

June 17, 2020

VIA ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: *City of New York v. BP P.L.C., et al.*, No. 18-2188

Dear Ms. Wolfe:

Defendant-Appellee Chevron writes in response to Plaintiff-Appellant's May 30, 2020 letter regarding the Ninth Circuit's decision in *City of Oakland v. BP PLC*, __ F.3d __, 2020 WL 2702680 (9th Cir. May 26, 2020). This decision is irrelevant here because, as Plaintiff concedes, it says nothing about the key question in this appeal—namely, whether federal common law governs tort claims alleging harms related to global climate change.

The plaintiffs in *City of Oakland* brought state-law tort claims in state court against a select group of oil and gas companies for alleged harms attributable to climate change, which the defendants removed to the Northern District of California. In two orders, the district court (1) found that “it had federal-question jurisdiction ... because the Cities’ claims were ‘necessarily governed by federal common law,’” and (2) dismissed the complaints under Rule 12(b)(6) because, *inter alia*, “the Cities’ claims ‘implicate[d] the interests of countless governments, both foreign and domestic.’” *Id.* at *3.

The Ninth Circuit addressed only the jurisdictional order, concluding that the case was not removable under the *Grable* doctrine or the doctrine of complete preemption. *Id.* at *7. Chevron respectfully disagrees but, as relevant here, the Ninth Circuit did *not* address whether plaintiffs’ claims were, in fact, governed by federal common law. Indeed, Plaintiff acknowledges that “the Ninth Circuit did not reach the question of whether federal common law applies” to its claims. Dkt. 255 at 1. Nor did the Ninth Circuit address the legal viability of the claims. But those are precisely the questions that lie at the heart of this appeal, where federal jurisdiction is uncontested and the issues are: (i) whether federal common law governs Plaintiff's claims, and (ii) whether those claims are legally viable. And while

Catherine O'Hagan Wolfe

June 17, 2020

Page 2

Plaintiff asserts that the Ninth Circuit's "vacatur provides another reason why the Court should not regard [the Northern District of California's decision] persuasive here," *id.* at 1–2, it fails to explain how the Ninth Circuit's *silence* on the relevant issues has any bearing on the persuasiveness of the lower court's reasoning.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

Theodore J. Boutrous Jr.
GIBSON, DUNN & CRUTCHER LLP
Counsel for Defendant-Appellee Chevron Corporation

cc: All counsel of record (via ECF)