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SUPREME COURT OF THE UNITED STATES

Nos. 99–244 and 99–253

MOBIL OIL EXPLORATION AND PRODUCING SOUTHEAST, INC., PETITIONER
99–244 *v.*
UNITED STATES

MARATHON OIL COMPANY, PETITIONER
99–253 *v.*
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

[June 26, 2000]

JUSTICE BREYER delivered the opinion of the Court.

Two oil companies, petitioners here, seek restitution of $156 million they paid the Government in return for lease contracts giving them rights to explore for and develop oil off the North Carolina coast. The rights were not absolute, but were conditioned on the companies' obtaining a set of further governmental permissions. The companies claim that the Government repudiated the contracts when it denied them certain elements of the permission-seeking opportunities that the contracts had promised. We agree that the Government broke its promise; it repudiated the contracts; and it must give the companies their money back.

I

A

A description at the outset of the few basic contract law principles applicable to this case will help the reader understand the significance of the complex factual circumstances that follow. "When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals." *United States* v. *Winstar Corp.,* 518 U. S. 839, 895 (1996) (plurality opinion) (internal quotation marks omitted). The Restatement of Contracts reflects many of the principles of contract law that are applicable to this case. As set forth in the Restatement of Contracts, the relevant principles specify that, when one party to a contract repudiates that contract, the other party "is entitled to restitution for any benefit that he has conferred on" the repudiating party "by way of part performance or reliance." Restatement (Second) of Contracts §373 (1979) (hereinafter Restatement). The Restatement explains that "repudiation" is a "statement by the obligor to the obligee indicating that the obligor will commit a breach that would of itself give the obligee a claim for damages for total breach." *Id.,* §250. And "total breach" is a breach that "so substantially impairs the value of the contract to the injured party at the time of the breach that it is just in the circumstances to allow him to recover damages based on all his remaining rights to performance." *Id.*, §243.

As applied to this case, these principles amount to the following: If the Government said it would break, or did break, an important contractual promise, thereby "substantially impair[ing] the value of the contract[s]" to the companies, *ibid.,* then (unless the companies waived their rights to restitution) the Government must give the companies their money back. And it must do so whether the contracts would, or would not, ultimately have proved financially beneficial to the companies. The Restatement

illustrates this point as follows:

> "A contracts to sell a tract of land to B for $100,000. After B has made a part payment of $20,000, A wrongfully refuses to transfer title. B can recover the $20,000 in restitution. The result is the same even if the market price of the land is only $70,000, so that performance would have been disadvantageous to B." *Id.*, §373, Comment *a*, Illustration 1.

B

In 1981, in return for up-front "bonus" payments to the United States of about $158 million (plus annual rental payments), the companies received 10-year renewable lease contracts with the United States. In these contracts, the United States promised the companies, among other things, that they could explore for oil off the North Carolina coast and develop any oil that they found (subject to further royalty payments) provided that the companies received exploration and development permissions in accordance with various statutes and regulations to which the lease contracts were made "subject." App. to Pet. for Cert. in No. 99–253, pp. 174a–185a.

The statutes and regulations, the terms of which in effect were incorporated into the contracts, made clear that obtaining the necessary permissions might not be an easy matter. In particular, the Outer Continental Shelf Lands Act (OCSLA), 67 Stat. 462, as amended, 43 U. S. C. §1331 *et seq.* (1994 ed. and Supp. III), and the Coastal Zone Management Act of 1972 (CZMA), 16 U. S. C. §1451 *et seq.*, specify that leaseholding companies wishing to explore and drill must successfully complete the following four procedures.

First, a company must prepare and obtain Department of the Interior approval for a Plan of Exploration. 43 U. S. C. §1340(c). Interior must approve a submitted

Exploration Plan unless it finds, after "consider[ing] available relevant environmental information," §1346(d), that the proposed exploration

> "would probably cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral . . . , to the national security or defense, or to the marine, coastal, or human environment." §1334(a)(2)(A)(i).

Where approval is warranted, Interior must act quickly– within "thirty days" of the company's submission of a proposed Plan. §1340(c)(1).

Second, the company must obtain an exploratory well drilling permit. To do so, it must certify (under CZMA) that its Exploration Plan is consistent with the coastal zone management program of each affected State. 16 U. S. C. §1456(c)(3). If a State objects, the certification fails, unless the Secretary of Commerce overrides the State's objection. If Commerce rules against the State, then Interior may grant the permit. §1456(c)(3)(A).

Third, where waste discharge into ocean waters is at issue, the company must obtain a National Pollutant Discharge Elimination System permit from the Environmental Protection Agency. 33 U. S. C. §§1311(a), 1342(a). It can obtain this permit only if affected States agree that its Exploration Plan is consistent with the state coastal zone management programs or (as just explained) the Secretary of Commerce overrides the state objections. 16 U. S. C. §1456.

Fourth, if exploration is successful, the company must prepare, and obtain Interior approval for, a Development and Production Plan– a Plan that describes the proposed drilling and related environmental safeguards. 43 U. S. C. §1351. Again, Interior's approval is conditioned upon certification that the Plan is consistent with state coastal zone management plans– a certification to which States

can object, subject to Commerce Department override. §1351(a)(3).

C

The events at issue here concern the first two steps of the process just described– Interior's consideration of a submitted Exploration Plan and the companies' submission of the CZMA "consistency certification" necessary to obtain an exploratory well drilling permit. The relevant circumstances are the following:

1. In 1981, the companies and the Government entered into the lease contracts. The companies paid the Government $158 million in up-front cash "bonus" payments.

2. In 1989, the companies, Interior, and North Carolina entered into a memorandum of understanding. In that memorandum, the companies promised that they would submit an initial draft Exploration Plan to North Carolina before they submitted their final Exploration Plan to Interior. Interior promised that it would prepare an environmental report on the initial draft. It also agreed to suspend the companies' annual lease payments (about $250,000 per year) while the companies prepared the initial draft and while any state objections to the companies' CZMA consistency certifications were being worked out, with the life of each lease being extended accordingly.

3. In September 1989, the companies submitted their initial draft Exploration Plan to North Carolina. Ten months later, Interior issued the promised ("informal" pre-submission) environmental report, after a review which all parties concede was "extensive and intensive." App. 179 (deposition of David Courtland O'Neal, former Assistant Secretary of the Interior) (agreeing that the review was "the most extensive and intensive" ever "afforded an exploration well in the outer continental shelf (OCS) program"). Interior concluded that the proposed exploration would not "significantly affec[t]" the marine environment

or "the quality of the human environment." *Id.,* at 138–140 (U. S. Dept. of Interior Minerals Management Service, Environmental Assessment of Exploration Plan for Manteo Area Block 467 (Sept. 1990)).

4. On August 20, 1990, the companies submitted both their final Exploration Plan and their CZMA "consistency certification" to Interior.

5. Just two days earlier, on August 18, 1990, a new law, the Outer Banks Protection Act (OBPA), §6003, 104 Stat. 555, had come into effect. That law prohibited the Secretary of the Interior from approving any Exploration Plan or Development and Production Plan or to award any drilling permit until (a) a new OBPA-created Environmental Sciences Review Panel had reported to the Secretary, (b) the Secretary had certified to Congress that he had sufficient information to make these OCSLA-required approval decisions, and (c) Congress had been in session an additional 45 days, but (d) in no event could he issue an approval or permit for the next 13 months (until October 1991). §6003(c)(3). OBPA also required the Secretary, in his certification, to explain and justify in detail any differences between his own certified conclusions and the new Panel's recommendations. §6003(c)(3)(A)(ii)(II).

6. About five weeks later, and in light of the new statute, Interior wrote a letter to the Governor of North Carolina with a copy to petitioner Mobil. It said that the final submitted Exploration Plan "is deemed to be approvable in all respects." It added:

> "[W]e are required to approve an Exploration Plan unless it is inconsistent with applicable law or because it would result in serious harm to the environment. Because we have found that Mobil's Plan fully complies with the law and will have only negligible effect on the environment, we are not authorized to disapprove the Plan or require its modification." App. to

> Pet. for Cert. in No. 99–253, at 194a (letter from Regional Director Bruce Weetman to the Honorable James G. Martin, Governor of North Carolina, dated Sept. 28, 1996).

But, it noted, the new law, the "Outer Banks Protection Act (OBPA) of 1990 . . . prohibits the approval of any Exploration Plan at this time." It concluded, "because we are currently prohibited from approving it, the Plan will remain on file until the requirements of the OBPA are met." In the meantime a "suspension has been granted to all leases offshore the State of North Carolina." *Ibid.* See also App. 129–131 (letter from Lawrence H. Ake, Minerals Management Service, to William C. Whittemore, Mobil Exploration & Producing U. S. Inc., dated Sept. 21, 1990 (notice of suspension of leases, citing 30 CFR §250.10(b)(7) (1990) as the basis for the suspensions)).

About 18 months later, the Secretary of the Interior, after receiving the new Panel's report, certified to Congress that he had enough information to consider the companies' Exploration Plan. He added, however, that he would not consider the Plan until he received certain further studies that the new Panel had recommended.

7. In November 1990, North Carolina objected to the companies' CZMA consistency certification on the ground that Mobil had not provided sufficient information about possible environmental impact. A month later, the companies asked the Secretary of Commerce to override North Carolina's objection.

8. In 1994, the Secretary of Commerce rejected the companies' override request, relying in large part on the fact that the new Panel had found a lack of adequate information in respect to certain environmental issues.

9. In 1996, Congress repealed OBPA. §109, 110 Stat. 1321–177.

D

In October 1992, after all but the two last-mentioned events had taken place, petitioners joined a breach-of-contract lawsuit brought in the Court of Federal Claims. On motions for summary judgment, the court found that the United States had broken its contractual promise to follow OCSLA's provisions, in particular the provision requiring Interior to approve an Exploration Plan that satisfied OCSLA's requirements within 30 days of its submission to Interior. The United States thereby repudiated the contracts. And that repudiation entitled the companies to restitution of the up-front cash "bonus" payments it had made. *Conoco Inc.* v. *United States*, 35 Fed. Cl. 309 (1996).

A panel of the Court of Appeals for the Federal Circuit reversed, one judge dissenting. The panel held that the Government's refusal to consider the companies' final Exploration Plan was not the "operative cause" of any failure to carry out the contracts' terms because the State's objection to the companies' CZMA "consistency statement" would have prevented the companies from exploring regardless. 177 F. 3d 1331 (CA Fed. 1999).

We granted certiorari to review the Federal Circuit's decision.

II

The record makes clear (1) that OCSLA required Interior to approve "within thirty days" a submitted Exploration Plan that satisfies OCSLA's requirements, (2) that Interior told Mobil the companies' submitted Plan met those requirements, (3) that Interior told Mobil it would not approve the companies' submitted Plan for at least 13 months, and likely longer, and (4) that Interior did not approve (or disapprove) the Plan, ever. The Government does not deny that the contracts, made "pursuant to" and "subject to" OCSLA, incorporated OCSLA provisions as

promises. The Government further concedes, as it must, that relevant contract law entitles a contracting party to restitution if the other party "substantially" breached a contract or communicated its intent to do so. See Restatement §373(1); 11 W. Jaeger, Williston on Contracts §1312, p. 109 (3d ed. 1968) (hereinafter Williston); 5 A. Corbin, Contracts §1104, p. 560 (1964); see also *Ankeny* v. *Clark,* 148 U. S. 345, 353 (1893). Yet the Government denies that it must refund the companies' money.

This is because, in the Government's view, it did not breach the contracts or communicate its intent to do so; any breach was not "substantial"; and the companies waived their rights to restitution regardless. We shall consider each of these arguments in turn.

A

The Government's "no breach" arguments depend upon the contract provisions that "subject" the contracts to various statutes and regulations. Those provisions state that the contracts are "subject to" (1) OCSLA, (2) "Sections 302 and 303 of the Department of Energy Organization Act," (3) "all regulations issued pursuant to such statutes and in existence upon the effective date of" the contracts, (4) "all regulations issued pursuant to such statutes in the future which provide for the prevention of waste and the conservation" of Outer Continental Shelf resources, and (5) "all other applicable statutes and regulations." App. to Pet. for Cert. in No. 99–253, at 175a. The Government says that these provisions incorporate into the contracts, not only the OCSLA provisions we have mentioned, but also certain other statutory provisions and regulations that, in the Government's view, granted Interior the legal authority to refuse to approve the submitted Exploration Plan, while suspending the leases instead.

First, the Government refers to 43 U. S. C. §1334(a)(1)(A), an OCSLA provision that authorizes the

Secretary to promulgate regulations providing for "the suspension . . . of any operation or activity . . . *at the request of a lessee*, in the national interest, to facilitate proper development of a lease." (Emphasis added.) This provision, as the emphasized terms show, requires "the request of a lessee," *i.e.,* the companies. The Government does not explain how this requirement was satisfied here. Hence, the Government cannot rely upon the provision.

Second, the Government refers to 30 CFR §250.110(b)(4) (1999), formerly codified at 30 CFR §250.10(b)(4) (1997), a regulation stating that "[t]he Regional Supervisor may . . . direct . . . a suspension of any operation or activity . . . [when the] suspension is necessary for the implementation of the requirements of the National Environmental Policy Act or to conduct an environmental analysis." The Government says that this regulation permitted the Secretary of the Interior to suspend the companies' leases because that suspension was "necessary . . . to conduct an environmental analysis," namely, the analysis demanded by the new statute, OBPA.

The "environmental analysis" referred to, however, is an analysis the need for which was created by OBPA, a later enacted statute. The lease contracts say that they are subject to then-existing regulations and to certain future regulations, those issued pursuant to OCSLA and §§302 and 303 of the Department of Energy Organization Act. This explicit reference to future regulations makes it clear that the catchall provision that references "all other applicable . . . regulations," *supra,* at 9, must include only statutes and regulations already existing at the time of the contract, see 35 Fed. Cl., at 322–323, a conclusion not questioned here by the Government. Hence, these provisions mean that the contracts are not subject to future regulations promulgated under other statutes, such as new statutes like OBPA. Without some such contractual provision limiting the Government's power to impose new

and different requirements, the companies would have spent $158 million to buy next to nothing. In any event, the Court of Claims so interpreted the lease; the Federal Circuit did not disagree with that interpretation; nor does the Government here dispute it.

Instead, the Government points out that the regulation in question– the regulation authorizing a governmental suspension in order to conduct "an environmental analysis"– was not itself a *future* regulation. Rather, a similar regulation existed at the time the parties signed the contracts, 30 CFR §250.12(a)(iv) (1981), and, in any event, it was promulgated under OCSLA, a statute exempted from the contracts' temporal restriction. But that fact, while true, is not sufficient to produce the incorporation of future statutory requirements, which is what the Government needs to prevail. If the pre-existing regulation's words, "an environmental analysis," were to apply to analyses mandated by *future* statutes, then they would make the companies subject to the same unknown future requirements that the contracts' specific temporal restrictions were intended to avoid. Consequently, whatever the regulation's words might mean in other contexts, we believe the contracts before us must be interpreted as excluding the words "environmental analysis" *insofar as* those words would incorporate the requirements of future statutes and future regulations excluded by the contracts' provisions. Hence, they would not incorporate into the contracts requirements imposed by a new statute such as OBPA.

Third, the Government refers to OCSLA, 43 U. S. C. §1334(a)(1), which, after granting Interior rulemaking authority, says that Interior's

> "regulations . . . shall include . . . provisions . . . for the suspension . . . of any operation . . . pursuant to any lease . . . *if there is a threat of serious*, irreparable, or

> immediate *harm* or damage to life . . . , to property, to any mineral deposits . . . , or to the marine, coastal, or *human environment.*" (Emphasis added.)

The Government points to the OBPA Conference Report, which says that any OBPA-caused delay is "related to . . . environmental protection" and to the need "for the collection and analysis of crucial oceanographic, ecological, and socioeconomic data," to "prevent a public harm." H. R. Conf. Rep. No. 101–653, p. 163 (1990); see also Brief for United States 32. At oral argument, the Government noted that the OBPA mentions "tourism" in North Carolina as a "major industry . . . which is subject to potentially significant disruption by offshore oil or gas development." §6003(b)(3). From this, the Government infers that the pre-existing OCSLA provision authorized the suspension in light of a "threat of . . . serious harm" to a "human environment."

The fatal flaw in this argument, however, arises out of the Interior Department's own statement– a statement made when citing OBPA to explain its approval delay. Interior then said that the Exploration Plan "fully complies" with current legal requirements. And the OCSLA statutory provision quoted above was the most pertinent of those current requirements. *Supra,* at 3. The Government did not deny the accuracy of Interior's statement, either in its brief filed here or its brief filed in the Court of Appeals. Insofar as the Government means to suggest that the new statute, OBPA, *changed* the relevant OCSLA standard (or that OBPA language and history somehow constitute findings Interior must incorporate by reference), it must mean that OBPA in effect created a *new* requirement. For the reasons set out *supra,* at 10, however, any such new requirement would not be incorporated into the contracts.

Finally, we note that Interior itself, when imposing the

lengthy approval delay, did not rely upon any of the regulations to which the Government now refers. Rather, it relied upon, and cited, a different regulation, 30 CFR §250.110(b)(7) (1999), which gives Interior the power to suspend leases when "necessary to comply with judicial decrees prohibiting production or any other operation or activity." The Government concedes that no judicial decree was involved in this case and does not rely upon this regulation here.

We conclude, for these reasons, that the Government violated the contracts. Indeed, as Interior pointed out in its letter to North Carolina, the new statute, OBPA, *required* Interior to impose the contract-violating delay. See App. 129 ("The [OBPA] contains provisions that specifically prohibit the Minerals Management Service from approving any Exploration Plan, approving any Application for Permit to Drill, or permitting any drilling offshore the State of North Carolina until at least October 1, 1991"). It therefore made clear to Interior and to the companies that the United States had to violate the contracts' terms and would continue to do so.

Moreover, OBPA changed pre-existing contract-incorporated requirements in several ways. It delayed approval, not only of an Exploration Plan but also of Development and Production Plans; and it delayed the issuance of drilling permits as well. It created a new type of Interior Department environmental review that had not previously existed, conducted by the newly created Environmental Sciences Review Panel; and, by insisting that the Secretary explain in detail any differences between the Secretary's findings and those of the Panel, it created a kind of presumption in favor of the new Panel's findings.

The dissent argues that only the statements contained in the letter from Interior to the companies may constitute a repudiation because "the enactment of legislation is not typically conceived of as a 'statement' of anything to any

one party in particular," and a repudiation requires a "statement by the obligor to the obligee indicating that the obligor will commit a breach." *Post*, at 8, n. 4 (quoting Restatement §250). But if legislation passed by Congress and signed by the President is not a "statement by the obligor," it is difficult to imagine what would constitute such a statement. In this case, it was the United States who was the "obligor" to the contract. See App. to Pet. for Cert. in No. 99–253, at 174a (lease, identifying "the United States of America" as the "Lessor"). Although the dissent points out that legislation is "addressed to the public at large," *post,* at 8, n. 4, that "public" includes those to whom the United States had contractual obligations. If the dissent means to invoke a special exception such as the "sovereign acts" doctrine, which treats certain laws as if they simply created conditions of impossibility, see *Winstar*, 518 U. S., at 891–899 (principal opinion of SOUTER, J.), 923–924 (SCALIA, J., concurring in judgment), it cannot do so here. The Court of Federal Claims rejected the application of that doctrine to this case, see 35 Fed. Cl., at 334–336, and the Government has not contested that determination here. Hence, under these circumstances, the fact that Interior's repudiation rested upon the enactment of a new statute makes no significant difference.

We do not say that the changes made by the statute were unjustified. We say only that they were changes of a kind that the contracts did not foresee. They were changes in those approval procedures and standards that the contracts had incorporated through cross-reference. The Government has not convinced us that Interior's actions were authorized by any other contractually cross-referenced provision. Hence, in communicating to the companies its intent to follow OBPA, the United States was communicating its intent to violate the contracts.

B

The Government next argues that any violation of the contracts' terms was not significant; hence there was no "substantial" or "material" breach that could have amounted to a "repudiation." In particular, it says that OCSLA's 30-day approval period "does not function as the 'essence' of these agreements." Brief for United States 37. The Court of Claims concluded, however, that timely and fair consideration of a submitted Exploration Plan was a "necessary reciprocal obligation," indeed, that any "contrary interpretation would render the bargain illusory." 35 Fed. Cl., at 327. We agree.

We recognize that the lease contracts gave the companies more than rights to obtain approvals. They also gave the companies rights to explore for, and to develop, oil. But the need to obtain Government approvals so qualified the likely future enjoyment of the exploration and development rights that the contract, in practice, amounted primarily to an *opportunity* to try to obtain exploration and development rights in accordance with the procedures and under the standards specified in the cross-referenced statutes and regulations. Under these circumstances, if 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? Cf. *id.,* at 324 (the companies bought exclusive rights to explore and develop oil "*if they met*" OCSLA requirements (emphasis added)).

The Government's modification of the contract-incorporated processes was not technical or insubstantial. It did not announce an (OBPA-required) approval delay of a few days or weeks, but of 13 months minimum, and likely much longer. The delay turned out to be at least four years. And lengthy delays matter, particularly where several successive agency approvals are at stake. Whether an applicant approaches Commerce with an

Interior Department approval already in hand can make a difference (as can failure to have obtained that earlier approval). Moreover, as we have pointed out, OBPA changed the contract-referenced procedures in several other ways as well. *Supra,* at 12–13.

The upshot is that, under the contracts, the incorporated procedures and standards amounted to a gateway to the companies' enjoyment of all other rights. To significantly narrow that gateway violated material conditions in the contracts. The breach was "substantia[l]," depriving the companies of the benefit of their bargain. Restatement §243. And the Government's communication of its intent to commit that breach amounted to a repudiation of the contracts.

C

The Government argues that the companies waived their rights to restitution. It does not deny that the United States repudiated the contracts *if* (as we have found) OBPA's changes amounted to a substantial breach. The Government does not claim that the United States retracted its repudiation. Cf. *id.,* §256 (retraction will nullify the effects of repudiation if done before the other party either changes position in reliance on the retraction or communicates that it considers the repudiation to be final). It cannot claim that the companies waived their rights simply by urging performance. *Id.,* §257 (the injured party "does not change the effect of a repudiation by urging the repudiator to perform in spite of his repudiation"); see also 11 Williston §1334, at 177–178. Nor has the Government convinced us that the companies' continued actions under the contracts amount to anything more than this urging of performance. See 2 E. Farnsworth, Contracts §8.22, p. 544 (2d ed. 1998) (citing *United Cal. Bank* v. *Prudential Ins. Co.*, 140 Ariz. 238, 282–283, 681 P. 2d 390, 433–434 (App. 1983) (urging performance and

making "efforts of its own to fulfill the conditions" of the contract come to the same thing)); cf. 11 Williston §1337, at 186–187. Consequently the Government's waiver claim must come down to a claim that the companies *received* at least partial performance. Indeed, acceptance of performance under a once-repudiated contract can constitute a waiver of the right to restitution that repudiation would otherwise create. Restatement §373, Comment *a;* cf. Restatement of Restitution §68, Comment *b* (1936).

The United States points to three events that, in its view, amount to continued performance of the contracts. But it does not persuade us. First, the oil companies submitted their Exploration Plan to Interior two days *after* OBPA became law. *Supra,* at 5. The performance question, however, is not just about what the oil companies did or requested, but also about what they actually received from the Government. And, in respect to the Exploration Plan, the companies received nothing.

Second, the companies subsequently asked the Secretary of Commerce to overturn North Carolina's objection to the companies' CZMA consistency certification. And, although the Secretary's eventual response was negative, the companies did at least receive that reply. *Supra,* at 7. The Secretary did not base his reply, however, upon application of the contracts' standards, but instead relied in large part on the findings of the new, OBPA-created, Environmental Sciences Review Panel. See App. 224, 227, n. 35, 232–233, 239, 244 (citing the Panel's report). Consequently, we cannot say that the companies received from Commerce the kind of consideration for which their contracts called.

Third, the oil companies received suspensions of their leases (suspending annual rents and extending lease terms) pending the OBPA-mandated approval delays. *Supra,* at 6. However, a separate contract– the 1989 memorandum of understanding– entitled the companies

to receive these suspensions. See App. to Brief for United States 2a (letter from Toni D. Hennike, Counsel, Mobil Exploration & Producing U. S. Inc., to Ralph Melancon, Regional Supervisor, U. S. Dept. of Interior Minerals Management Service, dated Feb. 21, 1995 (quoting the memorandum as a basis for the requested suspensions)). And the Government has provided no convincing reason why we should consider the suspensions to amount to significant performance of the lease contracts in question.

We conclude that the companies did not receive significant postrepudiation performance. We consequently find that they did not waive their right to restitution.

D

Finally, the Government argues that repudiation could not have hurt the companies. Since the companies could not have met the CZMA consistency requirements, they could not have explored (or ultimately drilled) for oil in any event. Hence, OBPA caused them no damage. As the Government puts it, the companies have already received "such damages as were actually caused by the [Exploration Plan approval] delay," namely, none. Brief for United States 43–44; see also 177 F. 3d, at 1340. This argument, however, misses the basic legal point. The oil companies do not seek damages for breach of contract. They seek restitution of their initial payments. Because the Government repudiated the lease contracts, the law entitles the companies to that restitution whether the contracts would, or would not, ultimately have produced a financial gain or led them to obtain a definite right to explore. See *supra,* at 2. If a lottery operator fails to deliver a purchased ticket, the purchaser can get his money back—whether or not he eventually would have won the lottery. And if one party to a contract, whether oil company or ordinary citizen, advances the other party money, principles of restitution normally require the latter, upon

repudiation, to refund that money. Restatement §373.

III

Contract law expresses no view about the wisdom of OBPA. We have examined only that statute's consistency with the promises that the earlier contracts contained. We find that the oil companies gave the United States $158 million in return for a contractual promise to follow the terms of pre-existing statutes and regulations. The new statute prevented the Government from keeping that promise. The breach "substantially impair[ed] the value of the contract[s]." *Id.,* §243. And therefore the Government must give the companies their money back.

For these reasons, the judgment of the Federal Circuit is reversed. We remand the cases for further proceedings consistent with this opinion.

It is so ordered.