

In The
Supreme Court of the United States

BP EXPLORATION & PRODUCTION INC., ET AL.,
Petitioners,

v.

LAKE EUGENIE LAND & DEVELOPMENT, INC., ET AL.,
Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF AND BRIEF FOR *AMICI CURIAE*
THE MOBILE AREA CHAMBER OF COMMERCE,
THE NEW ORLEANS CHAMBER OF COMMERCE,
THE GREATER PENSACOLA CHAMBER OF
COMMERCE, THE ASCENSION CHAMBER OF
COMMERCE, THE CHARLOTTE COUNTY
CHAMBER OF COMMERCE, THE ST. BERNARD
PARISH CHAMBER OF COMMERCE, THE RIVER
REGION CHAMBER OF COMMERCE AND THE
CHAMBER OF COMMERCE OF CAPE CORAL
IN SUPPORT OF RESPONDENTS**

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**MOTION FOR LEAVE TO FILE
BRIEF AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

Pursuant to Rule 37.2(b) of the Rules of this Court, The Mobile Area Chamber of Commerce, The New Orleans Chamber of Commerce, The Greater Pensacola Chamber of Commerce, The Ascension Chamber of Commerce, The Charlotte County Chamber of Commerce, The St. Bernard Parish Chamber of Commerce, The River Region Chamber of Commerce and The Chamber of Commerce of Cape Coral move this Court for leave to file the attached *amicus curiae* brief in support of Respondents.

All parties were timely notified of the intent of these *amici* to file the attached brief as required by Rule 37.2(a). Petitioners and Respondents have consented to the filing of this brief, save for Ancelet's Marina, L.L.C. Blanket consents to the filing of this brief are on file with the Clerk of this Court.

In this case, the Fifth Circuit correctly held that the applicable requirements of Rule 23 are satisfied, and neither class certification nor settlement approval are contrary to Article III. This holding is of critical interest to *amici*, organizations that represent all segments of the Gulf coast business community and whose members frequently find themselves as defendants in class actions and other litigation. *Amici* have a particular and substantial interest in ensuring that class action cases that are amicably resolved

may be settled with confidence and finality and that the sanctity of contract is protected.

Accordingly, *amici* respectfully request that the Court grant the motion for leave to file an *amicus curiae* brief.

Respectfully submitted,

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OCTOBER 2014

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INTEREST OF *AMICI CURIAE*¹

The Mobile Area Chamber of Commerce, The New Orleans Chamber of Commerce, The Greater Pensacola Chamber of Commerce, The Ascension Chamber of Commerce, The Charlotte County Chamber of Commerce, The St. Bernard Parish Chamber of Commerce, The River Region Chamber of Commerce and The Chamber of Commerce of Cape Coral respectfully submit this brief as *amici curiae*.

Organized in 1836, The Mobile Area Chamber of Commerce of Mobile, Alabama is one of the nation's oldest. The Mobile Area Chamber is an Affiliate of The U.S. Chamber of Commerce as well as a U.S. Chamber Federation Partner. The U.S. Chamber's Federation Partnership Program ensures that Federation Partners have a voice in Washington representing their interests. The U.S. Chamber of Commerce Board of Directors awarded The Mobile Area Chamber a 5-Star rating. The purpose of The U.S. Chamber's accreditation and rating program is to foster a pro-business environment across America. The Mobile Area Chamber is one of less than 50 organizations to

¹ The parties were notified ten days prior to the due date of this brief of the intention to file. All parties, save for Ancelet's Marina, LLC, have consented to the filing of this brief.

No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, or its counsel made a monetary contribution to its preparation or submission.

hold such a rating out of over 7,000 eligible chambers. A voice for local, state, regional and national business-friendly legislation and government practices, The Mobile Area Chamber has over 2,200 business members representing over 100,000 local and regional employees.

The New Orleans Chamber of Commerce of New Orleans, Louisiana is an Affiliate of The U.S. Chamber of Commerce as well as a U.S. Chamber Federation Partner. The New Orleans Chamber of Commerce was founded in 2004 to provide members with the opportunity to build mutually beneficial partnerships within the City of New Orleans. The New Orleans Chamber counts over 1,100 businesses as members.

Founded in 1889, The Greater Pensacola Chamber of Commerce of Pensacola, Florida represents nearly 1,200 Northwest Florida businesses and is an Affiliate of The U.S. Chamber of Commerce, as well as a U.S. Chamber Federation Partner. The Greater Pensacola Chamber is committed to promoting, improving and enhancing Pensacola and Northwest Florida through economic development. The Greater Pensacola Chamber holds a 4-Star accreditation from The U.S. Chamber of Commerce.

Founded in 1949, The Ascension Chamber of Commerce of Gonzales, Louisiana is an Affiliate of The U.S. Chamber of Commerce as well as a U.S. Chamber Federation Partner. The Ascension Chamber is a business membership organization that

promotes markets and provides networking opportunities to local businesses. The Ascension Chamber of Commerce harnesses the tremendous potential of the private enterprise system and enables its membership to accomplish collectively a support system for the community and business. The Ascension Chamber includes over 500 businesses as members.

Founded in 1925 and representing over 1,000 businesses, The Charlotte County Chamber of Commerce of Port Charlotte, Florida, is located along the Southwest Florida coast between Sarasota and Ft. Myers. The Charlotte County Chamber is an Affiliate of The U.S. Chamber of Commerce and holds a 4-Star accreditation from same. The Charlotte County Chamber plays a primary role in further improving the business climate in Southwest Florida.

The St. Bernard Parish Chamber of Commerce is a professional business organization of 190 members which is committed to the representation and support of the New Orleans area business community. Founded in 2003, The St. Bernard Parish Chamber is located just five miles east of the City of New Orleans, in the center of the Gulf of Mexico Coastal Region. St. Bernard Parish is a key port city driven by a robust industrial based economy dealing in trade, shipping, oil, natural gas and sugar production. St. Bernard Parish has a far reaching trade area that services 76 million people within a 600-mile radius. The St. Bernard Parish Chamber is an Affiliate of The U.S. Chamber of Commerce and engages in economic development in conjunction with many key

Parish partners including the St. Bernard Economic Development Foundation and the St. Bernard Port, Harbor and Terminal District.

The River Region Chamber of Commerce of LaPlace, Louisiana, founded in 2004, advocates a pro-business environment in St. Charles, St. James, and St. John parishes. Representing 275 business members, The River Region Chamber is an Affiliate of The U.S. Chamber of Commerce.

Founded in 1965, The Chamber of Commerce of Cape Coral is an Affiliate of The U.S. Chamber of Commerce located in the Ft. Myers area of Southwest Florida. The Chamber of Commerce of Cape Coral represents over 700 area businesses, promoting tourism and other industry along Florida's Gulf coast.

Together, these Affiliates ("Affiliates") of The Chamber of Commerce of the United States of America ("The Chamber") represent over 7,000 businesses, large and small, throughout the affected region of the Gulf of Mexico. These Affiliates of The Chamber and their thousands of members must rely on the sanctity and certainty of contract in order to engage in commerce and to resolve disputes.

Additionally, many of the Affiliate organizations themselves, as well as their individual business members, were negatively impacted to one extent or another by the events of April 20, 2010 and the subsequent economic and environmental disaster caused by Petitioner's gross negligence. These Affiliates and their members wish to inform the Court of their

disagreement with, and objection to, the *amicus* brief filed by The Chamber in support of Petitioners, as The Chamber does not speak for these Affiliates and their members in this instance.

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SUMMARY

The Chamber did not seek the input nor approval of the *amici* Affiliates, nor to our knowledge any Gulf coast area Affiliate, prior to filing its *amicus* brief in support of Petitioner’s Petition for a Writ of Certiorari. In its brief, The Chamber purports to speak for “more than three million U.S. businesses and organizations of every size, in every industry, and from every region of the country” (Chamber Br. at 2), yet it fails to disclose that hundreds, and potentially thousands, of Affiliates of The Chamber and business members of those Affiliates have filed claims for business economic losses in reliance on the Settlement Agreement – a Contract – and the very compensation system Petitioner designed, lobbied for District Court approval of, attested to the adequacy and fairness of under oath, and initially defended before the Fifth Circuit Court of Appeals. The Chamber’s *amicus* brief continues saying, “One important Chamber function is to represent the interests of its members in matters before the courts.” (*Id.*) By supporting Petitioners, The Chamber does no such thing with regard to the listed *amici* Affiliates nor their thousands of individual business members.



ARGUMENT

Amici Affiliates appreciate that *amicus* briefs are rarely filed in support of Respondents at this stage of the proceedings (opposing Petition for a Writ of Certiorari). While *amici* Affiliates are loathe to suggest that this dispute is anything more than a simple contract interpretation issue that has been settled below, *amici* Affiliates feel compelled to inform the Court of the misstatements made by The Chamber in its *amicus* brief. As Supreme Court Rule 37.1 states: “An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court.” We so pray.

Justice Black observed that “[m]ost cases before this Court involve matters that affect far more people than the immediate record parties.” *Labor Board v. Electrical Workers*, 346 U.S. 464 (1953). We agree. The Chamber fails to disclose to this Court the number of its Affiliates, and those Affiliates’ individual business members, that were harmed by Petitioner’s gross negligence and who have subsequently filed business economic loss claims as dictated by the Settlement Agreement – a Contract with Petitioner.

For the Affiliates and their members, the sanctity of contract is as paramount in commerce as it is in dispute resolution. Not surprisingly, The Chamber frequently submits *amicus* briefs in support of this most basic of notions. Take for instance The Chamber’s *amicus* brief filed in *Atlantic Marine*

Construction Company, Inc. v. United States District Court for the Western District of Texas, 571 U.S. ____ (2013), in which it wrote: “Without predictable and enforceable contract rights, business activity cannot flourish. . .” (Chamber Br. at 12 in *Atlantic Marine Construction Company*) and failure to enforce contractual terms “fosters commercial uncertainty. . .” (*Id.*) Indeed. For the Affiliates and their individual business members, Petitioner’s legal machinations, supported by The Chamber, along with Petitioner’s faux “Commitment to the Gulf,” foster the greatest of commercial uncertainty as the date upon which Affiliates and members will be made whole under the terms of this Settlement Agreement continues to elude.

In a February 6, 2014 policy brief entitled *Secure U.S. Investment Overseas*, The Chamber unequivocally stated that “[t]he rule of law, *sanctity of contracts*, and respect for property rights are the touchstones of respect for international investment – and the United States should fight for these principles in markets around the globe” (emphasis added). U.S. Chamber of Commerce, *Secure U.S. Investment Overseas* (2014), <https://www.uschamber.com/issue-brief/secure-us-investment-overseas> at 4.

In a September 25, 2007 letter to Sen. Tom Harkin opposing the anti-arbitration provisions within the Senate Farm Bill, The Chamber again unequivocally stated that “The Chamber believes in the principle of *sanctity of contract*” (emphasis added). U.S. Chamber of Commerce, *Letter opposing anti-arbitration provisions within the Senate Farm Bill* (2007),

<https://www.uschamber.com/letter/letter-opposing-anti-arbitration-provisions-within-senate-farm-bill> at 4. This principle is conveniently ignored in The Chamber's *amicus* brief in favor of Petitioner's obviously after-the-fact rewriting of the clear language of the Settlement Agreement. The damage that would be occasioned by creating such a precedent would be incalculable and would inure to the detriment of *every* member for whom The Chamber purports to speak.

Turning to its membership, The Chamber states that it represents "more than three million U.S. businesses and organizations of every size, in every industry, and from every region of the country" (Chamber Br. at 2), yet its actions speak louder than its words, as evidenced by the fact that The Chamber did not seek input nor approval from its Affiliates and those Affiliates' local members for the filing of an *amicus* brief in support of Petitioners.

On its website, The Chamber states that its Council on Small Business "is able to bring to the Board's attention small business issues they regard as important or comment on the small business impact of policy being formulated by other standing Chamber policy committees." U.S. Chamber of Commerce, *Council on Small Business*, <https://www.uschamber.com/council-small-business-0> at 5. The website goes on to state that The Chamber's "members range from mom-and-pop shops and local chambers to leading industry associations and large corporations. They all share one thing in common – they count on the Chamber to be their voice in Washington, D.C."

U.S. Chamber of Commerce, About the U.S. Chamber, <https://www.uschamber.com/about-us/about-us-chamber>. Unfortunately, with this issue of utmost importance to the many small business members that were deleteriously affected by the Petitioner's gross negligence, the opinions of these members were not solicited, and when expressed were not respected. The Chamber obviously did not and does not serve as the "voice" of these members, as it misstates in its *amicus* brief.

For The Chamber, this course of action certainly makes sense, as only 1,500 entities (significantly less than three million) provided 94 percent of its contributions in 2012. More than half of its contributions came from just 64 donors. Public Citizen, *The Gilded Chamber* (2014), www.citizen.org/documents/us-chamber-of-commerce-funders-dominated-by-large-corporations-report.pdf. So the bulk of the Chamber's funding appears to come from large, well-funded corporate concerns, not the "mom-and-pop shops" The Chamber claims and certainly not these *amici* Affiliates.

Finally, as to the meaning of the Contract at hand, Daniel Patrick Moynihan once said, "[e]veryone is entitled to his own opinion, but not his own facts." In its *amicus* brief, The Chamber contends that "the Fifth Circuit here upheld certification after *interpreting* the settlement agreement in a way that swept in uninjured plaintiffs" (emphasis added) (Chamber Br. at 13). This is patently and demonstrably untrue; the "interpretation" of the two courts was *exactly* consistent with Petitioner's testimony under oath during the court-mandated Fairness Hearing that was held

before the Settlement Agreement was approved. Apparently, unlike The Chamber's representatives, both the District Court and the Fifth Circuit Court of Appeals actually read and understood Petitioners' sworn testimony, which was written in plain English. By repeating this canard, The Chamber serves the express interests of a foreign corporation at the expense of a very large number of its Affiliates and individual business members.

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CONCLUSION

In its *amicus* brief, The Chamber fails to disclose to this Court that a significant number of its Affiliates and individual business members have waived their Article III rights in reliance on Petitioner's Settlement Agreement and the innumerable words and actions of Petitioner inducing Affiliates and members to do the same. These members were *not* consulted by The Chamber before its *amicus* brief was filed, and do not agree with the arguments advanced by The Chamber in support thereof, particularly with respect to the potential damage to the sanctity of contracts if Petitioner is allowed to rewrite the Settlement Agreement after-the-fact.

The causation requirements of the Settlement Agreement meet or exceed the standards of Article III, Rule 23, and the Rules Enabling Act. The Contract, entered into by the most savvy of operators with eyes open, should be enforced as written and

agreed to by the parties and the Petition for Writ of Certiorari should be denied.

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