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PROTECTING PEOPLE AND THE PLANET

June 1, 2020

**Via ECF**

Maria R. Hamilton  
Clerk of Court  
U.S. Court of Appeals for the First Circuit  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 2500  
Boston, MA 02210

Re: *State of Rhode Island v. Shell Oil Prods. Co., et al.*, No. 19-1818  
Plaintiff-Appellee's Response to Citation of Supplemental Authorities

Dear Ms. Hamilton,

The State of Rhode Island ("State") responds to Defendant-Appellant's submission of *In re Peabody Energy Corp.*, \_\_\_ F.3d \_\_\_, 2020 WL 2176028 (8th Cir. May 6, 2020).

Because this Court's jurisdiction is limited to reviewing federal-officer jurisdiction as a basis for removal, bankruptcy removal jurisdiction is not before the Court. *See* Plaintiff-Appellee's Response Brief at 6–11 (Dec. 26, 2019) ("Br."). Regardless, the Eighth Circuit's opinion on the issues in the *Peabody* bankruptcy case is irrelevant.

The Eighth Circuit held that "although the [plaintiffs] advance[d] a reasonable interpretation of" the carve-out from Peabody's bankruptcy plan for "state or local equivalents" of "statutes, regulations and ordinances concerning pollution," it "c[ould not] say that the bankruptcy court abused its discretion" in finding the plaintiffs' claims fell outside the carve-out. *Id.* at \*2. That construction of Peabody's bankruptcy plan is irrelevant to whether the State's claims have a "particularly close nexus" to any confirmed bankruptcy. *In re Boston Reg'l Med. Ctr., Inc.*, 410 F.3d 100, 107 (1st Cir. 2005). Peabody Energy is not a defendant here, and no other bankruptcy relates to the State's claims. Br. at 56–59. Defendant-Appellant's contention that the plaintiffs' arguments before the Eighth Circuit "contradict" the State's positions is wrong—Defendant-Appellant quotes from the State's unrelated discussion of federal enclave jurisdiction, *id.* at 45—and has no conceivable relevance.

The Eighth Circuit also rejected the municipalities' argument that their claims were non-dischargeable under the plan's carve-out for "governmental claim[s] brought 'under any ... applicable police or regulatory law.'" 2020 WL 2176028, at \*3. The court found no abuse of discretion in the bankruptcy court's ruling that those claims "were not brought under a police or regulatory law" as defined in the plan, while emphasizing that it was addressing "a question about the meaning of the plan, not the bankruptcy code." *Id.* Defendants' contention that that holding is "irreconcilable" with the district court's application of the bankruptcy removal statute below is incorrect.

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The State's case is "designed primarily to protect the public safety and welfare" and thus not removable. *In re McMullen*, 386 F.3d 320, 325 (1st Cir. 2004).

Respectfully submitted,

/s/ Victor M. Sher

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**Sher Edling LLP**

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State of Rhode Island*

cc: All Counsel of Record (via ECF)