered Cimarex's petition, they re-asserted their claim to the royalties and opposed Orange River Group's motion for summary judgment.¹³⁰ The court found that the Mauboules's actions unquestionably presented Cimarex with a conflicting claim to the royalties and that Cimarex reacted appropriately by filing a concursus proceeding.¹³¹

Second, the Louisiana Supreme Court held that a stakeholder has no obligation to determine the validity or merit of

124. *Cimarex II*, 40 So. 3d at 940-41.

125. *Id.* at 938-39.

126. *Cimarex II*, 09-1170, p. 16 (La. 4/9/10); 40 So. 3d 942. In particular, the court found that the Mauboules's assertion of ownership was a sufficient reason for Cimarex to file a concursus despite that the Mauboules's claim lacked merit. *Id.*

127. *Id.* (finding that the Public Records Doctrine protected Orange River Group and essentially rendered Cimarex's claim to the royalties obsolete).

128. *Id.*

129. *Cimarex II*, 09-1170, p. 16 (La. 4/9/10); 40 So. 3d 942.

130. *Id.* at 937.

131. *Id.* at 942.

any claim asserted against it.¹³² The court relied mostly on the general policy and purpose of the concursus proceeding,¹³³ pointing out that one claimant's rights are generally superior to another's.¹³⁴ Orange River Group's use of the Public Records Doctrine was alone insufficient to prove that Cimarex inappropriately filed the concursus in this case.¹³⁵ The court used Judge Redmann's reasoning¹³⁶ to demonstrate that Orange River Group improperly relied on the Public Records Doctrine.¹³⁷

The court found that Orange River Group and the third circuit misinterpreted the Public Records Doctrine.¹³⁸ Rather than allowing a person to rely on what is stated in the public records, the doctrine allows a person to use the absence of recordation to render certain rights unenforceable.¹³⁹ Orange River Group asserted that its royalty rights were absolute due to its status as a good faith purchaser whose purchase was recorded in the public records.¹⁴⁰ The court recognized Orange River Group's argument but held that Cimarex faced competing claims whether or not the competing claims were sufficient to prevail.¹⁴¹ Thus, the Louisiana Supreme Court determined that Cimarex properly instituted the concursus.¹⁴²

B. THE DISSENT

Justice Knoll focused on five questions in her dissenting opinion, three of which are particularly interesting to compare to the majority decision.¹⁴³ First, the dissent urged that the

132. *Id.*

133. *Id.* at 943-44.

134. *Cimarex II*, 40 So. 3d at 942. Essentially, the court stated that one claimant's merit is usually superior to another's. *Id.* The court further noted that otherwise the concursus proceeding would be obsolete. *Id.*

135. *Id.* at 944.

136. *See supra* text accompanying notes 112-13.

137. *Cimarex II*, 40 So. 3d at 944.

138. *Id.* *See* discussion *supra* Part III.B.

139. *Cimarex II*, 09-1170, p. 19-20 (La. 4/9/10); 40 So. 3d 942, 944.

140. *Cimarex II*, 09-1170 (La. 4/9/10); 40 So. 3d 942, 941.

141. *Id.* at 946.

142. *Id.*

143. *Cimarex II*, 09-1170, (La. 4/9/10); 40 So. 3d 931, 952 (Knoll, J., dissenting). The dissent addressed two questions that are not squarely addressed for the purposes of this discussion. *Cimarex II*, 40 So. 3d at 947. First, the dissent addressed the

primary concern regarding penalties was whether or not Cimarex's royalty payment to Orange River Group was timely.¹⁴⁴ Second, it addressed whether or not Cimarex's deposit of the funds into the court's registry constituted payment pursuant to the Mineral Code.¹⁴⁵ Third, the dissent discussed the damage award calculation.¹⁴⁶

The dissent's argument primarily concerned whether or not Cimarex's payment of the royalties due to Orange River Group was timely rather than whether or not the concursus was properly filed.¹⁴⁷ The dissent agreed with the third circuit's holding that the Mauboules's claim was too feeble to constitute an adverse claim and, thus, did not justify Cimarex's filing of concursus.¹⁴⁸ It was further urged that Cimarex owed penalties to Orange River Group.¹⁴⁹ The dissent asserted that the penalties issue did not depend on whether or not Cimarex had a valid reason to invoke concursus; rather, it depended on whether or not Cimarex paid the royalties due in a timely manner.¹⁵⁰ Further, the dissent argued that Cimarex missed the thirty-day window to pay the royalties.¹⁵¹ Cimarex received notice of the demand for the royalty payment on November 18th but did not enter the funds into the registry of the court until December 22nd.¹⁵² The dissent observed that this was thirty-four calendar days after receipt of notice, asserting that payment was four days late.¹⁵³

Next, Justice Knoll addressed whether or not Cimarex effectively paid the amount due to Orange River Group when

general operation of the Mineral Code. *Id.* at 947. Second, the dissent addressed whether or not Cimarex's failure to pay was reasonable. *Id.* at 949.

144. *Id.* at 947.

145. *Id.* at 948-49 (Knoll, J., dissenting).

146. *Cimarex II*, 40 So. 3d 931 at 952 (Knoll, J., dissenting). The majority opinion did not discuss the appropriate calculation for the damage award because the court determined that damages were inappropriate. *Id.* at 946.

147. *Id.* at 947 (Knoll, J., dissenting).

148. *Id.* (Knoll, J., dissenting).

149. *Id.* (Knoll, J., dissenting).

150. *Cimarex II*, 09-1170, (La. 4/9/10); 40 So. 3d 942, 947 (Knoll, J., dissenting).

151. *Id.* at 948 (Knoll, J., dissenting).

152. *See supra* text accompanying notes 51-52.

153. *Cimarex II*, 09-1170, (La. 4/9/10); 40 So. 3d 942, 948 (Knoll, J., dissenting).

Cimarex deposited the funds into the court's registry.¹⁵⁴ In her dissent, she did not dispute that Louisiana Code of Civil Procedure article 4658 allows a stakeholder to deposit the stake into the court's registry to liberate himself of liability associated with that stake.¹⁵⁵ However, the dissent argued that Cimarex's deposit was late, asserting that the thirty-day timeframe for payment denoted in the Mineral Code is a strict deadline.¹⁵⁶ Thus, the dissent concluded that Cimarex was not free from liability because the payment was late and the penalties had already accrued when Cimarex deposited the fund into the registry of the district court.¹⁵⁷

Finally, the dissent further addressed the appropriate damage award.¹⁵⁸ Justice Knoll argued that, while correct to award damages, the trial court was incorrect in its calculation of damages.¹⁵⁹ The argument relied on a plain reading of Mineral Code § 31:212.23(B) and reached the conclusion that appropriate damages pursuant to that article are double, not treble, the unpaid royalties.¹⁶⁰ Thus, the dissent concluded that the appropriate damage award would have been the royalty amount times two rather than the royalty amount plus two times the royalty amount, as awarded by the third circuit.¹⁶¹

In sum, the Louisiana Supreme Court's opinion verified the liberal application of the concursus procedure in Louisiana.¹⁶² First, it re-asserted that a stakeholder has no obligation to weigh the strengths and weaknesses of the competing claims with which it is faced.¹⁶³ Second, it affirmed that a stakeholder is relieved of

154. *Id.*

155. *Id.*

156. *Id.* The dissent argued that the "strict deadline" meant counting every day against the clock, including weekends and holidays. *Id.*

157. *Cimarex II*, 40 So. 3d at 949 (Knoll, J., dissenting).

158. *Id.* at 952 (Knoll, J., dissenting).

159. *Id.* (Knoll, J., dissenting).

160. *Cimarex II*, 09-1170, (La. 4/9/10); 40 So. 3d 942, 952 (Knoll, J., dissenting). *See supra* Part III.C. for explanation of Mineral Code.

161. *Cimarex II*, 40 So. 3d at 952 (Knoll, J., dissenting).

162. *Id.* at 946.

163. *Cimarex II*, 09-1170, p. 23-25 (La. 4/9/10); 40 So. 3d 942, 946. The Louisiana Supreme Court held that imposing such a duty would be unfounded and would frustrate the intent of the concursus proceeding. *Cimarex II*, 09-1170, p. 23-25 (La. 4/9/10); 40 So. 3d 942, 946.

liability by depositing the stake into the district court's registry.¹⁶⁴ This opinion was particularly important because it affirmed the liberal application of the concursus proceeding in Louisiana from which the third circuit's opinion substantially diverged.¹⁶⁵

V. ANALYSIS

The Louisiana Supreme Court's decision verified the legal interpretation of concursus in Louisiana and demonstrated its importance. This section discusses both the legal implication and broad ramifications of the decision.

A. LEGAL SIGNIFICANCE

The *Cimarex* decision affirmed the purpose and procedure of a number of legal principles; this section addresses each in turn. The first subsection addresses the appropriate invocation and procedure for a concursus. The second subsection discusses the appropriate use of the Public Records Doctrine. Finally, the third subsection focuses on the dissent's contribution to the Mineral Code damages issue.

1. APPROPRIATE INVOCATION OF CONCURSUS

Traditionally, courts in Louisiana have liberally applied concursus.¹⁶⁶ Before its codification, the courts allowed the use of concursus as long as the person bringing the action was uninterested and no party would be wrongly prejudiced by the action.¹⁶⁷ Since then, the courts have applied an even broader application of the procedural tool by allowing interested parties to invoke concursus.¹⁶⁸ The current law provides merely that the person bringing the concursus be faced with "conflicting

164. *Id.*

165. *Id.*

166. *Am.Surety Co. of N.Y. v. Brim*, 144 So. 727, 729 (La. 1932), *cited in Cimarex II*, 40 So. 3d at 939; *Amerada Petroleum Corp. v. State Mineral Bd.*, 14 So. 2d 61, 65 (La. 1943) (citing *Hennington v. Petroleum Heat & Power Co. of La.*, 193 So. 583, 586 (La. 1940)), *cited in Cimarex II*, 40 So. 3d at 939.

167. *Lauterbach v. Seikmann*, 51 So. 1008 (La. 1910); *Dunlap v. Whitmer*, 69 So. 189 (La. 1914); *Mahoney v. La. Highway Comm'n*, 97 So. 582 (La. 1923).

168. *Brim*, 144 So. at 966, *cited in Cimarex II*, 40 So. 3d at 939; *Amerada Petroleum Corp.*, 14 So. 61 at 65 (citing *Hennington*, 193 So. at 586), *cited in Cimarex II*, 40 So. 3d at 939.

claims.”¹⁶⁹ The Louisiana Code of Civil Procedure does not state—or even suggest—that a stakeholder invoking a concursus must pierce the merits of the competing claims before bringing the action.¹⁷⁰

Here, the existence of competing claims is evident. Cimarex, after successfully drilling on the Mauboules’s land pursuant to a lease, was unsure whether the royalties from the drilling were due to the Mauboules, as landowner, or to Orange River Group, as a derivative purchaser of the royalty rights. Both the Mauboules and Orange River Group claimed ownership of the royalties. The underlying reason for the uncertainty was an ongoing dispute between the Mauboules and Ereunao—the party from whom Orange River Group purchased its royalty rights—regarding whether or not the ownership of the royalty rights had prescribed, which would have effectively restored those rights to the Mauboules. Thus, Cimarex, although uninterested as to the royalties, was unsure to which party they were correctly owed. That being the case, Cimarex deposited the disputed royalties into the registry of the district court and invoked a concursus. By even the strictest historical standard used for concursus in Louisiana, these facts indicate a quintessential case of the proper use of concursus. An uninterested stakeholder, unsure to whom the stake belonged, followed procedure by depositing it into the district court’s registry. Therefore, Cimarex appropriately filed the concursus in this case.

The third circuit held that Cimarex was unable to meet the actual concern requirement because the invocation was discussed between Cimarex and the Mauboules before the drilling lease between them was finalized.¹⁷¹ However, the Louisiana Code of Civil Procedure does not dictate that foreseeable competing claims are non-existent. Such an application of the procedure leads to the absurd result of imposing on the stakeholder the duty to address the merits of each of its competing claims. This result would destroy both the traditional use and the purpose of concursus in that it would require the stakeholder to perform the duties traditionally performed by the court in such proceedings.

169. LA. CODE CIV. PROC. ANN. art. 4651 (1998).

170. LA. CODE CIV. PROC. ANN. art. 4651-62 (1998).

171. *Cimarex I*, 08-452, p. 9 (La. App. 3 Cir. 3/11/09); 6 So. 3d 339, 405.

As such, the concursus proceeding, which has been used in Louisiana since 1820, would become effectively obsolete. In the present case, Cimarex was presented with competing claims and appropriately invoked concursus.

2. APPROPRIATE APPLICATION OF THE PUBLIC RECORDS DOCTRINE

The appropriate application of the Public Records Doctrine allows a third party to rely on the absence of recordation to avoid liability.¹⁷² Generally, a purchaser can rely on this doctrine to establish his ownership against an adverse claim if the claimant's own previous purchase was not recorded in the public records at the time that the more recent purchase was made. Thus, in that situation, the more recent purchaser relies on the absence of the previous purchaser's recordation to affirm his bona fide purchaser status and his good title.

In *Cimarex*, the transfer of the royalty interest was recorded in the public records and Orange River Group attempted to use that recordation to establish its affirmative rights.¹⁷³ Such usage of the Public Records Doctrine is unprecedented and inappropriate. Thus, the court correctly held that Orange River Group could not rely on the doctrine to establish its affirmative rights.¹⁷⁴

3. THE DISSENT AND THE MINERAL CODE

Both the dissent and the majority in *Cimarex* agreed that filing a concursus frees a stakeholder from any further liability; however, they disagreed regarding whether or not the filing of the concursus in the present situation was timely.¹⁷⁵ The majority seemingly interpreted the thirty-day window allotted by the Mineral Code to exclude weekends and holidays. The dissent urged that the thirty-day window be strictly interpreted as thirty calendar days from receipt of demand for payment.¹⁷⁶ The

172. William V. Redmann, *The Louisiana Law of Recordation: Some Principles and Some Problems*, 39 TUL. L. REV. 491 (1965), cited in *Cimarex II*, 40 So. 3d at 944.

173. *Cimarex II*, 09-1170, p. 20 (La. 4/9/10); 40 So. 3d 942, 944; see *supra* text accompanying note 48.

174. *Cimarex II*, 40 So. 3d at 944.

175. *Id.* at 948-49 (Knoll, J., dissenting).

176. *Id.* at 947-52 (Knoll, J., dissenting).

relevant Mineral Code article, denoting the appropriate timeframe for payment, is not specific in this regard and no previous cases explicitly state the appropriate interpretation of this article.

Moreover, the dissent discussed the Mineral Code article that establishes damages.¹⁷⁷ The majority opinion did not address the damage issue because the majority found that the concursus was timely filed and, thus, did not warrant damages. The dissent argued that the concursus was not timely and that Cimarex owed damages to Orange River Group. On the point of damage calculation, the dissent correctly argued that the appropriate Mineral Code calculation of damages was double, not treble, the royalties due.¹⁷⁸ Thus, the damage amount should have been the royalties due plus the royalties due, not the royalties due plus two times the royalties due. To interpret the Mineral Code otherwise leads to an excessive damage amount for late payment.

Furthermore, it is appropriate to interpret the language of the Civil Code in its plain meaning. Had the drafters of the code intended the damages in the Mineral Code to amount to treble damages, they would have explicitly expressed that intent; instead, the drafters stated that the court could award “double” damages.¹⁷⁹ Because the damage provision is similar to a penal provision, it should be interpreted, like other penal provisions, in favor of the defendant. The courts have yet to formally address and settle this issue, but it is expected to be a hot topic in future litigation and the dissent’s analysis of damages in the Mineral Code will be persuasive authority in those cases.

B. BROAD RAMIFICATIONS: PROTECTING LOUISIANA’S INDUSTRIES

The importance of this case radiates well beyond the instant parties by setting a crucial precedent that explicitly states the purpose and process of the concursus procedure. Concursus is particularly important in Louisiana due to its effect on many industries in the state. The procedure allows industry

177. *Cimarex II*, 09-1170, (La. 4/9/10); 40 So. 3d 942, 947-49 (Knoll, J., dissenting).

178. *Id.* at 952 (Knoll, J., dissenting).

179. LA. REV. STAT. ANN. § 31:212.23(C) (1982).

stakeholders to function more efficiently by shifting the burden of scrutinizing each claim from the industry to the claimants. Without such procedural protection, the risk to stakeholders would exponentially increase. Oil and gas companies would be forced to stop production until any royalty dispute was settled; insurance companies would have to withhold business until they knew which claimant was the rightful payee; building companies would be subject to lengthy periods of reduced business in order to resolve every competing claim.

The oil and gas industry is rampant with royalty disputes. When a drilling company is faced with multiple assertions to one fund of royalty proceeds, it is routine to file a concursus and allow the multiple claimants to attest to the merit of their claims in court. Oil and gas companies, by necessity, often continue drilling at times when they are faced with such competing claims through use of concursus. Thus, requiring them to pay before a determination of the rightful owner of royalties would stop drilling in many instances and effectively contribute to waste.

In light of the 2010 Deepwater Horizon oil spill in the Gulf of Mexico, many people are hesitant to extend protection to the oil and gas industry. In the heat of emotion and distress, people may overlook the fact that the oil and gas industry is vital to Louisiana's economy. As one of the leading industries in the state, it is a major source of revenue for the state and a major employer in the state.¹⁸⁰ Despite its substantial size, the oil and gas industry is inherently risky because companies take huge risks by investing large amounts of money in oil and gas ventures before they can gauge success. Concursus allows oil and gas companies to continue business without the increased risk of multiple liability or vexatious litigation. Keeping drilling property in commerce is essential for oil and gas production even when title is unclear. Thus, it is of paramount importance to the

180. See Loren Scott, PhD., *The "Energy" Sector: Still a Giant Economic Engine for the Louisiana Economy* (2007), available at www.google.com (search "Loren Scott, PhD. The 'Energy' Sector: Still a Giant Economic Engine for the Louisiana Economy"; then click "quick view"). In 2005, the oil and gas industry supported 320,280 jobs in Louisiana. *Id.* For every one job that the oil and gas industry creates, approximately four and a half other jobs are created in other industries in the state. *Id.* In 2006, the oil and gas industry paid approximately six and half percent of total wages in Louisiana (amounting to approximately four billion dollars). *Id.*

oil and gas industry that concursus, which allows these companies to act without the above-mentioned risks, retains its traditional liberal application.¹⁸¹

The insurance industry in Louisiana commonly uses concursus to avoid multiple liability for the same insurance proceed or lengthy and costly litigation over a disputed fund.¹⁸² Regarding life insurance, disputes over proceeds commonly arise in situations where two people claim to be the beneficiary of one policy. For instance, consider a life insurance situation in which the deceased was married to his first wife when he executed his life insurance policy but subsequently divorced and remarried before his death. A dispute would likely occur regarding which wife would appropriately benefit from the policy. In such a situation, the insurer is able to surrender the proceeds to the court and let the claimants present their arguments before the court. This allows the insurer to continue business without concern for the claims asserted for that particular proceed. This may seem like a trivial concern for a large insurance company, but if one considers the multiplicity effect of such claims, it is clear that numerous situations similar to the one suggested could lead to wasted time and money. Thus, a strict application of concursus would jeopardize the efficiency and productivity of insurers in Louisiana.

Finally, concursus is crucial in the building industry in that the parties to building contracts include the owner of the land for whom the building is performed, the general contractor, the surety for the general contractor, and any subcontractors hired by the general contractor. Disputes often arise over which subcontractor is entitled to a share of money. In the event of such a dispute, the owner or the general contractor (from whomever the subcontractor seeks money) can enter the entire fund into the

181. Louisiana, like the rest of the United States, is gradually shifting towards alternative energy sources. This is a necessary shift since the oil and gas resources in the state have depleted over the years and important in light of recent efforts and attention towards environmental protection. While this shift is underway, it is far from complete; thus, it is still crucial that the courts uphold the procedural protections for the oil and gas industry. Moreover, even after the shift to alternative resources is complete, the concursus proceeding will maintain an important procedural purpose, as alternative energy companies will likely require property leases that will inevitably lead to title disputes similar to the one in the instant case.

182. *See supra* Part III.A.3.b.

registry of the district court and allow the multiple claimants to assert their claims in court. In this situation, it is sometimes mandatory for owners to provoke a concursus pursuant to the Public Works Act. There are multiple situations that arise from building contracts in which concursus is the appropriate procedural tactic to deal with the conflict in a time- and cost-efficient manner. Thus, it is crucial to the construction industry that concursus be protected as a useful procedural tool.

If the *Cimarex* decision had made the requirements for a stakeholder to bring a concursus more burdensome, it would have forced stakeholders to determine the rightful claimant before beginning the concursus. Considering that the entire purpose of the concursus is for the court to determine the rightful claimant, this would render the procedure effectively obsolete. Thus, it would cause substantial harm to the large industries that contribute to Louisiana's economy.

VI. CONCLUSION

This factually complex case provided an important opportunity for the Louisiana Supreme Court to reaffirm the purpose and process of concursus proceedings in Louisiana. The court rightfully re-established that concursus is a liberal procedural tactic meant to protect stakeholders from multiple liability and vexatious litigation. Beyond the procedural importance of *Cimarex*, the court's decision is essential to Louisiana's economy. The use of concursus in Louisiana protects the oil and gas industry as it relates to royalty disputes, protects insurance agencies from superfluous beneficiary claims, and protects parties to building contracts from multiple liability. These industries are instrumental to Louisiana's economy. By offering procedural protection, the statutory laws and the judicial interpretation of those laws also protect Louisiana's economy. Frankly stated, Louisiana cannot afford to sacrifice the procedural tools that protect its industries. Thus, the Louisiana Supreme Court's decision was crucial because it substantiated the concursus procedure in Louisiana as a procedure to be used in a liberal manner to protect stakeholders, particularly those industries that greatly enhance Louisiana's economy.

