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PROTECTING PEOPLE AND THE PLANET

May 25, 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,

Plaintiff-Appellee State of Delaware submits *Rhode Island v. Shell Oil Products Co., L.L.C.*, No. 19-1818 (1st Cir. May 23, 2022) (“Op.”) (**Ex. A**), as supplemental authority. Joining the Fourth, Ninth, and Tenth Circuits, the First Circuit affirmed remand of analogous climate-related claims. In doing so, it rejected the same removal arguments advanced by Defendants-Appellants here.

Federal Common Law: The panel rebuffed the defendants’ “bid to base federal-question jurisdiction on federal common law,” for four principal reasons. Op. 16.

First, the defendants failed to identify “any significant conflict” between a uniquely federal interest and Rhode Island’s state-law claims—“a *precondition*” for applying federal common law. *Id.* 15-16.

Second, the federal common law of interstate emissions did not apply because it did “not address the type of acts Rhode Island s[ought] judicial redress for.” *Id.* 18 & n.8 (noting that the claims did not “regulate greenhouse-gas emissions”).

Third, Congress “statutorily displaced” the federal common law of interstate emissions, *id.* 18-19, and a defendant “cannot premise removal on a federal common law that no longer exists,” *id.* 14.

Finally, *City of New York* was “distinguishable” because that case “considered the fossil-fuel producers’ preemption defense on its own terms, not under the heightened standard unique to the removability inquiry.” *Id.* 17 (cleaned up).

Grable: The First Circuit then disposed of the defendants’ *Grable* arguments on “the necessarily-raised prong,” *id.* 20, “reject[ing] the idea that federal law [was] an *essential element* to the kind of classic state-law claims Rhode Island raises,” *id.* 21.

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Federal Officer: The panel also held that the defendants failed the “for or relating to” requirement of federal-officer removal because the government never “mandate[d]” the tortious “activities” alleged in the complaint. *Id.* 12 n.6.

OCSLA: Finally, the court explained that OCSLA jurisdiction did not exist because “[t]he core” of the lawsuit does not involve fossil-fuel production on the OCS, but rather “concerns how the [defendants] knew what fossil fuels were doing to the environment and continued to sell them anyway, all while misleading consumers about the true impacts of the products.” *Id.* 28-29 (cleaned up).

Respectfully submitted,

/s/ Victor M. Sher _____

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cc: All Counsel of Record (via ECF)