

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

STATE OF RHODE ISLAND,
Plaintiff,

v.

CHEVRON CORP.;
CHEVRON USA, INC.;
EXXONMOBIL CORP.;
BP, PLC;
BP AMERICA, INC.;
BP PRODUCTS NORTH AMERICA, INC.;
ROYAL DUTCH SHELL, PLC;
MOTIVA ENTERPRISES, LLC;
SHELL OIL PRODUCTS COMPANY,
LLC;
CITGO PETROLEUM CORP.;
CONOCOPHILLIPS;
CONOCOPHILLIPS COMPANY;
PHILLIPS 66;
MARATHON OIL COMPANY;
MARATHON OIL CORPORATION;
MARATHON PETROLEUM CORP.;
MARATHON PETROLEUM COMPANY,
LP;
SPEEDWAY, LLC;
HESS CORP.;
LUKOIL PAN AMERICAS, LLC;
GETTY PETROLEUM MARKETING,
INC.; AND DOES 1 through 100, inclusive

Defendants.

C.A. No. 18-cv-00395-WES-LDA

**DEFENDANTS' RESPONSE TO THE
STATE OF RHODE ISLAND'S
NOTICE OF SUPPLEMENTAL
AUTHORITY**

[Removal from the Providence
Superior Court of Rhode Island, C.A.
No. PC-2018-4716]

Action Filed: July 2, 2018

Defendants respectfully respond to the State of Rhode Island’s June 17, 2019 notice of supplemental authority bringing to the Court’s attention the recent decision in *Mayor and City Council of Baltimore v. BP P.L.C., et al.*, No. ELH-18-2357 (D. Md. June 10, 2019). *See* ECF No. 116.¹ That decision—issued without the benefit of a hearing and currently on appeal, *see Mayor and City Council of Baltimore v. BP P.L.C., et al.*, No. 19-1644 (4th Cir.)—conflicts with the prevailing authority on the issues considered and should be given no weight. In holding that the plaintiff’s claims were not removable under federal common law, Judge Hollander accepted the plaintiff’s argument that “[t]he well-pleaded complaint rule” barred removal because “the City does not plead any claims under federal law.” Ex. A at *12. But as the Supreme Court has explained, even if a claim is nominally pleaded under state law, “a cause of action” “arises under’ federal law if the dispositive issues stated in the complaint require the application of federal common law.” *Illinois v. City of Milwaukee*, 406 U.S. 91, 99 (1972). Because interstate pollution “cases should be resolved by reference to federal common law,” *Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 488 (1987), Judge Hollander incorrectly concluded that the plaintiff’s global warming claims must be litigated in state court. *See* Opp. Br., ECF No. 87 at 23-24.²

Judge Hollander’s opinion conflicts with the decisions reached by Judge Alsup and Judge Keenan, both of whom concluded that global warming claims arise under federal law regardless of the labels plaintiffs may affix to their claims. *See California v. BP p.l.c.*, 2018 WL 1064293, at *5 (“[T]he well pleaded complaint rule does not bar removal of these actions” because “the

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

² Specifically, Judge Hollander confused the initial “choice-of-law” determination with the merits determination to follow. This is not a preemption analysis, it is a choice-of-law analysis. A plaintiff cannot evade federal law because it will fare better under state law.

claims necessarily arise under federal common law.”); (N.D. Cal. Feb. 27, 2018) (Alsup, J.); *City of New York v. BP p.l.c.*, 325 F. Supp. 3d 466 (S.D.N.Y. 2018) (Keenan, J.) (“[T]he City’s claims are ultimately based on the ‘transboundary’ emission of greenhouse gases, indicating that these claims arise under federal common law and require a uniform standard of decision.”).

Even Judge Chhabria, who remanded similar global warming claims, did not reach Judge Hollander’s conclusion that the well-pleaded complaint rule bars removal. *See County of San Mateo v. Chevron Corp.*, 294 F. Supp. 3d 934 (N.D. Cal. 2018) (Chhabria, J.). Rather, he implicitly assumed that the claims would be removable if federal common law governed, but remanded because he believed “federal common law does *not* govern” global warming claims due to the displacement holding in *American Electric Power Co., Inc. v. Connecticut*, 564 U.S. 410 (2011). *Id.* at 937. Judge Hollander’s decision is thus an outlier and likely to be reversed on appeal for the reasons set forth in Defendants’ Opposition Brief here. *See* ECF No. 87 at 9-27.

Judge Hollander also erred in rejecting the defendants’ other grounds for removal, for the reasons set forth in Defendants’ Opposition brief.

Dated: June 28, 2019

Respectfully submitted,

Defendants
Chevron Corp and Chevron USA, Inc.,

/s/ Gerald J. Petros

Gerald J. Petros (#2931)
Robin L. Main (#4222)
Ryan M. Gainor (#9353)
HINCKLEY, ALLEN & SNYDER LLP
100 Westminster Street, Suite 1500
Providence, RI 02903
(401) 274-2000 (Telephone)
(401) 277-9600 (Fax)

E-mail: gpetros@hinckleyallen.com
E-mail: rmain@hinckleyallen.com
E-mail: rgainor@hinckleyallen.com

Theodore J. Boutrous, Jr. (*pro hac vice*)
Joshua S. Lipshutz (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-7520
E-mail: tboutrous@gibsondunn.com
E-mail: jlipshutz@gibsondunn.com

Neal S. Manne (*pro hac vice*)
SUSMAN GODFREY LLP
1000 Louisiana, Suite 5100
Houston, TX 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666
E-mail: nmanne@susmangodfrey.com

*Attorneys for Defendants CHEVRON CORP.
and CHEVRON U.S.A., INC.*

By: /s/ John A. Tarantino

John A. Tarantino (#2586)
Patricia K. Rocha (#2793)
Nicole J. Benjamin (#7540)
ADLER POLLOCK & SHEEHAN P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903
Tel.: (401) 427-6262
Fax: (401) 351-4607
E-mail: jtarantino@apslaw.com
E-mail: procha@apslaw.com
E-mail: nbenjamin@apslaw.com

Philip H. Curtis (admitted *pro hac vice*)
Nancy G. Milburn (admitted *pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER
LLP
250 West 55th Street
New York, NY 10019-9710
Telephone: (212) 836-8383
Facsimile: (212) 715-1399
E-mail: philip.curtis@arnoldporter.com
E-mail: nancy.milburn@arnoldporter.com

Matthew T. Heartney (admitted *pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER
LLP
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199
E-mail: matthew.heartney@arnoldporter.com

*Attorneys for Defendants BP PRODUCTS
NORTH AMERICA INC., BP plc, and BP
AMERICA INC.*

By: /s/ Matthew T. Oliverio

Matthew T. Oliverio, Esquire (#3372)
OLIVERIO & MARCACCIO LLP
55 Dorrance Street, Suite 400
Providence, RI 02903
Tel.: (401) 861-2900
Fax: (401) 861-2922
E-mail: mto@om-rilaw.com

Theodore V. Wells, Jr. (*pro hac vice*)
Daniel J. Toal (*pro hac vice*)
Jaren Janghorbani (*pro hac vice*)
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Telephone: (212) 373-3000
Fax: (212) 757-3990
E-mail: twells@paulweiss.com
E-mail: dtoal@paulweiss.com
E-mail: jjanghorbani@paulweiss.com

*Attorneys for Defendant EXXONMOBIL
CORP.*

By: /s/ Robert D. Fine

Robert D. Fine (2447)
Douglas J. Emanuel (5176)
CHACE RUTTENBERG & FREEDMAN,
LLP
One Park Row, Suite 300
Providence, Rhode Island 02903
Phone: (401) 453-6400
E-mail: rfine@crflp.com

Jerome C. Roth (*pro hac vice*)
Elizabeth A. Kim (*pro hac vice*)
MUNGER, TOLLES & OLSON LLP
560 Mission Street
Twenty-Seventh Floor
San Francisco, California 94105-2907
Telephone: (415) 512-4000
Facsimile: (415) 512-4077
E-mail: jerome.roth@mto.com
E-mail: elizabeth.kim@mto.com

David C. Frederick (*pro hac vice*)
KELLOGG, HANSEN, TODD, FIGEL &
FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
E-mail: dfrederick@kellogghansen.com
E-mail: bcrimmins@kellogghansen.com

*Attorneys for Defendants SHELL OIL
PRODUCTS COMPANY LLC and ROYAL
DUTCH SHELL, plc*

By: /s/ Stephen J. MacGillivray

John E. Bulman, Esq. (#3147)
Stephen J. MacGillivray, Esq. (#5416)
PIERCE ATWOOD LLP
One Financial Plaza, 26th Floor
Providence, RI 02903
Telephone: 401-588-5113
Fax: 401-588-5166
E-mail: jbulman@pierceatwood.com
E-mail: smacgillivray@pierceatwood.com

Nathan P. Eimer, Esq. (*pro hac vice*)
Pamela R. Hanebutt, Esq. (*pro hac vice*)
Lisa S. Meyer, Esq. (*pro hac vice*)
EIMER STAHL LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
Telephone: (312) 660-7600
Facsimile: (312) 692-1718
E-mail: neimer@EimerStahl.com
E-mail: phanebutt@EimerStahl.com
E-mail: lmeyer@EimerStahl.com

*Attorneys for Defendant CITGO
PETROLEUM CORP.*

By: /s/ Michael J. Colucci

Michael J. Colucci, Esq. #3302
OLENN & PENZA, LLP
530 Greenwich Avenue
Warwick, RI 02886
PHONE: (401) 737-3700
FAX: (401) 737-5499
E-mail: mjc@olenn-penza.com

John F. Savarese, Esq. (*pro hac vice*)
Ben M. Germana, Esq. (*pro hac vice*)
Jonathan R. Siegel, Esq. (*pro hac vice*)
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019
PHONE: (212) 403-1000
FAX: (212) 403-2000
E-mail: JFSavarese@wlrk.com
E-mail: BMGermana@wlrk.com
E-mail: JRSiegel@wlrk.com

Sean C. Grimsley, Esq. (*pro hac vice*)
Jameson R. Jones, Esq. (*pro hac vice*)
BARTLIT BECK HERMAN
PALENCHAR & SCOTT LLP
1801 Wewatta Street, Suite 1200
Denver, CO 80202
PHONE: (303) 592-3100
FAX: (303) 592-3140
E-mail: sean.grimsley@bartlit-beck.com
E-mail: jameson.jones@bartlit-beck.com

Attorneys for Defendants
CONOCOPHILLIPS and
CONOCOPHILLIPS COMPANY

By: /s/ Robert G. Flanders, Jr.

Robert G. Flanders, Jr. (#1785)
Timothy K. Baldwin (#7889)
WHELAN, CORRENTE, FLANDERS,
KINDER & SIKET LLP
100 Westminster Street, Suite 710
Providence, RI 02903
PHONE: (401) 270-4500
FAX: (401) 270-3760
E-mail: rflanders@whelancorrente.com
E-mail: tbaldwin@whelancorrente.com

Steven M. Bauer (*pro hac vice*)
Margaret A. Tough (*pro hac vice*)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
PHONE: (415) 391-0600
FAX: (415) 395-8095
E-mail: steven.bauer@lw.com
E-mail: margaret.tough@lw.com

Attorneys for Defendant PHILLIPS 66

By: /s/ Jeffrey B. Pine

Jeffrey B. Pine (SB 2278)
Patrick C. Lynch (SB 4867)
LYNCH & PINE
One Park Row, 5th Floor
Providence, RI 02903
Tel: (401) 274-3306
Fax: (401) 274-3326
E-mail: JPine@lynchpine.com
E-mail: Plynych@lynchpine.com

Shannon S. Broome (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
50 California Street
San Francisco, CA 94111
Tel: (415) 975-3718
Fax: (415) 975-3701
E-mail: SBroome@HuntonAK.com

Shawn Patrick Regan (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
200 Park Avenue
New York, NY 10166
Tel: (212) 309-1046
Fax: (212) 309-1100
E-mail: SRegan@HuntonAK.com

Ann Marie Mortimer (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
Tel: (213) 532-2103
Fax: (213) 312-4752
E-mail: AMortimer@HuntonAK.com

*Attorneys for Defendants MARATHON
PETROLEUM CORP. MARATHON
PETROLEUM COMPANY, LP, and
SPEEDWAY, LLC*

By: /s/ Jason C. Preciphs

Jason C. Preciphs (SB 6727)
ROBERTS, CARROLL, FELDSTEIN &
PEIRCE, INC.
10 Weybosset Street, Suite 800
Providence, RI 02903
Tel: (401) 521-7000
Fax: (401) 521-1328
E-mail: jpreciphs@rcfp.com

J. Scott Janoe (*pro hac vice*)
Matthew B. Allen (*pro hac vice*)
BAKER BOTTS L.L.P.
910 Louisiana Street
Houston, TX 77002
Tel: (713) 229-1234
Fax: (713) 229-1522
E-mail: scott.janoe@bakerbotts.com
E-mail: matt.allen@bakerbotts.com

Megan H. Berge (*pro hac vice*)
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue NW
Washington, DC 20004
Tel: (202) 639-7700
Fax: (202) 639-7890
E-mail: megan.berge@bakerbotts.com

Attorneys for Defendant HESS CORP.

By: /s/ Lauren Motola-Davis

Lauren Motola-Davis (#3396)
Samuel A. Kennedy-Smith (#8867)
LEWIS BRISBOIS BISGAARD & SMITH
LLP
1 Turks Head Place, Suite 400
Providence, RI 02903
Tel: 401-406-3313
Fax: 401-406-3312
Email:
Lauren.MotolaDavis@lewisbrisbois.com
Email: samuel.kennedy-
smith@lewisbrisbois.com

*Attorneys for Defendant LUKOIL Pan
Americas, LLC*

By: /s/ Robert D. Fine

Robert D. Fine (#2447)
Douglas J. Emanuel (#5176)
CHACE RUTTENBERG & FREEDMAN,
LLP
One Park Row, Suite 300
Providence, Rhode Island 02903
Telephone: (401) 453-6400
Facsimile: (401) 453-6411
E-mail: rfine@crflp.com

*Attorneys for Defendant MOTIVA
ENTERPRISES, LLC*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed through the ECF system on the 28th day of June, 2019, and will be sent electronically to the registered participants identified on the Notice of Electronic Filing. Additionally, I certify that on the 28th day of June, 2019, a copy of the foregoing document was sent via first class mail and email to counsel of record for Plaintiff State of Rhode Island to the following:

PETER F. KILMARTIN
REBECCA PARTINGTON
NEIL F.X. KELLY
DEPARTMENT OF THE ATTORNEY GENERAL
150 South Main Street
Providence, RI 02903

VICTOR M. SHER
MATTHEW K. EDLING
TIMOTHY R. SLOANE
MARTIN D. QUIÑONES
MEREDITH S. WILENSKY
KATIE H. JONES
SHER EDLING LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104

/s/ Gerald J. Petros _____