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Supreme Court Orders Federal Government to Return More Than \$150 Million to Oil Companies

In *Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 120 S. Ct. 2423 (2000), the Supreme Court reversed the Federal Circuit Court of Appeals and held that the government breached its contracts with two oil companies when it delayed approval of the companies' exploration plans. In 1981, Mobil Oil and Marathon Oil paid the government \$158 million for lease contracts giving them rights to explore for and develop oil off the North Carolina coast. The contracts were conditioned upon the companies' receiving exploration approval from the Department of the Interior (DOI) under the Outer Continental Shelf Lands Act (OCSLA), and from the State of North Carolina under the Coastal Zone Management Act (CZMA). In 1990, Congress enacted the Outer Banks Protection Act (OBPA), imposing a thirteen-month moratorium on new exploration in the region. In accordance with the OBPA, DOI suspended the companies' plans despite finding them "approvable" under the OCSLA. Shortly thereafter, North Carolina objected to the companies' plans under its CZMA program. In 1992, the oil companies sued the government for breach of contract, seeking restitution for their up-front payments for the lease contracts.

In *Mobil*, the Court found that the companies were entitled to restitution of the full \$158 million paid in 1981. First, the Court held that the contractors were subject only to those legal requirements existing at the time of the contracts. The Court found that the government violated its contracts by following the OBPA, which imposed unforeseeable new requirements on the approval process. Second, the Court found that the OBPA's changes narrowed the companies' "gateway" to obtain exploration and development rights, thus leading the government to breach the contracts.¹ Third, the Court held that the companies did not waive the right to restitution by continuing to urge the government to approve their plans. The

1. See *Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 120 S. Ct. 2423, 2436 (2000) ("[I]f the companies did not at least buy a promise that the Government would not deviate significantly from those procedures and standards, then what did they buy?").

Court stated that a waiver determination depends on the performance received, not on the performance requested. The Court concluded that because the government repudiated the lease contracts, it was liable for restitution irrespective of whether the plaintiffs would have profited from their lease contracts. In his dissent, Justice Stevens argued that the award was excessive. In Justice Stevens' view, the delays in exploration plans were foreseeable and caused by many parties and the magnitude of the remedy did not reflect the government's role in causing delays.

This ruling discourages conservationist legislation by requiring the government to accept more of the risk involved in private development of public resources. In this case, the OBPA was adopted during the terms of lease contracts, and the government followed the OBPA's new procedures. By deciding to refund the contractors' full investments after nineteen years, the Court penalized the government for passing and adhering to the OBPA. The ruling disregarded the value of the government's good faith efforts to facilitate ventures by private companies. The Government now has a disincentive to enact legislation that will delay such ventures, due to the risk that the legislation will cause the United States to forfeit its own expenditures.

H. David Gold