

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

CITY OF ANNAPOLIS, MARYLAND,

Plaintiff,

v.

BP P.L.C., *et al.*,

Defendants.

CASE NO.: 21-cv-00772 ELH

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants Chevron Corporation and Chevron U.S.A. Inc. respectfully submit as supplemental authority the Supreme Court's decision yesterday in *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. ___, 2021 WL 1951777 (2021) (attached hereto as Exhibit A), which has a direct impact on this and numerous other climate change cases that have been removed to federal court.¹ In *Baltimore*, the Supreme Court considered whether "28 U.S.C. 1447(d) permit[s] a court of appeals to review any issue in a district court order remanding a case to state court where the defendant premised removal in part on the federal officer removal statute, §1442, or the civil rights removal statute, §1443." *Id.* at *2. The Court answered in the affirmative, reasoning that "the relevant portion of §1447(d) provides that 'an *order* remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal,'" and the plain meaning of the term "order" refers to "a 'written direction or command delivered by . . . a court or judge.'" *Id.* at *4 (emphasis added). Therefore, "when a district court's removal

¹ This notice is submitted subject to and without waiver of any defense, affirmative defense, or objection, including personal jurisdiction, insufficient process, insufficient service of process, or lack of service of process.

order rejects all of the defendants' grounds for removal, §1447(d) authorizes a court of appeals to review each and every one of them." *Id.* Because the Fourth Circuit had interpreted the statute to extend appellate jurisdiction only to the enumerated federal officer and civil rights grounds for removal, the Supreme Court vacated and remanded so that the court of appeals can consider all of the defendants' grounds for removal.

Baltimore is important here because it means that the Fourth Circuit will have to decide whether a similar climate change action (previously before this Court) was properly removed on grounds that it has not yet considered, including federal-question jurisdiction and OCSLA jurisdiction. *See id.* ("Normally, federal jurisdiction is not optional; subject to exceptions not relevant here, 'courts are obliged to decide cases within the scope of federal jurisdiction' assigned to them. So the district court wasn't at liberty to remove the City's case from its docket until it determined that it lacked any authority to entertain the suit."). Because Defendants here have asserted many of those same grounds for removal, the Fourth Circuit's resolution of those questions will provide substantial guidance regarding the proper forum in which this case should proceed. Accordingly, Defendants intend to file a renewed motion to stay proceedings in this case pending the Fourth Circuit's resolution of all removal grounds in *Baltimore*.

DATED: May 18, 2021

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of May 2021, the foregoing document was filed through the ECF system and was therefore served on all registered participants identified on the Notice of Electronic Filing.

/s/ Ty Kelly

Ty Kelly