

No. 47,078-CA

**DISSENT FROM THE DENIAL OF REHEARING
RENDERED ON JUNE 14, 2012**

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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HAWK FIELD SERVICES, L.L.C. AND
PETROHAWK ENERGY CORPORATION

Plaintiffs-Appellees

versus

MID AMERICA UNDERGROUND, L.L.C., ET AL Defendants-Appellants

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Originally Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Bossier, Louisiana
Trial Court No. 130014

Honorable Michael O. Craig, Judge

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Defendant-Appellant
U Brothers Rent, LTD.

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L.L.C. & Petrohawk
Energy Corp.

CAREY POARCH

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Counsel for
Defendant-Appellee
Pioneer Pipeline
Services, L.L.C.

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Before BROWN, STEWART, MOORE and LOLLEY, SEXTON (*Pro Tempore*), JJ.

STEWART, J., dissents from the denial of rehearing and assigns reasons.

MOORE, J., dissents from the denial of rehearing for the reasons assigned by Judge Stewart.

STEWART, J., dissenting.

I respectfully recommend this Court grant the rehearing and reverse the majority opinion.

Both U Brothers' lien and claim are invalid under the Louisiana Private Works Act. La. R.S. 9:4802 and 9:4822, when read together, require a claimant to secure and preserve a privilege to recover under the PWA. U Brothers failed to secure the privilege, thus, there is no claim to preserve.

In the majority opinion, this Court asserts U Brothers failed to comply with the technical requirements of La. R.S. 9:4802 when it failed to timely provide Hawk Field with a copy of the lease. This failure to comply invalidated the lien, constituting a failure to secure the privilege. Although U Brothers' privilege is invalid, this Court reasoned U Brothers complied with the technical requirements of La. R. S. 9: 4822 and the claim is still valid. This is contrary to the law.

Although U Brothers did comply with the technical requirements of La. R.S. 9:4822, this statute cannot be read in isolation. La. R.S. 9:4822 limits the preservation of a privilege to "the person who a claim or privilege is granted by La. R.S. 9:4802." Since U Brothers failed to secure the privilege under La. R.S. 9:4802, there is no claim to preserve under La. R.S. 9: 4822. Without a claim to preserve, U Brothers' claim is extinguished per La. R.S. 9:4823, which provides a claim is extinguished if a claimant fails to preserve the privilege granted by La. R.S. 9:4802. U Brothers' lien is invalid and their claim extinguished.