

SHER EDLING LLP

PROTECTING PEOPLE AND THE PLANET

July 26, 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 *City and County of Honolulu v. Sunoco LP et al.* and *County of Maui v. Sunoco LP et al.*, Nos. 21-15313, 21-15318, 2022 WL 2525427 (9th Cir. July 7, 2022) (**Ex. A**), as supplemental authority. The decision affirmed remand of analogous state-law actions to state court, rejecting two removal arguments Defendants-Appellants advance here. The court held that federal subject-matter jurisdiction was lacking, concluding: "This case is about whether oil and gas companies misled the public about dangers from fossil fuels. It is not about companies that acted under federal officers, conducted activities on federal enclaves, or operated on the OCS." Ex. A at *8. The decision joins the chorus of opinions from the First, Fourth, Ninth, and Tenth Circuits affirming remand in similar cases over the last year.

Federal Officer Removal: The court held the defendants were not "acting under" federal officers because their evidence, including fuel production during the Korean War and operations on federal land on the outer continental shelf, involved only "normal commercial or regulatory relationships that do not involve detailed supervision." *Id.* at *3; *compare* Defendants-Appellants' Opening Brief at 41–47. The court also held the defendants failed to "assert a colorable federal defense," because the defenses relied on either "d[id] not arise from official duties" or were supported by "conclusory statements and general propositions of law [that] do not make their defenses colorable," Ex. A at *5–6. *Compare* Opening Brief at 61–62.

OCSLA: The Ninth Circuit also rejected removal based on OCSLA, holding that the "Defendants' sporadic OCS activities cannot shoehorn OCSLA jurisdiction for just any tort claim" and "[r]uling for Defendants would dramatically expand OCSLA's scope." Ex. A at *8 (cleaned up). It held that while "the removal statute does not require 'but-for' causation strictly" under Ninth Circuit precedent, the "oil and gas companies' OCS activities are too attenuated and remote from Plaintiffs' alleged injuries," to support jurisdiction. Ex. A at *8. It would "build a bridge too far to reach federal jurisdiction under OCSLA." *Id.* *Compare* Opening Brief at 62–65 (arguing against but-for standard).

Patricia S. Dodszeit
Clerk of Court
July 26, 2022
Page 2

Respectfully submitted,

/s/ Victor M. Sher

Victor M. Sher

Sher Edling LLP

Counsel for Plaintiff-Appellee

cc: All Counsel of Record (via ECF)