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Strategic Retreat: A Proposed Response to Evasive Energy Company Tactics Following the Shale Boom-and-Bust

I. INTRODUCTION: UNIQUE MARKET CONDITIONS AND QUESTIONABLE PRACTICES

In 2006, there were enormous doubts about the viability of the United States' natural gas industry and its ability to adequately supply domestic demand.¹ However, new technologies and discoveries resulted in a boom in the natural gas industry.² Across the country, natural gas companies like Chesapeake Energy Corporation discovered deep formations of natural gas, called shale.³ Large, state-spanning formations were discovered in Arkansas, Texas, Oklahoma, Pennsylvania, and the Appalachian Basin.⁴ In Louisiana, a massive formation, the Haynesville Shale, was discovered in the northwest portion of the state.⁵ Preliminary estimates show that the Haynesville Shale may contain the equivalent of "33 billion barrels of oil, or 18 years' worth of current U.S. oil production," which had some members of the natural gas industry claiming, "There's no dry hole."⁶

Chesapeake drilled its first exploratory well in the Haynesville Shale by March 2006.⁷ When prices for natural gas were skyrocketing, Chesapeake went public with its discovery of the Haynesville Shale in 2008.⁸ Based on high prices, natural gas companies began a "land-grab" that resulted in the execution of high value leases.⁹ These companies offered highly favorable terms, including extremely lucrative sign-up bonuses.¹⁰ However, an unsettled economy soon eroded demand for natural gas.

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1. Ben Casselman, *U.S. Gas Fields Go From Bust to Boom*, WALL ST. J., Apr. 30, 2009, at A1.

2. *Id.*

3. *Id.*

4. *Id.*; see also Ross H. Pifer, *What a Short, Strange Trip It's Been: Moving Forward After Five Years of Marcellus Shale Development*, 72 U. PITT. L. REV. 615, 621 (2011).

5. Casselman, *supra* note 1.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. Margaret Cronin Fisk, *Chesapeake Loses Bid to Void Texas Oil, Gas Rights Award*, BLOOMBERG BUSINESSWEEK (Sept. 12, 2012), <http://www.businessweek.com/news/2012-09-12/chesapeake-loses-bid-to-void-texas-oil-gas-rights-award#p1> [<http://perma.cc/N722-L9S4>] (archived March 3, 2014).

Overproduction resulted in a “glut” that drove natural gas prices to their lowest levels in six years and prompted companies to significantly decrease drilling.¹¹ Prices plummeted, and “[b]etween July and October, oil and natural gas prices fell by more than 50%, and kept falling.”¹²

Today, natural gas companies still face great difficulty in their capacity to successfully and economically withdraw gas from deep-shale formations. Some officials of the Energy Information Agency are concerned that companies could be “set up for failure” and will go bankrupt due to the unsustainably high prices that some paid to landowners during the “land rush.”¹³

Companies such as Chesapeake are still litigating many of the leases, or alleged leases, in states across the country. Many landowners claim that Chesapeake formed agreements only to “walk away” when the market crashed.¹⁴ To complicate matters, there is significant tension between the decisions emerging in state and federal courts in Louisiana and across the country. This tension stems from questions as to the landowners’ possible remedies that may be available under various causes of action, and in many cases, whether there was even a contract at all.¹⁵ Even the U.S. Court of Appeals for the Fifth Circuit has weighed in and, applying Texas law, held that an energy company’s promises and actions constituted a viable basis for the formation of a contract.¹⁶

11. Casselman, *supra* note 1.

12. *Id.*

13. Ian Urbina, *Behind Veneer, Doubt on Future of Natural Gas*, N.Y. TIMES, June 27, 2011, at A1.

14. Fisk, *supra* note 10.

15. In Louisiana, see *Ballard v. XTO Energy, Inc.*, 784 F. Supp. 2d 635, 636 (W.D. La. 2011); *ASJ Interests v. Chesapeake Louisiana LP*, No. 11-CV-1343, 2012 WL 2357313 (W.D. La. June 20, 2012), *aff’d*, No. 12-30717, 2013 WL 5977608 (5th Cir. June 20, 2012); *Haire v. XTO Energy Inc.*, No. 09-1214, 2009 WL 4927875 (W.D. La. Dec. 18, 2009). For other jurisdictions, see *Valentino v. Range Res.-Appalachia, LLC*, No. 09-1615, 2010 WL 2034550 (W.D. Pa. May 21, 2010); *Hollingsworth v. Range Res.-Appalachia, LLC*, No. 3:09CV838, 2009 WL 3601586 (M.D. Pa. Oct. 28, 2009).

16. *Coe v. Chesapeake Exploration, L.L.C.*, 695 F.3d 311, 322 (5th Cir. 2012) (“Chesapeake claims the agreement lacked terms that would have been included in the final Purchase and Sale Agreement, such as warranties of title, depth limitations, non-compete provisions, and options to purchase additional acreage. The July Agreement, however, did contain depth provisions. Furthermore, Chesapeake identifies no authority for its claim that warranties of title, non-compete provisions and options to purchase additional acreage are essential elements in a conveyance of oil and gas leases, rather than terms that the parties could leave open for later negotiation. The July Agreement was sufficiently definite to be enforced.”).

Legislation has been considered, but not yet enacted, in an attempt to curb the source of this litigation by stemming the tide of unsolicited offers.¹⁷ Whether this legislation will be successful is subject to debate, and its application, if passed, will be in the hands of the courts. Regardless, litigation is pending, and this problem will almost certainly arise again when market forces incentivize another Louisiana “land-grab.” Well-developed jurisprudence would ensure legal predictability for both the energy companies and landowners.

Across the country, as a result of the shale “land-grab,” three general groups of landowners emerged. First, there were landowners with viable contracts who were satisfied with the payment they received during the “land-grab.” Accordingly, this group is not in search of any remedy. Second, there were landowners who did not know about the shale formation under their land and signed or renewed leases without that knowledge. Third, there were landowners who believed they had successfully entered into contracts with favorable terms but were later told by company officials that no such agreements existed.

Section II of this Comment discusses the causes of action that were sought by the second group of landowners: those who did not know about the mineral deposits but had contracts. Section III examines the causes of action pursued by the third set of landowners, who believed in, and relied on, the confidence of their lucrative contracts. Section IV considers the impact of this litigation and potential routes that remedies might take in the future.

II. RESCINDING CONTRACTS UNDER PRE-SHALE DISCOVERY FRAUD CLAIMS

The second group of landowners consists of those who did not know about the shale formation under their land, yet signed or renewed leases. As a result of their lack of knowledge, they typically granted lease terms favorable to energy companies (compared to other contracts at the time). These landowners have brought suit and have attempted to rescind these newly signed or renewed leases. Landowners claim that energy companies had prior knowledge of the formations, but failed to make that information available to the landowners.¹⁸ Further, they argue that this lack of information

17. S.B. 530, 2012 Reg. Sess. (La. 2012).

18. In Louisiana, see *HMB Interests, L.L.C. v. Chesapeake Louisiana L.P.*, No. 08-1542, 2010 WL 3896521 (W.D. La. Sept. 29, 2010); *Hayes v. Pride Oil & Gas Props., Inc.*, No. 09-0488, 2010 WL 318273 (W.D. La. Jan. 22, 2010); *Thomas v. Pride Oil & Gas Props., Inc.*, 633 F. Supp. 2d 238, 245 (W.D. La. 2009); *Cascio v. Twin Cities Dev., LLC*, 48 So. 3d 341 (La. Ct. App. 2010). In other jurisdictions, see Pifer, *supra* note 4 (“In an attempt to take advantage of the

created a sufficient error to justify rescission of their previous agreements. However, these claims have been unsuccessful in both federal and state court.¹⁹

The crux of these claims, particularly in Louisiana, is that error existed on the part of the landowners as to the object of the mineral lease.²⁰ As a result of this supposed error, landowners claim that their consent was vitiated.²¹ The plaintiff-landowners maintain that they would never have entered into or renewed their contracts with the energy companies had they known the value of the mineral deposits under their land.²² They contend that this lack of knowledge, particularly when the company knew of the existence of the formations, constituted error that would vitiate consent under Louisiana Civil Code articles 1948, 1949, and 1950.²³

However, these claims did not survive motions to dismiss in the early stages of litigation because of “[t]he inherent nature and character of the right to extract oil and gas from the soil . . . [which is not] susceptible of having an intrinsic, determinable, and fixable value.”²⁴ The courts, when examining this claim, have analyzed the nature of the energy business, which is inherently speculative and unpredictable.²⁵ Further, they examined comparable laws pertaining

higher lease market, many of these landowners with early leases filed legal actions seeking to terminate their leases. In total, there were nearly one hundred lawsuits filed in state and federal courts, putting the validity of thousands of leases at issue.”).

19. *Id.*

20. *HMB Interests*, 2010 WL 3896521; *Hayes*, 2010 WL 318273 (W.D. La. Jan. 22, 2010); *Thomas*, 633 F. Supp. 2d at 245; *Cascio*, 48 So. 3d 341.

21. *See Cascio*, 48 So. 3d at 343; *see also HMB Interests*, 2010 WL 3896521, at *1.

22. *See HMB Interests*, 2010 WL 3896521, at *3.

23. *See Cascio*, 48 So. 3d at 343; *see also HMB Interests*, 2010 WL 3896521, at *2 (“The consent of a contracting party may be vitiated by error, fraud, or duress [E]rror vitiates consent only when it concerns a cause without which the obligation would not have been incurred and that cause was known or should have been known to the other party.” La. Civ. Code art. 1949. An ‘error concerns cause’ when it ‘bears on the nature of the contract, or the thing that is the contractual object or a substantial quality of that thing, or the person, or the qualities of the other party, of the law, or any other circumstance that the parties regarded, or should have regarded, as a cause of the obligation.’ La. Civ. Code art. 1950.”).

24. *Cascio*, 48 So. 3d at 343 (citing *Wilkins v. Nelson*, 99 So. 607, 609 (La. 1924)).

25. *See Thomas*, 633 F. Supp. 2d at 244.

to mineral rights, which served as further verification of their analysis.²⁶ Louisiana courts have consistently dismissed these suits.

A. Fraudulent Inducement Claims: Another Possible Remedy?

Plaintiff-landowners brought more viable claims of fraudulent inducement under Louisiana Civil Code article 1953, with the premise that the companies sought leases but did not disclose the very lucrative shale discovery; further, landowners argued that their consent was vitiated because energy companies suppressed the truth in order to “obtain an unjust advantage” in the form of less expensive leases.²⁷ These claims are superior because of the nature of the “land-grab” and the energy companies’ prior knowledge of the shale formations, which the companies did not bring to the public’s attention until after first signing or renewing leases for cheaper rates.²⁸

Louisiana Civil Code article 1953 states that “[f]raud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction.”²⁹ There are three basic elements to prove fraudulent inducement under article 1953: “(1) a misrepresentation, suppression, or omission of true information; (2) the intent to obtain an unjust advantage or to cause damage or inconvenience to another; and (3) the error induced by a fraudulent act must relate to a circumstance substantially influencing the victim’s consent to (a cause of) the contract.”³⁰

The first question for courts is whether energy companies misrepresented information when entering into negotiations with landowners. The plaintiff may be able to win on this element in some instances. For example, Chesapeake’s knowledge of the Haynesville Shale was noted in 2006, and they were aware of its viability and vast potential for profit in 2007.³¹ Chesapeake

26. *Cascio*, 48 So. 3d at 344 (“Because sales of mineral leases are not subject to rescission on this basis under La. R.S. 31:17, it follows that a claim of error on this basis cannot rescind the sale either. . . . [W]e find this contract may not be rescinded for error.”).

27. In Louisiana, see *Thomas*, 633 F. Supp. 2d at 240. In other jurisdictions, see *Pifer*, *supra* note 4, at 629.

28. Casselman, *supra* note 1.

29. LA. CIV. CODE ANN. art. 1953 (2014).

30. *Williams v. Interstate Dodge Inc.*, 34 So. 3d 1151, 1155–56 (La. Ct. App. 2010).

31. Casselman, *supra* note 1.

executives were so confident that they even claimed that “we knew that we had a tiger by the tail.”³²

The second element that the plaintiffs need to prove is that the companies intended to obtain an unjust advantage. This element may also be quite easy for the plaintiffs to contend. While companies did not want to announce the discovery of an unproven and inaccessible source of natural gas, they also wanted to receive favorable terms for tracts of land that were up for renewal or suspected of containing lucrative shale deposits.³³ It is fathomable that energy companies did not disclose the Haynesville Shale’s existence in order to not alert competitors and to get a head start in the “land-grab.”

The third and final element is whether the error induced by the companies influenced the decision of the landowners to sign the lease. The landowners’ argument here may be compelling; in short, they claim that they would not have signed the lease on the terms offered had they known of the massive shale formation under their land.

B. Courts Reject Un-nuanced Fraud Claims

Despite the appearance of an adequate fraudulent inducement cause of action, Louisiana courts have rejected these claims because of both the specific nature of the Louisiana Mineral Code and because of holdings in previous Louisiana court decisions. Primarily, these claims fall flat under the initial element. Louisiana courts have recognized that no duty existed because “a mineral lessee is not under a fiduciary obligation to his lessor”³⁴ To sustain a claim under article 1953 that there was “fraud from silence or suppression of the truth, there must exist a duty to speak or disclose information.”³⁵ Specifically, some courts have rebutted the argument that energy companies knew of and concealed the existence of the Haynesville Shale by stating that, even if true, the plaintiff had not “reposed confidence in Defendant which resulted in Defendant’s superiority and influence over Plaintiff;”³⁶ this is necessary to show the existence of a fiduciary duty.³⁷ Finally, the negotiation process did not impose a duty on the energy company or

32. *Id.*

33. Casselman, *supra* note 1. (“We knew we had the tiger by the tail”).

34. LA. MIN. CODE art. 122 (2000).

35. *Thomas v. Pride Oil & Gas Props., Inc.*, 633 F. Supp. 2d 238, 241 (W.D. La. 2009) (internal quotation marks omitted) (citing *Greene v. Gulf Coast Bank*, 593 So. 2d 630, 632 (La. 1992)).

36. *Thomas*, 633 F. Supp. 2d at 241.

37. *Id.*

its agents because “an invitation to contract, without more, is insufficient to establish a fiduciary relationship or a duty to disclose information concerning the value of the property.”³⁸

C. Finding a Remedy by Showing Depth of Relationship to the Lessee or Misleading Statements.

If the plaintiff could show that there was more depth to their landowner-lessee relationship, such as a history of a business relationship with a confidential element to it, then the plaintiff’s action might survive a motion for summary judgment.³⁹ In *Emerson v. Shirley*, a mineral royalty owner, Emerson, sought to annul the sale of his royalty to a former business partner, Noble, who allegedly procured the royalty through a third party, Shirley.⁴⁰ Emerson believed that Noble and Shirley had particular inside knowledge that the royalty was substantially more valuable than the sale price.⁴¹ Further, he claimed that, given the informal, oral business arrangement that he and Noble previously had, Noble had a fiduciary duty and thus was obligated to disclose the profitability of the royalty.⁴²

The Louisiana Supreme Court held that both the trial and appellate court were incorrect in facially preventing Emerson’s fraud claim, and that Emerson could attempt to establish that his relationship with Noble had a confidential element.⁴³ This confidential element, if proven, would impose a duty on Noble for broader disclosure.⁴⁴ Joint ownership of a royalty interest alone does not create a foundation for a confidential relationship, which might entitle one of the parties to disclose the value of a royalty to the other.⁴⁵

Further, if the plaintiff could show that the misleading disclosure was made about a property, then a remedy might be found. In *American Guaranty Co. v. Sunset Realty & Planting Co.*, an agent for an energy company made representations to an out-of-state company regarding tracts of land and the mineral values of each.⁴⁶

38. *Id.*

39. *See* *Emerson v. Shirley*, 175 So. 909, 911–12 (La. 1937).

40. *Id.* at 910.

41. *Id.*

42. *Id.* at 911.

43. *Id.*

44. *Id.* at 911–12.

45. *Id.* at 911; *see also* *Mims v. Hilliard*, 125 So. 2d 205, 206–07 (La. Ct. App. 1960).

46. *Am. Guar. Co. v. Sunset Realty & Planting Co.*, 23 So. 2d 409, 412 (La. 1944).

The land, which turned out to be a viable and high-producing field, was sold to the defendant, Small, for substantially less than its true worth.⁴⁷ Plaintiff contended that Small made affirmative representations that his pursuit of the field was purely speculative⁴⁸ when, in fact, he possessed knowledge that the energy company had a geophysical map of the area that showed connections to an oil producing field of tremendous value.⁴⁹ Plaintiffs argued that Small suppressed this knowledge in order to obtain the property rights at a relatively insignificant value.⁵⁰

The Louisiana Supreme Court ruled that, while parties are not generally bound to make statements regarding the value of the subject (such as the potential value of the land), if they make statements, then they are obligated to disclose fully.⁵¹ The court held as follows:

While a purchaser is under no obligation to inform a prospective vendor as to the value, the title or the condition of the property involved, he, individually, or as agent for his principal, having made representations and statements as to the value, the title or the condition of the property, knowing them to be false or reckless or without knowledge of their truth or falsity, is under the solemn obligation to make correct representations and tell the whole truth, without concealment or suppression of any material facts, especially if there exists an inequality of knowledge, as where the seller does not reside near the land and the purchaser does and is familiar with it.⁵²

This is true despite the invitation to investigate by the defendant, Small. The invitation does not provide a *carte blanche* excuse for the defendant's actions.⁵³ In particular, this is significant because the Louisiana Supreme Court notes that it was not possible for the out-of-state plaintiff to ascertain the value of the property; an expert would have been required, and investigation would have been difficult.⁵⁴ That invitation to investigate, in conjunction with false representations by Small, made the fraud in *American Guaranty* more insidious.⁵⁵

47. *Id.* at 427.

48. *Id.* at 456.

49. *Id.* at 427.

50. *Id.*

51. *See id.* at 449.

52. *Am. Guar. Co.*, 23 So. 2d at 449.

53. *Id.*

54. *Id.* at 450.

55. *Id.* at 452.

In the present sets of cases under consideration, landowners' ignorance of the existence of shale gas stems from the desire of many energy companies to maintain confidentiality in the early investigation of the shale,⁵⁶ which is slightly suspect because by 2007, energy companies earnestly believed that their position was not speculative.⁵⁷ However, whether there was any disclosure that might have misled the defendants is a fact-specific issue for the trial court to discover. In *American Guaranty*, Small's affirmative representations regarding the land led the Louisiana Supreme Court to conclude that Small had fraudulently induced the plaintiffs to convey their mineral rights for substantially lower values. While no duty originally existed, once Small made those affirmative representations regarding the property, he assumed a duty to fully and honestly correct his inaccurate representations and disclose the whole truth.⁵⁸

A case rendered by the Louisiana Third Circuit Court of Appeal has also taken an interesting position that may offer a final refuge for landowners who seek recourse for alleged fraudulent inducement. In *Mims v. Hilliard*, plaintiffs sought cancellation of a mineral lease on the basis that the contract was the product of fraud and misrepresentation.⁵⁹ The defendant and the plaintiff conducted negotiations over a fifty-acre tract of land.⁶⁰ Plaintiffs agreed to lease the tract but then discovered that fourteen acres of the fifty-acre tract were placed in a compulsory unit.⁶¹ The defendant was aware of the Conservation Commissioner's actions and of the intention to place part of the tract in a new unit⁶², but the defendant used that position for his benefit. However, the appellate court pointed out that, had the landowners simply inquired through public records, they would have discovered that the Office of Conservation formed the new unit.⁶³ While the lack of a confidential relationship between the parties made it clear that there was no affirmative duty to disclose the information, the defendant would have been under an obligation to disclose this material fact to the landowner if he was

56. Energy company secrecy could be justified from a policy or practical standpoint. From a policy standpoint, requiring automatic full disclosure to landowners would eliminate a significant market advantage for the company and would not reward innovative "first-movers." From a practical standpoint, it would likely shift the costs of speculation entirely onto energy companies and could prove fiscally unsustainable.

57. Casselman, *supra* note 1.

58. In other words, "Ask me no questions, I'll tell you no lies."

59. *Mims v. Hilliard*, 125 So. 2d 205 (La. Ct. App. 1960).

60. *See id.* at 206.

61. *Id.*

62. *Id.*

63. *Id.* at 206–07.

asked.⁶⁴ Thus, while a landowner may not have such a confidential relationship with an energy company or its representative that requires disclosure, if the landowner makes an inquiry to the opponent party and the facts are misrepresented, a remedy is available.

Louisiana courts have not been receptive to requests by landowners to rescind existing contracts. Fraud and fraudulent inducement claims that are based simply on the premise that the landowners were not aware of the true value of their oil, natural gas, and mineral reserves appear to be hardly sufficient to sustain rescission of an existing contract. This is particularly important given the Louisiana Supreme Court's recognition that oil, natural gas, and minerals do not have a readily available or fixable value because the values are speculative.⁶⁵ These contracts are, in large part, speculation by companies who may or may not possess special knowledge. Similarly, article 1953 claims will largely fail given that there is no affirmative obligation on the part of the energy company to disclose. However, remedies are available. First, if a landowner or royalty owner can illustrate that the energy company or its representative had a special relationship that gives rise to a duty, then that duty might give rise to an obligation to disclose information regarding, for example, the value or potential value of a royalty. Second, if the company or its representative makes false or misleading statements, they are obligated to correct those incorrect or untrue claims. Third, and finally, it appears that the contract may be rescinded if the landowner makes a specific inquiry and the lessee made misrepresentations in response.

III. DETRIMENTAL RELIANCE: A VIABLE REMEDY FOR LANDOWNERS

While there were many landowners who knew that they had lucrative contracts and were satisfied with the terms of those leases or who signed below-market leases and attempted rescission, a third set of landowners still remains. These landowners frequently received offers from energy companies, or landmen working on behalf of energy companies, who offered terms including profitable above-market bonuses and royalties. Following the crash and the pullback in activity, companies exercised various options to evade

64. *Id.* at 207 (“While this Court is of the opinion that defendant knew of the formation of the unit at the time that he purchased the lease, in the absence of an inquiry by plaintiffs he was under no obligation to divulge same to them.”).

65. *See Wilkins v. Nelson*, 99 So. 607, 609 (La. 1924).

contractual obligations. Such options included failure to close,⁶⁶ failure to obtain management approval,⁶⁷ and the failure to include lessee signature despite the presence of lessor signature.⁶⁸ These practices have led to seemingly inconsistent decisions in federal and state courts across the country. The initial question is whether these practices are legitimate, and, if so, whether the landowner can still seek remedy by arguing detrimental reliance.

A. The Requirement of a Writing and Some Manifestation of Intent by the Non-Signatory Party

A conflict exists in many of the courts across the country as to the legitimacy of evasive tactics such as management approval clauses. While the specifics of practices like these vary from company to company, the general concept remains the same. An energy company approaches a landowner and offers lucrative, above-market bonuses and royalties to incentivize the landowner to sign. The landowner then signs and returns the lease. The lessee then takes the contract, which had a condition that required management approval prior to execution, and “sits” on the contract for a specified period of time. After the market crash, these contracts, which were generally not signed by the lessee, were returned to the landowners with a statement that they would not be entering into a lease with the landowners.⁶⁹ While the specific determination of whether these practices are legitimate is a precise and fact-specific question left best to the discretion of trial courts, Louisiana law provides a general remedy against this practice.

Under article 1839 of the Louisiana Civil Code, “[a] transfer of immovable property must be made by authentic act or by act under

66. See *Coe v. Chesapeake Exploration, L.L.C.*, 695 F.3d 311 (5th Cir. 2012); see also *Shafer v. Range Res.-Appalachia, LLC*, No. 2:10-CV-1142, 2011 WL 677479 (W.D. Pa. Feb. 16, 2011); *Valentino v. Range Res.-Appalachia, LLC*, No. 09-1615, 2010 WL 2034550 (W.D. Pa. May 21, 2010); *Hollingsworth v. Range Res.-Appalachia, LLC*, No. 3:09CV838, 2009 WL 3601586 (M.D. Pa. Oct. 28, 2009).

67. *Ballard v. XTO Energy, Inc.*, 784 F. Supp. 2d 635, 637 (W.D. La. 2011).

68. *ASJ Interests v. Chesapeake Louisiana LP*, 11-CV-1343, 2012 WL 2357313, at *2 (W.D. La. June 20, 2012), *aff'd*, No. 12-30717, 2013 WL 5977608 (5th Cir. June 20, 2012).

69. For Louisiana, see generally *Ballard*, 784 F. Supp. 2d at 636–37; *Haire v. XTO Energy Inc.*, No. 09-1214, 2009 WL 4927875 (W.D. La. Dec. 18, 2009). For other states, see generally *Shafer v. Range Res.-Appalachia, LLC*, No. 2:10-CV-1142, 2011 WL 677479 (W.D. Pa. Feb. 16, 2011); *Valentino v. Range Res.-Appalachia, LLC*, No. 09-1615, 2010 WL 2034550 (W.D. Pa. May 21, 2010); *Hollingsworth v. Range Res.-Appalachia, LLC*, No. 3:09CV838, 2009 WL 3601586 (M.D. Pa. Oct. 28, 2009).

private signature.”⁷⁰ Pursuant to article 1947, when no legal requirement is present and “the parties have contemplated a certain form, it is presumed that they do not intend to be bound until the contract is executed in that form.”⁷¹ The other end of this presumption is that, “unless the parties have contemplated otherwise, the contract need not be in a certain form.”⁷²

In addition, mineral leases cannot be concluded in an oral agreement; they must be written.⁷³ These “management clauses” and other practices can be examined in light of these code articles and corresponding Louisiana jurisprudence. In instances where the energy company would receive the signature of the lessor but would not sign the document, the question initially became whether the company manifested the intent to be bound despite the presence of the “management clause.”

A Louisiana Third Circuit Court of Appeal decision addressed whether a mineral lease must be signed by both parties. In *Bills v. Fruge*, a mineral lease was mailed to Fruge (a prisoner) with a money draft attached to it.⁷⁴ Bills instructed Fruge to sign the lease, notarize it, and then return it.⁷⁵ Fruge endorsed the draft, but the lease was not returned.⁷⁶ The trial court held that, despite the fact that the mineral lease was not signed, a contract existed because Fruge cashed the draft.⁷⁷ The Third Circuit reversed, stating that mineral leases must be in writing.⁷⁸ In making this assessment, the court stated that jurisprudence prior to the enactment of the Mineral Code consistently required mineral leases to have the “same written testimonial proof as transfers of immovable property.”⁷⁹ Further, the Third Circuit indicated that scholars agreed that a written element was necessary.⁸⁰ As a result, even though Fruge had signed the draft and cashed it, a written mineral lease signed by the lessor was still required.⁸¹

70. LA. CIV. CODE ANN. art. 1839 (2014).

71. LA. CIV. CODE ANN. art. 1947 (2014).

72. Patrick S. Ottinger, *Principles of Contractual Interpretation*, 60 LA. L. REV. 765, 767 (2000).

73. See *ASJ Interests*, 2012 WL 2357313, at *4; see also *Ballard*, 784 F. Supp. 2d at 638.

74. *Bills v. Fruge*, 360 So. 2d 661, 662 (La. Ct. App. 1978), writ denied, 362 So. 2d 792 (La. 1978).

75. *Id.*

76. *Id.*

77. *Id.* at 662–63.

78. *Id.* at 663.

79. *Id.*

80. See *Bills*, 360 So. 2d at 663.

81. *Id.*

However, it is also clear from Louisiana case law that both parties do not need to sign the written mineral lease.⁸² In another case rendered by the Third Circuit Court of Appeal, *St. Romain v. Midas Exploration, Inc.*, St. Romain, a landowner, was contacted by Midas regarding a mineral lease, and after negotiations, an agreement was reached.⁸³ Midas and its agent, French, prepared the mineral lease and also a bank draft for St. Romain.⁸⁴ He and the other landowners signed the mineral lease and endorsed the bank draft, which was then picked up by French; however, after 30 days, the company did not pay the draft.⁸⁵ The defendant asserted that the bonus payment was conditioned upon the company accepting the lease.⁸⁶ Midas contended that, since Midas did not sign the lease, the company did not accept.⁸⁷ The court found that a contract did exist because the company contacted the landowner, made the final offer, and prepared the lease, which manifested its consent to be bound.⁸⁸ The appellate court held that, although mineral leases must be in writing, it is not necessary that the lessee sign the written instrument; rather, the company merely must indicate its consent to the lease agreement.⁸⁹ Since Midas prepared a bank draft and conducted serious negotiations, the court found that the lessee's consent was present.⁹⁰ Despite the absence of the lessee's signature, the court found that the signature of the landowner and the manifestation of Midas's intent were sufficient to support the existence of a binding contract.⁹¹

This is particularly true if the energy company has prepared the lease agreement and presented it to the landowner for the landowner's signature. The Louisiana Supreme Court made this

82. See *Pennington v. Colonial Pipeline Co.*, 260 F. Supp. 643, 648 (E.D. La. 1966), *aff'd*, 387 F.2d 903 (5th Cir. 1968) ("The oil, gas and mineral lease held by Pennington on the 2,425 acres of land was not a valid lease when executed by the purported lessor, Mills, because of the fact that it was never signed by Pennington. *But a lease may be accepted by the lessee and thus become an effective lease by means other than being signed by the lessee.* In this case, the lease as between Pennington and Mills did become an effective lease because Pennington, by making lease payments, and by asserting his ownership of the lease signified his acceptance thereof, and because the lessor Mills, in accepting rental payments from Pennington, is estopped to deny the validity of the lease.") (emphasis added).

83. *St. Romain v. Midas Exploration, Inc.*, 430 So. 2d 1354, 1355 (La. Ct. App. 1983).

84. *Id.*

85. *Id.*

86. *Id.* at 1356.

87. *Id.* at 1355–56.

88. *Id.* at 1356.

89. See *id.* at 1357.

90. See *St. Romain*, 430 So. 2d at 1357.

91. See *id.* at 1357–58.

conclusion in *Rainey v. Entergy Gulf States, Inc.*, where a contractor's employee was injured while working at an Entergy site.⁹² The court considered the validity of a written contract between Entergy and the contractor that was previously prepared.⁹³ The contractor had signed the agreement, but Entergy had not.⁹⁴ The Louisiana Supreme Court stated, "It has long been held by our courts that a party who prepares the contract and presents it to the other party for their signature may not later claim he is not bound by the contract because his signature is lacking."⁹⁵ These decisions form a powerful presumption that a contract is formed when the energy company drafts a lease agreement, receives a signature from the landowner, and then provides some manifestation that a contract exists.

Likewise, the U.S. Fifth Circuit Court of Appeals, when applying Texas law, came to a similar conclusion by stating that a Chesapeake management approval clause did not preclude the formation of a contract:

That the Agreement provided Chesapeake would have an opportunity to examine title to the leases and to review any contracts and agreements affecting the leases and lands covered by the leases, and that these needed to be "reasonably acceptable" to Chesapeake, also does not render the agreement indefinite. Texas courts have explained that an agreement subject to one party's approval is not indefinite if it includes an objective standard—such as "reasonable"—on which that approval must be based. . . . Thus, the inclusion of this clause in the agreement did not render it indefinite.⁹⁶

It would seem that, despite a failure to close or the presence of a management approval requirement, many landowners may have viable contracts if they were presented with a lease drafted by the mineral company, and they signed and returned it. Yet, many federal and state courts have stressed an additional requirement, namely, that some external manifestation of intent on the part of the landowner or the company is essential.

92. *Rainey v. Entergy Gulf States, Inc.*, 35 So. 3d 215, 217 (La. 2010).

93. *See id.* at 218.

94. *See id.* at 217–18.

95. *Id.* at 227.

96. *Coe v. Chesapeake Exploration, L.L.C.*, 695 F.3d 311, 322 n.36 (5th Cir. 2012).

1. Despite External Manifestations of Acceptance, If the Landowner Prepares the Original, then Landowner's Signature Alone is Insufficient for Formation

St. Romain and *Rainey* considered documents prepared by the company and signed by other parties; both cases also involved some external action demonstrating that the company desired to be bound by the contract.⁹⁷ Some federal courts in Louisiana have stressed that a partially signed written lease is not sufficient if it is also lacking some manifestation of intent on the part of the company. In *ASJ Interests v. Chesapeake Louisiana LP*, Chesapeake made an oral offer to ASJ, which was accepted.⁹⁸ Following oral acceptance, the offer was reduced to writing and signed by almost all of the relevant landowners before Chesapeake notified its representative that they would not follow through with the agreement.⁹⁹ ASJ argued that Chesapeake was bound when the plaintiffs accepted Chesapeake's offer and when it was put into writing, regardless of whether Chesapeake signed the lease.¹⁰⁰

The court found that a valid lease was not formed because Chesapeake had not signed it, set up a closing date, or delivered the bonus check.¹⁰¹ The court noted that the proposed lease was modeled from a lease used in a previous interaction by ASJ.¹⁰² In a previous agreement over an entirely separate tract (Tract 34), the two parties had used a lease developed by ASJ.¹⁰³ Following completion of that agreement, the representative for Chesapeake took the lease for that first separate tract (Tract 34) and updated it for use in the present case (Tract 33).¹⁰⁴ The representative offered the exact same terms to ASJ, and all the relevant landowners orally agreed.¹⁰⁵

The district court emphasized evidence revealing that Chesapeake agreed to the terms, including that it prepared the lease, delivered the lease to ASJ, had previous negotiations that were successful with similar terms, and prepared checks, some of which

97. See *Rainey*, 35 So. 3d 215; *St. Romain v. Midas Exploration, Inc.*, 430 So. 2d 1354 (La. Ct. App. 1983).

98. *ASJ Interests v. Chesapeake Louisiana LP*, No. 11-CV-1343, 2012 WL 2357313, at *1 (W.D. La. June 20, 2012), *aff'd*, No. 12-30717, 2013 WL 5977608 (5th Cir. June 20, 2012).

99. *Id.* at *1.

100. *Id.* at *3.

101. See *id.* at *6-7.

102. *Id.* at *6.

103. *Id.* at *2.

104. *ASJ Interests*, 2012 WL 2357313, at *2.

105. *Id.*

were mailed.¹⁰⁶ The court stated that the presumption established in *St. Romain* and *Rainey* was not controlling since ASJ originally prepared the other lease in the first agreement:

The Court is mindful that the party who prepares a contract and presents it to the other party for their signature cannot claim not to be bound by the contract because his signature is lacking. However, in the instant case, that principle is tempered by the fact that Madison drafted the lease agreement for Section 34. . . . More importantly, it was Madison who unilaterally added to the lease agreement a signature block for Chesapeake to sign. This signature block did not appear on any of Chesapeake's lease forms, but rather was intentionally added to the Plaintiffs' lease agreement by Madison himself. This act demonstrates that Madison, as the Plaintiffs' representative, contemplated obtaining Chesapeake's signature.¹⁰⁷

As a result of a failure to invoke the *St. Romain* and *Rainey* presumption, the federal district court concluded that—even though the parties might have had a meeting of the minds—a closing was essential to establish a binding obligation on Chesapeake.¹⁰⁸ Distinguishing *St. Romain* and *Rainey*, the federal court stated that, in this case, the lease was not complete until Chesapeake signed the agreement because Chesapeake did not manifest its consent by tendering payments, accepting the executed lease documents, or signing the lease when a signature block was intentionally added by the plaintiff.¹⁰⁹

While decisions similar to this may seem to narrow the presumption of *St. Romain* and *Rainey*, the change is merely one of appearance rather than substance. The question of which party created the contract is a fact-specific issue that requires examination by the trial court; however, the important part of the decision—whether intent is objectively manifested—is largely consistent with *St. Romain* and *Rainey*. Distinguishing the Louisiana Third Circuit decision in *St. Romain* from the Louisiana Supreme Court's decision in *Rainey*, the federal district court stated that the parties did not intend to be bound until closing and that no manifestation of intent existed because payments were not tendered and lease documents were not accepted.¹¹⁰

106. *Id.* at *6.

107. *Id.*

108. *See id.*

109. *See id.*

110. *See ASJ Interests*, 2012 WL 2357313, at *6.

Other recent federal district court decisions involving the Haynesville Shale similarly apply Louisiana law. For example, in *Haire v. XTO Energy Inc.*, plaintiffs solicited an offer from the defendant to lease mineral rights with an attached lease form.¹¹¹ The defendant authorized its agent to make an oral offer, which was accepted.¹¹² The defendant's agent then sent correspondence claiming that the representative had "gotten" the plaintiff's tract.¹¹³ However, they did not honor the agreement, and the plaintiff brought suit.¹¹⁴ The federal district court stated that there was no sign that the defendant manifested its consent; specifically, no serious negotiations between the parties had taken place, the company did not pay any drafts, and there were no other signs that the company desired to be bound.¹¹⁵

While the form and signature of the lease were not at issue, the federal court, consistent with *ASJ Interests*, required an explicit and affirmative showing of some manifestation of intent.¹¹⁶ It now appears clear that, if a signature is not present, a landowner must seek out some affirmative act on the part of the lessee that demonstrates intent, such as the tendering of a bank draft,¹¹⁷ serious negotiations,¹¹⁸ or accepting the "executed lease documents."¹¹⁹

2. E-mail Probably Satisfies the Requirement that a Mineral Lease be in Writing

Another related question is whether an e-mail exchange satisfies the requirement that a mineral lease be in writing. This area of law is almost certain to see more development, particularly given technological advances and Louisiana's requirement that mineral leases must be written.¹²⁰ In another federal district court decision concerning the Haynesville Shale and the manifestation of a company's intent, *Ballard v. XTO Energy, Inc.*, this question was

111. *Haire v. XTO Energy Inc.*, No. 09-1214, 2009 WL 4927875, at *1 (W.D. La. Dec. 18, 2009).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* at *2.

116. *See id.*

117. *See St. Romain v. Midas Exploration, Inc.*, 430 So. 2d 1354, 1357 (La. Ct. App. 1983).

118. *See id.*

119. *ASJ Interests v. Chesapeake Louisiana LP*, No. 11-CV-1343, 2012 WL 2357313, at *6 (W.D. La. June 20, 2012), *aff'd*, No. 12-30717, 2013 WL 5977608 (5th Cir. June 20, 2012).

120. *Id.* at *2; *see also Ballard v. XTO Energy, Inc.*, 784 F. Supp. 2d 635, 638 (W.D. La. 2011).

addressed, albeit loosely.¹²¹ The district court stated that, though there was certainly a writing requirement, the specific “source and scope” of the writing requirement was unclear.¹²² That court declined to examine the issue because, even if it had constituted a valid mineral lease, it did not contain the other requirements; specifically, it did not evince offer and acceptance and did not preclude consummation by other means.¹²³ As a result, no contract was formed.¹²⁴

However, the Louisiana Uniform Electronic Transactions Act clearly resolves this issue; it states that “[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form.”¹²⁵ Similarly, the “contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.”¹²⁶ The writing requirement has also been specifically satisfied because the Act states, “If a law requires a record to be in writing, an electronic record satisfies the law.”¹²⁷ Finally, “[i]f a law requires a signature, an electronic signature satisfies the law.”¹²⁸ The Fifth Circuit, when applying this Act, stated that there must be a showing of intent.¹²⁹ This clearly resolves the “source and scope” concern articulated by the lower federal court.

B. Even if these evasive tactics are legitimate, Louisiana landowners should be able to find a cause of action under detrimental reliance.

1. Landowners’ Situations Often Satisfy the Elements of Detrimental Reliance

Even if courts are willing to legitimize the evasive tactics used by energy companies to resist contracts following the shale boom-and-bust, landowners should still find a remedy under Louisiana Civil Code article 1967. Article 1967 establishes the principles of detrimental reliance:

Cause is the reason why a party obligates himself.

121. *See generally Ballard*, 784 F. Supp. 2d at 636.

122. *Id.* at 638.

123. *Id.* at 639.

124. *Id.*

125. LA. REV. STAT. ANN. § 9:2607(A) (2005).

126. LA. REV. STAT. ANN. § 9:2607(B).

127. LA. REV. STAT. ANN. § 9:2607(C).

128. LA. REV. STAT. ANN. § 9:2607(D).

129. *See Regions Bank v. Cabinet Works, L.L.C.*, 92 So. 3d 945, 956 (La. Ct. App. 2012).

A party may be obligated by a promise when he knew or should have known that the promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying. Recovery may be limited to the expenses incurred or the damages suffered as a result of the promisee's reliance on the promise. Reliance on a gratuitous promise made without required formalities is not reasonable.¹³⁰

The Louisiana Supreme Court has stated that, in order to prove detrimental reliance, "a party must prove three elements by a preponderance of the evidence: (1) a representation by conduct or word; (2) justifiable reliance; and (3) a change in position to one's detriment because of the reliance."¹³¹ Interestingly, Louisiana Civil Code article 1967 and Louisiana jurisprudence do not require "a formal, valid, and enforceable contract."¹³² As a result, it is inconsequential whether landowners can show the existence of a contract. Landowners need only show a representation, justifiable reliance as a result of that representation, and a change in position that caused a detriment. The Supreme Court stated that the purpose of detrimental reliance is to "prevent injustice by barring a party from taking a position contrary to his prior acts, admissions, representations, or silence."¹³³

While detrimental reliance has a very long jurisprudential history in Louisiana, its application by Louisiana courts has been inconsistent.¹³⁴ There are different explanations for its uneven application. Some contend that judges do not universally agree on this doctrine's application.¹³⁵ Others argue against its importation into Louisiana law because it is considered a foreign import.¹³⁶

The Louisiana Supreme Court in *Suire v. Lafayette City-Parish Consolidated Government* outlined the concept of detrimental reliance.¹³⁷ In *Suire*, the plaintiff owned a house and some land

130. LA. CIV. CODE ANN. art. 1967 (2014).

131. *Suire v. Lafayette City-Parish Consol. Gov't*, 907 So. 2d 37, 59 (La. 2005).

132. *Id.*

133. *Id.* (citing *Babkow v. Morris Bart, P.L.C.*, 726 So. 2d 423, 427 (La. Ct. App. 1998) (quoting *Orr v. Bancroft Bag, Inc.*, 687 So. 2d 1068, 1070 (La. Ct. App. 1997))).

134. See Shael Herman, *Detrimental Reliance in Louisiana Law--Past, Present, and Future (?)*: *The Code Drafter's Perspective*, 58 TUL. L. REV. 707, 715-16 (1984).

135. *Id.* at 715.

136. See *Ballard v. XTO Energy, Inc.*, 784 F. Supp. 2d 635, 641 n.2 (W.D. La. 2011); see also Herman, *supra* note 125, at 715-16.

137. See generally *Suire*, 907 So. 2d 37.

through which a channel passed—the Belle Terre Coulee.¹³⁸ The city received a permit and attempted to improve the drainage of the channel.¹³⁹ Plaintiff claimed that representatives of the assorted contractors had assured him that any damages incurred would be remedied.¹⁴⁰ Later, the plaintiff noticed damage to his property.¹⁴¹ The city argued that the detrimental reliance claim failed because there was no contract.¹⁴² However, the court astutely indicated that detrimental reliance is not based on the existence of contract because it is not tied to the party's intent to be bound.¹⁴³ More precisely, the court upheld the reversal of the trial court's motion for summary judgment and stated that whether a representation was made and whether it was reasonable was an issue of material fact that needed to be examined.¹⁴⁴

However, in contrast, the federal district court in *Ballard v. XTO Energy Inc.* granted a motion for summary judgment in response to a claim of detrimental reliance.¹⁴⁵ In *Ballard*, a landowner who received numerous offers to lease his land opted instead to join a pool of landowners to solicit an offer from XTO Energy.¹⁴⁶ Typical of many of the scenarios discussed previously, serious negotiations were conducted, an agreement was tentatively reached, and XTO's agent informed the landowners that management approval was required after the alleged offer.¹⁴⁷ Soon after, plaintiffs were informed that management approval was denied and that there was no agreement.¹⁴⁸

Ballard is the only case that discusses detrimental reliance in the context of the Haynesville Shale and the evasive tactics used by energy companies following the market dip in Louisiana. In *Ballard*, the plaintiff alleged that he acted in reliance on XTO's offer, and as a result, he rejected numerous other lucrative offers.¹⁴⁹ This formed the crux of his detrimental reliance claim because he relied on the existence of XTO's offer and, when XTO withdrew, other competitive offers were also withdrawn because of market conditions.¹⁵⁰ The plaintiff was able to substantially support with

138. *Id.* at 42.

139. *Id.*

140. *Id.*

141. *Id.* at 43.

142. *Id.*

143. *Id.* at 59.

144. *Suire*, 907 So. 2d at 59.

145. *Ballard v. XTO Energy, Inc.*, 784 F. Supp. 2d 635, 641 (W.D. La. 2011).

146. *Id.* at 636.

147. *Id.* at 637.

148. *Id.*

149. *Id.* at 641.

150. *Id.*

“ample evidence and plausibility” that he rejected other offers because he relied on XTO’s offer and that financial harm followed.¹⁵¹ However, the federal district court stated that detrimental reliance was only viable if the plaintiff’s reliance on the promises of XTO was reasonable, and in this case, it was not.¹⁵² The standard applied was whether the “plaintiff reasonably knew or should have known that [the] Defendant would not be bound until the additional proposed terms were acknowledged and a written contract was consummated.”¹⁵³ Further, the court noted an odd backdrop for their decision: detrimental reliance is “relatively disfavored” in Louisiana due to its common law roots.¹⁵⁴

Ballard illustrates the dilemma of landowners who believed that they were parties to a valid contract and relied on that belief in either rejecting offers from competing firms or not actively seeking out bids on their land. There certainly was reliance, and there certainly was financial damage caused by that reliance. The question then becomes whether, in many of the Louisiana shale cases, there was a “reasonable reliance.”¹⁵⁵ *Ballard* can be distinguished from previously discussed shale cases because the ultimate issue in *Ballard* is that the plaintiff never accepted the offer from XTO, and because they knowingly never accepted the contract, they could not reasonably rely on the assumption that there was a contract.¹⁵⁶

In the previous cases, however, plaintiffs reasonably believed in earnest that a contract had been achieved. In *ASJ Interests*, there was verbal acceptance of Chesapeake’s offer, which even the trial court explicitly recognized as creating “no dispute that Chesapeake had extended an oral offer to the Plaintiffs to lease land owned by them, which offer had been accepted by the Plaintiffs.”¹⁵⁷ The representative for Chesapeake also said that there were checks for the plaintiff, which appears to be an implicit recognition that there was a concluded agreement.¹⁵⁸ The representative even remarked to his superior that he believed that there was an agreement and that he “hope[d] this is just a minor delay, because these deals were made and accepted. . . .”¹⁵⁹ In this case, the language of the correspondence

151. *Ballard*, 784 F. Supp. 2d at 641.

152. *Id.* at 641.

153. *Id.*

154. *Id.* at 641 n.2.

155. *Id.* at 641.

156. *Id.*

157. *ASJ Interests v. Chesapeake Louisiana LP*, No. 11-CV-1343, 2012 WL 2357313, at *1 (W.D. La. June 20, 2012), *aff’d*, No. 12-30717, 2013 WL 5977608 (5th Cir. June 20, 2012).

158. *See id.* at *1–2.

159. *Id.* at *2.

is a strong indicator that an agreement was concluded and that simple, non-essential formalities remained so that ASJ Interests would seem reasonable in relying on what the landowners believed was a valid agreement. Likewise, in *Haire*, a representative made an oral offer that was accepted by the plaintiffs.¹⁶⁰

While a mineral lease requires a written form, detrimental reliance does not. Detrimental reliance requires, as one of its three elements, only “a representation by conduct or word.”¹⁶¹ The language of the correspondent, the language of the representatives, and other conduct creates a scenario on which a landowner, who is not versed in the law, might *reasonably* rely. As a result, even though there may not be a valid mineral lease because of defects in the negotiation or the fact that it was not reduced to a written contract accompanied by manifested intent, it appears clear that a landowner may still have a remedy under Louisiana Civil Code article 1967.¹⁶²

2. Management Clauses: No Refuge from Detrimental Reliance Claims

Ballard could be interpreted as a defense against detrimental reliance on the grounds that the existence of a management approval clause should cause landowners to not reasonably rely on agreements until final approval is obtained. However, if representations have been made that a deal is complete and mere formalities remain, or the presence of an oral agreement would seem to cause the landowner to reasonably presume the existence of an agreement, then landowners satisfy the reasonable reliance requirement. One case in particular that examines a management approval condition is *Duckett v. Grambling State University*, which contains many similarities to the shale cases.¹⁶³

In *Duckett*, an assistant college basketball coach in South Carolina left a higher paying job to move to Louisiana to coach for

160. *Haire v. XTO Energy Inc.*, No. 09-1214, 2009 WL 4927875, at *1 (W.D. La. Dec. 18, 2009).

161. *Suire v. Lafayette City-Parish Consol. Gov't*, 907 So. 2d 37, 59 (La. 2005).

162. Another relevant defense arises when considering that mineral contracts must be reduced to writing. Is it possible for a lawyer, or an experienced landman, to use detrimental reliance when the only foundation for their reasonable reliance is the existence of an oral agreement? It seems possible to argue that, since they are aware of the written requirement for mineral agreements that they are incapable of reasonably relying on oral promises given the essential nature of the written requirement. This issue, however, is outside of the scope of this Comment.

163. *Duckett v. Grambling State Univ.*, 92 So. 3d 478 (La. Ct. App. 2012), *writ denied*, 99 So. 3d 32 (2012).

Grambling on the assurance that he would receive a four-year contract.¹⁶⁴ A promise was extended to Duckett, but it was subject to management approval as required by Louisiana law.¹⁶⁵ Duckett took the job and worked for over a year, but he was fired because his contract was not considered and taken up by the board.¹⁶⁶ Duckett claims that multiple representatives made assurances and, as a result, he quickly signed his contract and sent it to Grambling.¹⁶⁷ Grambling had his signed contract but he did not worry about it further until he later received a termination letter.¹⁶⁸ The trial court stated that, while he had reasonably relied on the decision, the existence of a management approval clause (formal acceptable by a higher school authority) prohibited him from being able to reasonably rely on presumed existence of a contract because he knew that it was a prerequisite.¹⁶⁹ The Second Circuit Court of Appeals reversed, however, stating that there were material issues of fact that would require a trial on the merits.¹⁷⁰

Duckett indicates that at least some Louisiana courts would resist the argument that the management approval requirement in shale cases operates as an automatic bar for detrimental reliance claims. Presumably, this would allow landowners to reasonably rely on the existence of agreements despite the presence of such a clause. If landowners can show a reasonable reliance on representations of the company-lessee, they may be able to find a remedy under detrimental reliance.

IV. CONCLUSION

In the aftermath of the shale bust and the energy company “land-grab,” many landowners are left with mixed consequences. Some landowners possess undervalued contracts, relative to the potential value of the land. Landowners’ claims of fraud or fraudulent inducement by energy companies and their representatives have fallen—and will continue to fall—on deaf ears in Louisiana courts. The Louisiana Supreme Court has stated rather explicitly that extraction of oil, natural gas, and mineral deposits are an inherently speculative activity with no fixed value.¹⁷¹ The Louisiana courts have stated that Louisiana law does not establish a duty on the part

164. *Id.* at 479.

165. *Id.*

166. *Id.*

167. *Id.* at 480.

168. *See id.* at 481.

169. *Duckett*, 92 So. 3d at 481–82.

170. *Id.* at 486.

171. *See Wilkins v. Nelson*, 99 So. 607, 609 (La. 1924).

of the energy company to disclose the value of those resources. Further, it appears that in the absence of a misrepresentation by the energy company, there will not be a duty to disclose.

Landowners who relied on the belief that they had a viable contract, but later found out that the company was attempting to back out of their agreement, also face significant hurdles, but some options are available. If the agreements have been reduced to writing and include the lessor's signature, there might be a remedy if the energy company has manifested its intent to be bound by the agreement. Regardless, even if no contract exists, there is a viable and under-utilized area of Louisiana law that offers a remedy for these beleaguered landowners: detrimental reliance. If landowners can show that they reasonably relied on representations of the energy company and its agents that resulted in a detriment, then, even in the absence of a written agreement, landowners can receive the compensation they desire and deserve.

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