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July 8, 2020

**VIA EMAIL & U.S. MAIL**

The Honorable Videtta A. Brown  
Courthouse East  
111 N. Calvert Street, Room 205  
Baltimore, MD 21202  
[Sameerah.Mickey@mdcourts.gov](mailto:Sameerah.Mickey@mdcourts.gov)

Re: *Mayor and City Council of Baltimore v. BP P.L.C., et al.*  
Case No. 24-C-18-004219

Dear Judge Brown:

We write in response to Your Honor's correspondence dated July 1, 2020, regarding the timing of a ruling by the U.S. Supreme Court on Defendants' pending petition for a writ of certiorari, and to Plaintiff's July 2, 2020 letter to this Court in response. Defendants understand that the petition will be distributed to the Justices on July 15, and the Supreme Court will consider it at its first conference of next term, which will be held on September 29, 2020. We anticipate a decision from the Supreme Court within one to two weeks after the conference, although in some circumstances the Court will defer a petition for discussion at subsequent conferences.

If the Supreme Court grants certiorari and rules in favor of Defendants, this case likely would return to federal court, with the result that all proceedings before Your Honor would have been unnecessary and effectively void. Given the impact that the Supreme Court's decision on the petition could have on the proceedings before this Court, Defendants agree with Your Honor that this Court should act within its discretion to defer any hearing dates until after the Supreme Court rules on the petition. This will conserve resources and avoid potentially needless litigation and expenses, particularly during this challenging and uncertain time.

Also relevant to this Court's consideration of the broader schedule going forward are two consolidated cases currently pending before the Supreme Court that present issues related to those raised in Defendants' Joint Motion to Dismiss for Lack of Personal Jurisdiction ("Personal Jurisdiction Motion") and Defendants' Joint Motion for Protective Order ("Protective Order Motion"). In *Ford Motor Co. v. Montana Eighth Dist. Ct.*, No. 19-368, and *Ford Motor Co. v. Bandemer*, No. 19-369, the Supreme Court is expected to address the appropriate causation test for specific personal jurisdiction. In both cases, the Question Presented to the Supreme Court is: "Whether the 'arise out of or relate to' requirement [for specific personal jurisdiction] is met when none of the defendant's forum contacts caused the plaintiff's claims, such that the plaintiff's claims

would be the same even if the defendant had no forum contacts.” Brief of Petitioner, *Ford Motor Co. v. Montana Eighth Dist. Ct.*, No. 19-368, and *Ford Motor Co. v. Bandemer*, No. 19-369.

Here, Defendants raise this precise point: “[B]ased on Plaintiff’s own allegations, its claims do not ‘arise out of’ Defendants’ alleged contacts with Maryland. To the contrary, the Complaint expressly attributes Plaintiff’s injuries to ‘global greenhouse gas pollution’ from *worldwide* combustion of fossil fuels produced and sold by Defendants, as well as countless other sources.” Personal Jurisdiction Motion at 1 (citation omitted); *see also e.g.*, Reply in support of Protective Order Motion at 3 (“In other words, there is no personal jurisdiction here because, as alleged, Plaintiff’s injuries from global climate change would have occurred even if Defendants had no contacts with Maryland at all.”). Indeed, Plaintiff has even injected this issue into its Opposition to Defendants’ Protective Order Motion. *See* Pl. Opp. at 6, 12-14 (arguing for “lenient” test), 19-20 (“[N]either Maryland state courts nor the Fourth Circuit has adopted a strict ‘causal threshold’ requirement as part of the ‘arising from’ test. Instead, a Maryland court has applied a loose and expansive ‘but-for’ test . . .”).

As noted in Defendants’ Reply in support of their Protective Order Motion, the *Ford* cases will be argued and decided in the Supreme Court’s upcoming Term.<sup>1</sup> *See* Defs.’ Reply at 4 n.1. For this reason, the judge in the nearly-identical climate change action pending in Rhode Island state superior court (*State of Rhode Island v. Shell Oil Prods. Co., et al.*, No. 19-1818) recently indicated *sua sponte* that she is considering staying the personal jurisdiction motion—and potentially the motion to dismiss for failure to state a claim—currently pending in her court in anticipation of Supreme Court guidance on the personal jurisdiction standard. Defendants will update the Court on any other further developments.

A trial court’s discretion to set its schedule and defer a hearing is “especially” appropriate “if many of the factual and legal issues in [one] action are . . . interrelated with . . . factual and legal issues in the [other] action.” *Agbebaku v. Sigma Aldrich, Inc.*, 2003 WL 24258219, at \*19 (Cir. Ct. Balt. City June 24, 2003) (Berger, J.) (internal quotation marks and citation omitted). The Supreme Court’s ruling on Defendants’ petition and its decision in the *Ford* cases will likely impact the issues presented in Defendants’ Personal Jurisdiction Motion (and even the Protective Order Motion, given Plaintiff’s injection of these issues there). For these reasons, Defendants suggest that it would be appropriate for the Court to defer a hearing until the Supreme Court’s decisions on both the Defendants’ petition and the *Ford* cases.

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<sup>1</sup> The cases were originally set for oral argument on April 27, 2020, but were postponed due to the COVID crisis. The Court has not yet re-set the cases for argument.

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Defendants appreciate the Court's consideration.

Respectfully yours,

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC

*/s/Ty Kelly Cronin*

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Ty Kelly Cronin

cc: All counsel