

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

Conservation Law Foundation, Inc.,

Plaintiff,

v.

Shell Oil Company,
Shell Petroleum, Inc.,
Shell Trading (US) Company,
Motiva Enterprises LLC,
Triton Terminating LLC, and
Equilon Enterprises LLC d/b/a Shell Oil
Products US,

Defendants.

No. 1:17-cv-00396-WES-LDA

**DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF OPPOSITION TO
PLAINTIFF'S MOTION TO COMPEL AND CROSS-MOTION FOR PROTECTIVE
ORDER GOVERNING THE PRODUCTION AND EXCHANGE OF DISCOVERY**

Defendants submit this supplement to the briefing on Plaintiff's motion to compel (ECF No. 72) and Defendants' Cross-Motion for Protective Order (ECF No. 78). Specifically, and as described in greater detail below, Defendants respectfully propose to the Court that in lieu of CLF's requests that are disproportionate to the needs of this citizen suit action to enforce stormwater and waste rules at the Providence Terminal—those seeking worldwide discovery into all assets of the Defendants (and non-party parent companies and all other corporate affiliates) and CLF's requests regarding Defendants' and numerous other entities' alleged "knowledge of climate change"—the Court permit a deposition on the subject of how engineering and operational decisions are made at the Providence Terminal.¹ A deposition on this subject would allow CLF to efficiently learn facts about how the Providence Terminal is operated, and by whom, and whether there is a basis for CLF's theory of "centralized" control by Defendants' non-party parent companies that appears to underlie these requests.

During the June 3, 2022 scheduling conference, the Court encouraged the parties to assist it in finding a middle-ground solution where the parties' positions are far apart. Defendants' proposal is intended to address two significant areas of disagreement in the pending motions that encompass numerous requests for production: (1) CLF's requests seeking all documents regarding the engineering, design, and management of Defendants'² assets around the globe relating to the consideration of, addressing, or adapting to, climate change, *see* ECF No. 72-3, Request Nos. 10, 17, 23, and 25-27; and, (2) CLF's document requests regarding the "knowledge

¹ Defendants offered a deposition to CLF to discover facts regarding the applicability of corporate policies to the Terminal in their Memorandum of Law in Support of Defendants' Opposition to CLF's Motion to Compel and in Defendants' Cross-motion for Protective Order, *see* ECF No. 79 at 13, n.10. This supplement expands on that proposal.

² CLF's Requests for Production defines "Defendants" to include "agents, assigns, contractors, officers, directors, employees, partners, corporate parent(s), subsidiaries, or affiliates." ECF No. 72-3 at 3-4.

of climate change” by Defendants and all related non-party corporate entities, including corporate parents, *see id.*, Request Nos. 12-16, 19-21, and 24.

Defendants understand from CLF’s briefs and its recent comments during the June 3 scheduling conference that its purported need for this vast and untailed volume of documents is based in its belief that decisions regarding how to manage potential precipitation and flooding risks from climate change at the Providence Terminal are “centralized” within ultimate parent Shell plc (or another parent entity of Defendants), *see generally* ECF No. 72 at 11-15, and that it has propounded these broad requests to explore their theory .

Defendants have repeatedly, including via sworn declaration, explained that CLF’s theory is not correct and that each asset determines how to manage weather-related risks based on asset-specific considerations. Declaration of James Kent Yeates, ECF No. 79-9 ¶¶ 10, 20-30.

Defendants have also explained in their briefing that these requests by CLF are *far* outside the relevance and proportionality requirements of the Federal Rules of Civil Procedure. ECF No. 79 at 14-25. The broad discovery CLF seeks into an extraordinarily diverse universe of assets, which, importantly, are in a wide array of geographic locations that do not face the same precipitation and flooding risks alleged by CLF here for Providence, and into numerous non-parties’ “knowledge of climate change” has no bearing on the Clean Water Act stormwater permit and Resource Recovery and Conservation Act violations alleged at the Providence Terminal that the Court must decide. *Id.*

Defendants have also taken a reasonable position that amply addresses CLF’s requests for information about broader corporate policies and information by agreeing to produce documents related to current or imminent precipitation and flooding risks to Providence and how those risks are addressed at the Terminal, including applicable corporate policies and engineering

documents, and to the extent such risks may be discussed in the context of climate change, and regardless of whether such documents expressly refer to the Providence Terminal. ECF No. 79 at 13. Despite these explanations and efforts by Defendants, CLF continues to hold on to its extreme position that these document requests that impose an extraordinary burden on Defendants are necessary to explore its theory of parent decision-making. *See generally* Declaration of Clyde Earl Williams, ECF No. 79-10 (explaining that broad terminology and scope of requests would require, for single requests, thousands of searches and “border on impossible” to respond to from a logistical standpoint).

To the extent CLF continues to have questions about how the Providence Terminal is operated and who operates it, Defendants believe a deposition on this subject is a far more efficient means for CLF to learn this information than the scorched-earth document requests it has propounded. Accordingly, Defendants will agree to provide a witness to answer CLF’s questions about how the Providence Terminal manages the precipitation and flooding risks identified in CLF’s complaint, and who makes those decisions for the Terminal (in addition to the previously proposed topic of applicability of corporate policies to the Terminal), and respectfully proposes to the Court that, in addition to the limitations provided in Defendants’ proposed order (ECF No. 80), the Court additionally order such a deposition. If CLF wishes to propound follow-up discovery, it is free to do so, and can then tailor those requests to the information it has learned through the deposition and other discovery. CLF’s broad-brush document requests and the disproportionate burdens they impose can be avoided with this proposal while still providing CLF an opportunity to explore the underlying issues relating to

how the Providence Terminal operates with respect to the precipitation and flooding risks at issue in this case.³

Dated: July 1, 2022

Respectfully submitted,

/s/ Bina Reddy

Robert D. Fine (RI Bar # 2447)
Chace, Rutenberg & Freedman, LLP
One Park Row, Suite 300
Providence, RI 02903
(401) 453-6400
Fax (401) 453-6411
rfine@crflp.com

John S. Guttmann (admitted *pro hac vice*)
Roy D. Prather III (admitted *pro hac vice*)
Beveridge & Diamond, P.C.
1900 N Street, NW, Suite 100
Washington, DC 20036
(202) 789-6020
Fax (202) 789-6190
jguttmann@bdlaw.com
rprather@bdlaw.com

Bina Reddy (admitted *pro hac vice*)
Beveridge & Diamond, P.C.
400 W. 15th Street, Suite 1410
Austin, Texas 78701
(512) 391-8045
Fax (512) 391-8099
breddy@bdlaw.com

³ CLF filed a supplement today, July 1, 2022. ECF No. 90. CLF's supplement neither offers a compromise nor new information as instructed by the Court during the June 3, 2022 scheduling conference. Instead CLF has simply submitted additional argument in response to Defendants' April 2, 2022 Memorandum in Support of Cross-Motion for Protective Order (ECF. No. 79). This additional argument could have been included in CLF's April 15, 2022 Response to Defendants' Cross-Motion (ECF. No. 83). CLF's supplement also improperly attempts to add to the factual record after briefing has closed by including as exhibits documents that were served by Defendants well before CLF's April 15, 2022 response was due: on November 9, 2020 (Exhibit A, ECF No. 90-1), August 13, 2021 (Exhibits B and C, ECF Nos. 90-2 and 90-3), and March 3, 2022 (Exhibit D, ECF No. 90-4). Defendants did not understand the Court to be inviting new rounds of argument on the already extensive briefing when it granted the parties an opportunity to supplement, and do not respond to CLF's late arguments here. Defendants respectfully request that the Court decline to consider CLF's supplement and related exhibits.

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2022, the foregoing document was filed through the Court's electronic filing system ("ECF"), through which the document is available for viewing and downloading from the ECF system, and a copy of the filing will be sent electronically to all parties registered with the ECF system.

/s/ Bina Reddy

Bina Reddy