

SUPREME COURT OF LOUISIANA

NO. 95-C-1425

JAMES BILLY RAY FONTENOT, ET AL

versus

***CHEVRON U.S.A. INC., DANTZLER BOAT AND BARGE CO.,
AND AETNA CASUALTY AND SURETY CO.***

VICTORY, JUSTICE, Dissenting.

I respectfully dissent. The majority's opinion guts an important provision of the Louisiana Oilfield Anti-Indemnity Act, La. R.S. 9:2780(G), which clearly and unambiguously declares a waiver of subrogation like this "null and void and of no force and effect." As a result the plaintiff gets a "double recovery."

There is no requirement in the law that Hercules seek to nullify the waiver for it to be null and void. Nothing in the statute suggests that Aetna may not claim nullity because it was paid for the waiver. (I assume any insurer would require a higher premium for giving up its right to subrogate).

Further, Aetna's waiver clearly provides it will not "operate directly or indirectly to benefit anyone not named in the schedule." Fontenot was not named in the schedule. Thus, presumably, Aetna received a premium for waiving subrogation only against Chevron, not Fontenot. If the waiver were declared null and void, Hercules might be entitled to a refund of the additional premium charged for the waiver.