

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

CONSERVATION LAW FOUNDATION,
INC.,

Plaintiff,

v.

SHELL OIL COMPANY, EQUILON
ENTERPRISES LLC D/B/A SHELL OIL
PRODUCTS US, SHELL PETROLEUM, INC.,
TRITON TERMINALING LLC, and MOTIVA
ENTERPRISES LLC,

Defendants.

Civil Action No. 3:21-cv-00933-SALM

August 12, 2022

JOINT STATUS REPORT

Plaintiff Conservation Law Foundation (“CLF”) and Defendants¹ respectfully submit this joint status report in support of the parties’ request for a status conference with this Court to discuss a proposal to streamline discovery and to allow sufficient time for the parties to complete necessary discovery in this case. The parties agree that following the discovery approach ordered in connection with CLF’s Motion to Compel and Shell’s Cross Motion for Protective Order by the United States District Court for the District of Rhode Island in the case *Conservation Law Foundation v. Shell Oil Products US, et al.*, No. 17-cv-00396-WES-LDA would similarly serve the interests of efficiency and conserving judicial resources. *See* Exhibit A (District of Rhode Island Memorandum and Order denying without prejudice CLF’s Motion to Compel and Defendants’ Cross-Motion for Protective Order). Adopting this approach may obviate or limit the need for further briefing on Plaintiff’s pending Motion to Compel (ECF No. 84). The parties seek

¹ Defendants are Shell Oil Company, Equilon Enterprises LLC d/b/a Shell Oil Products US, Shell Petroleum Inc., Triton Terminaling LLC, and Motiva Enterprises LLC. As disclosed in Defendants’ prior filing (ECF 56), Shell Oil Company changed its name to Shell USA, Inc.

this Court's guidance on how to implement the approach in this case without further briefing. The approach, which is summarized below, would also benefit from an adjustment to the overall discovery schedule in this case, on which the parties also seek guidance from the Court.

I. SUMMARY OF DISCOVERY PROCESS TO-DATE

The parties offer the following summary of their efforts to complete discovery to date to provide context for their request for a conference with the Court. CLF served its First Set of Requests for Production and its First Set of Interrogatories on April 13, 2022. Defendants served their First Set of Requests for Production and First Set of Interrogatories on May 3, 2022.

On May 13, 2022, Defendants provided CLF with their Responses to CLF's First Discovery Requests, Defendants' first document production, and a letter requesting to meet and confer regarding Defendants' proposed ESI Agreement, search terms, and timing for rolling productions and privilege log.

On May 26, 2022, CLF filed a consent motion for extension of time to serve CLF's discovery responses to Defendants' First Discovery Requests, which was granted by this Court on May 29, 2022. On June 9, 2022, CLF provided the Defendants with its responses to the Defendants' First Discovery Requests.

On June 6, 2022, CLF sent a letter to Defendants outlining the perceived deficiencies with Defendants' responses to CLF's First Discovery Requests. On June 24, 2022, Defendants sent a responsive letter addressing each of CLF's concerns.

During a general discovery meet and confer on July 1, 2022, the parties discussed ongoing discovery issues, including timing for subsequent document productions. CLF committed to providing a written response to Defendants' June 24 letter in order to further narrow the outstanding issues with Defendants' responses to CLF's First Discovery Requests. CLF did not send a follow up letter because, consistent with the progression of discussions in the Rhode Island

case, CLF could not further narrow any of its requests, and the parties continued to discuss other discovery issues. The parties agreed to make additional productions of documents on July 22, 2022. On July 6, 2022, Defendants and Plaintiff filed a joint consent motion for extension of time to file motions to compel discovery responses, which was granted by this Court on July 7, 2022.

On July 14, 2022, Defendants sent CLF a letter setting forth the deficiencies with CLF's responses to Defendants' First Discovery Requests and proposed dates and times for the parties to meet and confer. On July 21, 2022, the parties discussed Defendants' July 14 letter and ongoing discovery issues. Both parties committed to taking steps to narrow the outstanding issues.

On July 27, 2022, consistent with the applicable Court deadlines in this case, CLF filed a Motion to Compel. ECF No. 84. CLF described in footnote 5 of its Motion to Compel a Court Order that related to "almost all of the issues presented in the instant Motion" in the case *Conservation Law Foundation v. Shell Oil Products US, et al.*, No. 17-cv-00396-WES-LDA (D.R.I) ("Providence case"). The Rhode Island court ordered that defendants produce for deposition, an individual identified as James Kent Yeates, the East Coast Lead Facility Engineer who submitted a declaration in support of Shell's opposition to the Motion to Compel. In addition to Mr. Yeates' deposition, Shell was ordered to produce documents associated with Mr. Yeates' declaration. The Rhode Island court instructed the parties to "utilize the results of such discovery to continue to confer in good faith regarding the scope of document production" that remained in dispute. Order in Providence case, at p. 4. In its Motion to Compel filed here, CLF states, also in footnote 5, that it "is open to following a similar approach in this case, but files the instant Motion to preserve the issues given the approaching fact discovery deadline."

Also on July 27, 2022, Defendants provided the revised discovery requests that it had committed to during the July 21 meet and confer. Defendants also requested that, in light of the

impending deadline for Defendants' motion to compel, CLF provide by July 29, 2022 its written confirmation of items discussed during the July 21 meet and confer, and responses to document requests that it had committed to provide. Defendants stated that if CLF did not respond by July 29, Defendants would assume that CLF was no longer interested in continuing to confer and that Defendants would seek court intervention for any outstanding issues. On July 28, 2022, CLF responded to Defendants that CLF was willing to continue conferrals and would respond by August 5, 2022.

On August 2, 2022, during a general discovery meet and confer, Defendants raised the timing issue with CLF and requested consent for a motion for extension of time for Defendants' deadline to file a motion to compel. During the August 2, 2022 discussion, Defendants advised Plaintiff that substantial review and production remained of documents potentially responsive to Plaintiff's requests that were not the subject of an ongoing dispute. Both parties agreed to follow a similar approach to the Court Order in the Providence case in an effort to narrow or provide more detail to the Court on the bulk of the issues that are raised in CLF's July 27, 2022 Motion to Compel. CLF agreed to provide written confirmation of this approach by August 4, 2022.

On August 4, 2022, CLF provided written confirmation that it is open to following a production and deposition process similar to the one ordered by the Court in the Providence case. On August 5, 2022, CLF provided a more detailed proposal. Defendants are evaluating CLF's proposed timing for the production and deposition process, but both parties agree that this proposal may obviate or limit the need for further briefing on CLF's Motion to Compel.

Also on August 5, 2022, Defendants filed a Motion for Extension of Time to move to compel CLF's discovery responses. On August 8, 2022, this Court granted in part and denied in part Defendants' motion. The Court granted the motion to extend the Defendants' deadline for

filing motions to compel until August 24, 2022, and directed the parties to engage in a final meet-and-confer session on or before August 17, 2022. However, the Court denied Defendants' request to extend the deadline for filing motions to compel beyond August 24, 2022.

II. PROPOSAL TO FOLLOW COURT ORDER IN PROVIDENCE CASE

The Court Order in the Providence case requires that Defendants “produce Mr. [Kent] Yeates for deposition regarding the contents of his Declaration and Mr. Yeates or an alternative designee for deposition regarding ‘how the Providence Terminal manages the precipitation and flooding risks identified in [Plaintiff’s] complaint, and who makes those decisions for the Terminal ([including the] applicability of corporate policies to the Terminal).’”

Because Mr. Yeates’ declaration was drafted specifically for the Providence terminal, CLF’s proposal asks Defendants to provide a declaration of Mr. Kent Yeates in this case and information regarding Mr. Yeates’ work history. Plaintiff then proposes to depose Mr. Yeates, and/or another designee if necessary, on the same topics included in the Court Order in the Providence case, but specific to the New Haven Terminal. Prior to the deposition(s), Defendants would provide the same categories of documents that were included in the Court Order in the Providence case. The parties would meet and confer to schedule the deposition at a mutually convenient time. The parties will also discuss the possibility of combining the depositions for the two cases, to maximize efficiency for all.

As noted above this deposition and document productions associated therewith may obviate or limit the need for further briefing on CLF’s Motion to Compel. Even if discovery disputes remain after the deposition, the issues should be substantially narrower, or at a minimum more defined, than what was presented in CLF’s July 27 Motion to Compel. The parties seek the Court’s guidance on how to approach CLF’s Motion to Compel and the remaining briefing schedule.

III. PROPOSAL TO EXTEND DISCOVERY SCHEDULE

The parties have further discussed the current schedule for discovery in this matter and have agreed that additional time is necessary to ensure that ongoing discovery productions as well as the production and deposition procedure ordered by the Court in the Providence case can be completed and any further discovery issued and resolved. The parties are also engaged in a parallel, court-assisted settlement process with Judge Vatti and have an in-person settlement conference scheduled for September 13, 2022. Pursuant to Judge Vatti's Order (ECF No. 76 and accompanying text), CLF sent Defendants its settlement demand on August 3, 2022. Defendants are scheduled to send CLF their response on September 2, 2022.

Given all the moving parts in the case at present, the parties believe that a brief extension of the overall November 4 fact discovery deadline is warranted, as well as the interim deadline for propounding written discovery requests. The parties also agree that the discovery schedule would benefit from a separate and later deadline for propounding requests for admission.

The parties' proposals for these deadlines are as follows:

1. Deadline for propounding document requests and interrogatories:
 - 75-day extension from current deadline of August 12 to October 2, 2022
2. Fact discovery deadline:
 - 42-day extension from current deadline of November 4 to December 16, 2022
3. Added deadline for propounding requests for admission:
 - Aug. 11, 2023, 2 weeks after the close of expert discovery

The parties would also like to discuss the possibility of extending some of the expert disclosure deadlines. The parties have discussed, but have not agreed on, a preferred approach with respect to the expert disclosure deadlines. Both parties prefer not to extend the deadline by which expert depositions would be complete.

IV. PENDING MOTION TO DISMISS

In light of the Court's order referring the case to Judge Farrish for all pretrial matters and case management, the parties also wish to note for the Court Defendants' pending Motion to Dismiss (ECF No. 50). Defendants believe a decision on the Motion to Dismiss may impact the scope of discovery and timing necessary for discovery. The parties further note that on July 26, 2022, Judge Nagala held a hearing on a motion to dismiss in a similar case, *Conservation Law Found., Inc. v. Gulf Oil Ltd. P'Ship*, No. 3:21-cv-932-KAD (D. Conn.).

V. CONCLUSION

The parties thank the Court for its consideration of these discovery issues and look forward to further discussion at the Status Conference set for Monday, August 15, 2022, at 1:00 p.m.

Respectfully submitted,

/s/ Alexandra St. Pierre

Alexandra St. Pierre (ct31210)
Conservation Law Foundation, Inc.
62 Summer Street
Boston, MA 02110
(617) 850-1732
Fax (617) 350-4030
aestpierre@clf.org

Christopher M. Kilian (ct31122)
Conservation Law Foundation, Inc.
15 East State Street, Suite 4
Montpelier, VT 05602
(802) 223-5992 x4015
ckilian@clf.org

Allan Kanner (ct31051)
Elizabeth B. Petersen (ct 31211)
Allison S. Brouk (ct31204)
Kanner & Whiteley, LLC
701 Camp Street
New Orleans, LA 70130
(504) 524-5777

/s/ James O. Craven

James O. Craven (ct18790)
WIGGIN AND DANA LLP
One Century Tower
265 Church Street
P.O. Box 1832
New Haven, CT 06508-1832
T: (203) 498-4400
F: (203) 782-2889
jcraven@wiggin.com

John S. Guttman (ct25359)
BEVERIDGE & DIAMOND, P.C.
1900 N Street, NW, Suite 100
Washington, DC 20036
T: (202) 789-6020
F: (202) 789-6190
jguttman@bdlaw.com

Bina R. Reddy (phv20420)
BEVERIDGE & DIAMOND, P.C.
400 West 15th Street, Suite 1410
Austin, TX 78701-1647

a.kanner@kanner-law.com
e.petersen@kanner-law.com
a.brouk@kanner-law.com

T: (512) 381-8000
F: (202) 789-6190
breddy@bdlaw.com

Megan L. Morgan (phv20623)
BEVERIDGE & DIAMOND, P.C.
201 North Charles Street, Suite 2210
Baltimore, MD 21201-4150
T: (410) 230-1300
F: (202) 789-6190
mmorgan@bdlaw.com