EFiled: May 18 2023 03:30PM EDT
Transaction ID 70042859
Case No. N20C-09-097 MMJ CCLD

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE

STATE OF DELAWARE, *ex rel.* KATHLEEN JENNINGS, Attorney General of the State of Delaware, Plaintiff, v. BP P.L.C., *et al.*, Defendants.	Civil Action No. N20C-09-097 MMJ CCLD

MEMORANDUM IN SUPPORT OF DEFENDANT AMERICAN PETROLEUM INSTITUTE'S INDIVIDUAL MERITS MOTION TO DISMISS

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The State of Delaware seeks to punish the entire fossil fuel industry for advocating a view contrary to the State's preferred narrative on one of the most difficult and important public policy issues of our time. But that policy debate over the costs and benefits of fossil fuels—which touches on both their foundational importance to 150 years of economic progress and their contributions to climate change—has more than one side. And neither the First Amendment, Delaware law, nor common sense allows the State to muzzle that debate with the threat of years of litigation, intrusive discovery, and extraordinary civil liability.

The Complaint asserts a single claim against the American Petroleum Institute ("API") under the Delaware Consumer Fraud Act ("DCFA"). That claim fails for the reasons in Defendants' Joint Motion to Dismiss, which API adopts and incorporates. But API should be dismissed for two additional reasons. First, API does not sell, and is not alleged to sell, any fossil fuels. So API has not made any statements "in connection with the sale, lease, receipt, or advertisement of any merchandise." Second, even if the DCFA applied, the First Amendment and its Delaware analogue fully protect API's speech on this important issue from State censorship couched as a lawsuit.

BACKGROUND

API is a nationwide, non-profit trade association representing over 600 companies throughout the petroleum and natural-gas industry. Compl. ¶ 37(a). As the State recognizes, API's mission is to "influence public policy in support of a strong, viable U.S. oil and natural gas industry." Compl. ¶ 37(c). API's diverse membership runs from small independent producers to publicly traded companies, and includes everyone from producers, refiners, suppliers, marketers, pipeline operators, and marine transporters, to oil-and-gas service and supply companies. It is the largest oil trade association in the country. Compl. ¶ 37(a).

The State seeks to use Delaware's false advertising statute to punish API for its public advocacy. It seeks incalculable damages stemming from the very use of fossil fuels, the bedrock of an energy system that has been essential in the everyday lives of people across the world for over a century. The State alleges that API led a "deceptive greenwashing campaign," concealed the dangers of fossil fuel products, and promoted misleading information designed to undermine public support for the regulation of greenhouse gas emissions. Compl. ¶¶ 8, 198–201. The Complaint highlights API's 2017 "Power Past Impossible" public policy campaign as "greenwashing" because API correctly described oil and gas as being "cleaner" now than in the past and used the color green. Compl. ¶ 198. The State also cites a policy piece on API's website titled, "America's Natural Gas and Oil: Energy for Progress."

Compl. ¶ 200. The State contends that this advocacy obscures "the reality that fossil fuels are the driving force behind anthropogenic climate change" and in turn "increase[s] consumers' use of fossil fuels in order to advance API's core mission of growing its member companies' oil and natural gas business." Compl. ¶ 200.

To prevail, the State must persuade this Court both to intervene—and rule in its favor—on an intense and complex public policy debate, and then to punish Defendants for taking a contrary view in that debate. The first request would impose on this Court a task it is ill-equipped to meet. The second request would engage the Court in an egregious violation of the First Amendment. *See NAACP v. Alabama*, 357 U.S. 449, 463 (1958) ("It is not of moment that the State has here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power which we are asked to scrutinize."). For the reasons below, neither task is appropriate based on this legally insufficient Complaint.

ARGUMENT

I. THE COMPLAINT FAILS TO STATE A DCFA CLAIM BECAUSE API DOES NOT SELL FOSSIL FUELS.

The DCFA applies only to sellers of goods or merchandise. It "provides remedies for violations of the 'vertical' relationship between a buyer (the consumer) and a producer or seller." *Grand Ventures, Inc. v. Whaley*, 632 A.2d 63, 70 (Del. 1993). Its express purpose is "to protect *consumers* . . . from unfair or deceptive *merchandising* practices," 6 Del. C. § 2512 (emphases added), and it requires that

an alleged misrepresentation be made "*in connection* with the sale, lease . . . or advertisement of any merchandise." 6 Del. C. § 2513 (emphasis added); Del. P.J.I. Civ. § 16.5 ("The Consumer Fraud Act is limited to transactions involving the sale or advertising of merchandise[.]"). That "in connection with" requirement means that alleged fraud "not connected to the sale or advertisement of the [merchandise] do[es] not constitute[] consumer fraud under the Act." *Norman Gershman's Things to Wear, Inc. v. Mercedes-Benz of North America, Inc.*, 558 A.2d 1066, 1074 (Del. Super. Ct. 1989).

No reported case has applied the DCFA to a party that does not sell merchandise. Yet that is exactly what the State seeks to do here. The Complaint does not allege that API sells fossil fuels or any other merchandise. So the Complaint cannot show that API made any statements in connection with the sale of goods or merchandise.

API's mere association with the Fossil Fuel Defendants cannot bring it within the purview of the DCFA. As courts interpreting the DCFA have consistently held, a DCFA claim cannot proceed on a theory where alleged fraudulent activities are, at best, peripheral to the sale of merchandise. *See, e.g.*, *Pennsylvania Employee Benefit Trust Fund v. Zeneca, Inc.*, 2005 WL 2993937, at *2 n.3 (D. Del. Nov. 8, 2005) (rejecting DCFA claim premised on alleged fraudulent statement in pharmaceutical report where they were not "used in the sale or advertisement of [the drug] to

consumers"); *see also Norman Gershman's*, 558 A.2d at 1074 (similar). So API's policy advocacy "do[es] not fall within the constructs of the [DCFA]" because API's relationship to consumers is "not that of a consumer to vendor" and thus is "too attenuated to support a [DCFA] claim." *See Thomas v. Harford Mut. Ins.*, 2003 WL 21742143, at *1 (Del. Super. Ct. July 25, 2003).

II. THE STATE'S ATTEMPT TO PUNISH API'S ADVOCACY VIOLATES BEDROCK CONSTITUTIONAL GUARANTEES.

Even if the text of the DCFA could apply to API's public advocacy here, the First Amendment bars any law "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. Const. amend. I. Article I, Section 5 of the Delaware Constitution of 1897 confers the same rights at the state level. *Preston Hollow Cap. LLC v. Nuveen LLC*, 216 A.3d 1, 12 (Del. Ch. 2019). The State's DCFA claim against API violates these core free speech rights by seeking to censor public discourse and advocacy on a matter of significant controversy and public importance.

A. The Complaint seeks to abridge API's freedom of speech.

Freedom of speech is sacrosanct under U.S. law. Indeed, "expression on public policy issues 'has always rested *on the highest rung of First Amendment values*.'" *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982) (emphasis added). Speech on important public issues "is the essence of self-government." *Id.*

The First Amendment "presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection." *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943) (Hand, J.). The nation has "a profound [] commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). This "constitutional protection does not turn upon 'the truth, popularity, or social utility of the ideas and beliefs which are offered.'" *Id.* (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)); *see also* 376 U.S. at 271–72 (recognizing "[t]hat erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive[.]'") (quoting *Button*, 371 U.S. at 433).

Yet the Complaint unabashedly tries to suppress API's speech "because of disagreement with the message it conveys." *See Mitchell v. Com'rs of Com'n On Adult Ent. Est.*, 802 F. Supp. 1112, 1118 (D. Del. 1992) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)); *see also R.A.V. v. City of St. Paul*, 505 U.S. 377, 391–92 (1992) ("[The government] has no authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules."). Though the State is using a consumer protection statute as the means, the end is the same censorship barred by the First Amendment. *See NAACP v. Alabama*, 357 U.S. at 463; *James v. Meow Media, Inc*., 300 F.3d 683, 695-97 (6th

Cir. 2002) (affirming dismissal because complaint that sought to regulate speech through tort liability raised "significant constitutional problems under the First Amendment"); *Tompkins v. Cyr*, 995 F. Supp. 664, 675 (N.D. Tex. 1998) (finding imposition of tort liability appropriately considered "regulation" under First Amendment analysis, because it involves legal standards that govern or direct expressive activity). To safeguard free speech, courts dismiss similar speech regulations masquerading as tort claims, including consumer protection claims. *See, e.g.*, *New York Pub. Int. Rsch. Grp., Inc. v. Ins. Info. Inst.*, 161 A.D.2d 204, 206 (N.Y. Sup. Ct. 1990) (dismissing consumer protection suit against defendants seeking "to influence public officials, voters and citizens in general in order to increase sympathy for the concerns of the insurance industry" because they "engaged in precisely the sort of free debate which the First Amendment was intended to safeguard").

The First Amendment requires the same result here. The debate over the benefits of fossil fuels and the risks posed by global climate change is one of the most difficult and controversial public policy issues of our time. Yet the State, through this lawsuit, seeks to silence that debate. The State's claim is an open attack on a trade association's policy statements on a hotly contested issue. The use of a false advertising statute to suppress API's advocacy does not immunize the State

from the plain text of the First Amendment; the State is attempting to regulate API's speech, and its DCFA claim violates the First Amendment.

1. The Complaint tries to suppress noncommercial speech.

The API speech that the State seeks to muzzle under the DCFA is fully protected noncommercial speech. While the Supreme Court has cast doubt on the proposition that commercial speech merits any less protection than noncommercial speech, *see Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011), it is well-established that noncommercial speech receives full protection. "[T]he proposal of a commercial transaction [is] the test for identifying commercial speech." *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423 (1993).

Restraints on noncommercial speech are subject to aptly named strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015); *see also Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 637 (1985). Even if policy-oriented speech is intertwined with commercial speech, the speech must still receive full First Amendment protection under strict scrutiny. *See Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 796–98 (1988) (explaining that for "inextricably intertwined" speech, "we apply our test for fully protected expression," and that if "the means chosen to accomplish [the state's purported interest] are unduly burdensome and not narrowly tailored[,]" the regulation cannot stand); *see also Facenda v. NFL Films, Inc.*, 542 F.3d 1007, 1016–17 (3d Cir. 2008) (describing as

fully protected under *Riley* speech that combines "promotional" and "artistic and informational elements"); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 193 F.3d 781, 793 (3d Cir. 1999) (applying *Riley* where "speech consists of complex mixtures of commercial and noncommercial elements").

API's campaigns are plainly noncommercial speech. They propose no transaction. *City of Cincinnati*, 507 U.S. at 423. And they address a topic of great public importance. Indeed, the Complaint identifies no commercial transaction API proposed. At most, the State alleges that API promoted the message that natural gas and oil drive progress. This public policy advocacy is far too removed from any commercial transaction to face abridged First Amendment protection. *See* Compl. ¶¶ 198–201. And even if that advocacy is in the form of an advertisement, it "does not necessarily render such speech commercial in nature." *See Adventure Commc'ns, Inc. v. Kentucky Registry of Election Fin.*, 191 F.3d 429, 440 (4th Cir. 1999). Any commercial element of API's speech is intertwined with noncommercial speech advocating a public policy position, so API's campaigns are entitled to full First Amendment protection in any event. *Riley*, 487 U.S. at 796. After all, even the landmark *New York Times v. Sullivan* decision addressed a paid advertisement addressing an important policy issue.

The Complaint challenges API's advocacy positions and political speech, backed by research, which are "quintessentially noncommercial" and protected by

the First Amendment, even if erroneous or for a for-profit motive. A "myriad of problems [] might ensue from judicial forays into the field of scientific research and publication" and, to that end, messages grounded in scientific fact are "protected noncommercial speech despite the potential for erroneous content." *Bracco Diagnostics, Inc. v. Amersham Health, Inc.*, 627 F. Supp. 2d 384, 456–57 (D.N.J. 2009). One particularly instructive case on this point is *Neurotron, Inc. v. Am. Ass'n of Electrodiagnostic Med.*, 189 F. Supp. 2d 271, 277 (D. Md. 2001), *aff'd,* 48 F. App'x 42 (4th Cir. 2002), in which the court held that a nonprofit trade association's negative review of a product was noncommercial speech. The plaintiff, a manufacturer of medical devices, sued a trade association for publishing an article questioning the product's efficacy. *Id.* at 273–74. The plaintiff claimed the article was false and sought damages in the form of denied insurance reimbursement claims for testing based on the product. The court held that the review was fully protected noncommercial speech because the trade association never proposed a commercial transaction. *Id.* at 276-77. The association's "purpose [was] not only to lobby and advocate for its members, but also to provide educational services such as informing members of current trends in the industry through publications such as [the journal in which the article was published] or by conducting educational seminars." *Id.* at 277. To that end, the court explained that "chilling speech of [the trade association] in this instance would likely prevent all debate about such subjects from entering

into the marketplace." *Id.* The court acknowledged that "even if there [was] some commercial aspect of the article, it would not be considered commercial speech […] because of its public significance and status as an academic piece published by a non-profit organization." *Id.*

Courts have often recognized that trade association speech is noncommercial. *See, e.g.*, *Nat'l Servs. Grp., Inc. v. Painting & Decorating Contractors of Am., Inc*., 2006 WL 2035465, at *6 (C.D. Cal. July 18, 2006) (concluding that a trade association's article critical of a painting company was protected noncommercial speech where it was "economically motivated only in an indirect sense" and it "attempt[ed] to inform its members of an issue affecting their economic interests" rather than promoting the services of its members); *Gordon & Breach Sci. Publishers S.A. v. Am. Inst. of Physics*, 859 F. Supp. 1521, 1539–41 (S.D.N.Y. 1994) (concluding that challenged statements made by nonprofit entity that ranked its own publications higher than that of the plaintiff was noncommercial, and "[t]he fact that [the defendants] stood to benefit from publishing [the challenged statement]—even that they intended to benefit—is insufficient by itself to turn the articles into commercial speech."); *see also Bd. of Trs. of Leland Stanford Junior Univ. v. Sullivan*, 773 F. Supp. 472, 474 (D.D.C. 1991) ("It is equally settled, however, though less commonly the subject of litigation, that the First Amendment protects scientific expression and debate just as it protects political and artistic expression.").

That recognition makes good sense: public policy advocacy, like the trade association speech attacked by the State, does not cross the line into commercial speech unless it is "peppered with advertising" to buy a particular company's products. *See Semco, Inc. v. Amcast, Inc.*, 52 F.3d 108, 112–13 (6th Cir. 1995).

In sum, the State's allegations fail to identify commercial transactions solicited by API, let alone any transaction that can be disentangled from API's noncommercial speech advocating the industry's policy benefits.

2. The State cannot justify its content-based restriction of speech.

The State's lawsuit seeks to censor speech it disagrees with on hotly contested issues. As the Supreme Court has explained, "[t]he government may not regulate speech based on hostility—or favoritism—towards the underlying message expressed." *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 763 (1994). "If the restriction is content-based, it is subject to strict scrutiny and is therefore presumptively unconstitutional and may be justified only if the government proves that [it is] narrowly tailored to serve compelling state interests." *Bruni v. City of Pittsburgh*, 941 F.3d 73, 83–84 (3d Cir. 2019). Only if "a restriction is content neutral," do courts apply "intermediate scrutiny and ask whether it is narrowly tailored to serve a significant governmental interest." *Id.*

The State's allegations confirm that it seeks to regulate API's speech because of its content and because of its viewpoint. The Complaint targets API's pro-energy

speech, attacking API's "Power Past Impossible" campaign because it told consumers that the petroleum industry "could help them 'live better lives.'" Compl. ¶ 198. The State also attacks API's "Energy for Progress" campaign describing the industry's initiatives in tackling climate change. Compl. ¶ 201. The State also generally attacks unparticularized (indeed, unidentified) television, radio, and online advertisements in which API "promot[ed] [the] fossil fuel companies' claimed contributions to clean energy." Compl. ¶ 200.

The Complaint thus targets speech on the public benefits of API's industry. The State seeks to impose a blanket ban on all speech in this category. Regardless of the type of regulation used to achieve this sort of content-based restriction on speech, the restriction is subject to strict scrutiny. *See Perrong v. Liberty Power Corp.*, 411 F. Supp. 3d 258, 264 (D. Del. 2019).

As applied to API's alleged statements, the State's use of the DCFA is not narrowly tailored to any compelling government interest. To the contrary, the State attacks API's broad energy information campaigns, which discuss initiatives to reduce the industry's carbon footprint and to provide general information on the oil and gas industry. Compl. ¶¶ 188–192. Even if the State has a compelling government interest in protecting consumers from deceptive or misleading advertisements, it is entirely unclear what speech API can make and what it cannot

based on the State's theory. Put another way, if the State were successful here, what pro-energy messaging would not be illegal?

Moreover, the State could also achieve its purported interest—ensuring that consumers are fully informed about climate change—through its own speech. *See Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2376 (2018) (striking down an alleged consumer protection law because the state could take a counter-position to that of the regulated party "with a public-information campaign"). Although it would be cheaper for the State to foist that responsibility on API, "the *Riley* Court 'reaffirm[ed] simply and emphatically that the First Amendment does not permit the State to sacrifice speech for efficiency.'" *Telco Commc'ns, Inc. v. Barry*, 731 F. Supp. 670, 682 (D.N.J. 1990) (quoting *Riley*, 487 U.S. 781, 795 (1988)).

3. Even if API's speech were commercial speech, the State's attempt to suppress it is unconstitutional.

The State's attempt to regulate API's speech would violate the First Amendment even if the speech the State attacks were *all* commercial speech—a stretch by any measure. "The First Amendment requires heightened scrutiny whenever the government creates 'a regulation of speech because of disagreement with the message it conveys.'" *Sorrell*, 564 U.S. at 566 (quoting *Ward,* 491 U.S. at 791). "Commercial speech is no exception." *Sorrell*, 564 U.S. at 566. The Supreme Court thus rejected the argument that "a different analysis applies" where a

regulation "burdens only commercial speech" because "the outcome is the same whether a special commercial speech inquiry or a stricter form of judicial scrutiny is applied." *Id.* at 571. Because the State seeks to regulate API's speech on the basis of its content and indeed its viewpoint, *supra* at 9–10, such regulation would be unconstitutional whether or not that speech is "commercial."

Even if commercial speech received lower protection in some circumstances, API's speech would still be protected here. At most, the State can regulate such speech only if the regulation is "narrowly tailored" to a substantial governmental interest. *Bd. of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 478 (1989); *see also Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 564 (1980). The State presumably will assert that the regulation advances an interest in consumer protection. But its attempt to regulate API's speech has at best a tenuous relationship to that interest because the State does not tailor its speech regulation to specific products that it alleges were deceptively marketed. Rather, the State seeks to regulate a wide range of speech untethered to any specific consumer transaction. That theory would allow State regulation of policy debates about the benefits of the energy industry and sources of clean energy, regardless of that regulation's "fit" with any deceptive merchandising practice. That lack of fit would be fatal even if the speech at issue were considered commercial.

B. The Complaint violates API's right to petition the government for redress.

The State's claim against API must also be dismissed because it impermissibly targets API's petitioning activities. Compl. ¶ 125 (alleging API's concern over "potential regulation of . . . fossil fuel products," and opposition to "[p]olicies" that "limit . . . carbon emissions"); *see also* Compl. ¶ 128 (alleging a "deceptive [sic] public campaign against regulation"). The First Amendment prohibits the government from "abridging . . . the right of the people . . . to petition the government for a redress of grievances." Part of this protection is the ability for groups to "'use the channels and procedures of state and federal agencies and courts to advocate their causes and points of view respecting resolution of their business and economic interests *vis-à-vis* their competitors.'" *Bradley v. Pittsburgh Bd. of Educ.*, 913 F.2d 1064, 1076 (3d Cir. 1990) (quoting *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972)).

An integral component to the right to petition is the *Noerr-Pennington* doctrine, which has provided individuals and entities with immunity from liability—under both state and federal law—based on activities arising out of their attempts to influence the passage or enforcement of particular laws. *See Prof'l Indus. Est. Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 56 (1993); *United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 669–72 (1965); *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 135

(1961). Although *Noerr-Pennington* originally emerged in the antitrust context, it fully applies to other attempts to create petitioner liability. *See Cheminor Drugs, Ltd. v. Ethyl Corp.*, 168 F.3d 119, 128 (3d Cir. 1999) (applying *Noerr-Pennington* to state tort claims). To that end, courts have applied *Noerr-Pennington* to state unfair trade practices acts as well as state consumer protection acts. *See, e.g.*, *Suburban Restoration Co., Inc. v. ACMAT Corp.*, 700 F.2d 98, 102 (2d Cir. 1983) ("Especially since *Noerr-Pennington*'s statutory exemption is defined in terms of first amendment activity, we are confident that Connecticut's courts would carve out a similar exception to [Connecticut Unfair Trade Practices Act] and the common law, whether or not they believed that they were required to do so by the Constitution."); *Green Mountain Realty Corp. v. Fifth Est. Tower, LLC*, 13 A.3d 123, 130–31 (N.H. 2010) (holding that *Noerr-Pennington* applied to New Hampshire Consumer Protection Act).

The State may argue that it does not attack API's protected petitioning activity, and instead addresses API's other statements and activities. That distinction cannot be drawn here. API's petitioning and lobbying of government entities are interrelated with API's promotion of the industry it represents. *Noerr-Pennington* recognizes that API's promotional activities are part and parcel with API's legislative and public policy activities. In *Noerr* itself, for example, the Supreme Court held that the defendant-railroad companies were entitled to First Amendment

protection for their publicity campaign which was "designed to influence the passage of state laws relating to truck weight limits and tax rates on heavy trucks, and to encourage a more rigid enforcement of state laws penalizing trucks for overweight loads and other traffic violations." *Noerr Motor Freight, Inc.*, 365 U.S. at 131. Here too, even if the alleged activities that purport to support the State's claim against API were based on API's alleged targeting of consumers rather than regulators, *Noerr* dictates that a publicity campaign which targets both governmental entities and consumers is protected.

Because API's alleged attempts to influence local, state, and federal policy constitute the sole basis for the State's DCFA claim against API, the claim should be dismissed under the *Noerr-Pennington* doctrine too.

III. CONCLUSION

For these reasons and those in the Joint Motion to Dismiss, the claim against API should be dismissed with prejudice.

Dated: May 18, 2023

WOMBLE BOND DICKINSON (US) LLP
/s/ Kevin J. Mangan
Kevin J. Mangan (DE No. 3810)
1313 North Market Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 252-4320
Facsimile: (302) 252-4330
Email: kevin.mangan@wbd-us.com

MCGUIREWOODS LLP
Jeremiah J. Anderson, *pro hac vice*
Texas Tower, 24th Floor
845 Texas Ave.
Houston, TX 77002
Telephone: (832) 255-6339
Facsimile: (832) 255-6386
Email: jjanderson@mcguirewoods.com

Kathryn M. Barber, *pro hac vice*
Gateway Plaza
800 East Canal Street
Richmond, VA 23219
Telephone: (804) 775-1227
Facsimile: (804) 698-2227
Email: kbarber@mcguirewoods.com

Attorneys for American Petroleum Institute