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PROTECTING PEOPLE AND THE PLANET

April 27, 2022

Via ECF

Patricia S. Dodszuweit
Clerk of Court
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: *State of Delaware v. BP America Inc., et al.*, No. 22-1096
Plaintiff-Appellee's Citation of Supplemental Authorities

Dear Ms. Dodszuweit,

The State of Delaware submits *County of San Mateo v. Chevron Corporation*, No. 18-15499, 2022 WL 1151275 (9th Cir. Apr. 19, 2022) (**Ex. A**), as supplemental authority. Writing for a unanimous panel of the Ninth Circuit, Judge Ikuta affirmed remand of analogous state-law claims, rejecting many of the same removal arguments advanced by Defendants-Appellants here.

Like the Fourth and Tenth Circuits, the Ninth Circuit held that the plaintiffs' "global-warming claims" did not "arise under federal common law." Ex. A 6. Because the "complaints asserted only state-law claims," the court reasoned, arising-under jurisdiction existed only if the complaints fell within one of the "two exceptions to the well-pleaded complaint rule": *Grable* or complete preemption. *Id.* The Ninth Circuit did not create a third exception for state-law claims purportedly governed by federal common law. Instead, it dismissed the defendants' federal-common-law arguments under the *Grable* framework, explaining: "[E]ven if ... the [plaintiffs'] complaints could give rise to a cognizable claim under federal common law, the global-warming-related tort claims do not require resolution of a substantial question of federal law because they do not require any interpretation of a federal statutory or constitutional issue, and are displaced by the Clean Air Act." *Id.* 7 (cleaned up).

Like the Fourth and Tenth Circuits, the Ninth Circuit also rejected OCSLA jurisdiction based on a careful analysis of the statute's text, structure, and purpose. *See id.* 9-11. To satisfy OCSLA's jurisdictional requirements, the court held, a defendant must show that a plaintiff's "claims arise from actions or injuries occurring on the [OCS]." *Id.* 10. The panel emphasized that its test for OCSLA jurisdiction was "materially similar" to the standards used by other circuits, and it concluded that the defendants failed this test because neither the plaintiffs' alleged injuries nor the defendants' alleged "wrongful actions" occurred on the OCS. *Id.* 11. As a result, any "connection" between the complaints and the OCS was "too attenuated to give rise to [OCSLA] jurisdiction." *Id.*

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Finally, the court rejected federal-officer removal, just as the First, Fourth, and Tenth Circuits have done in other climate-related cases. *Id.* 11-14.

Respectfully submitted,

/s/ Victor M. Sher

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cc: All Counsel of Record (via ECF)