

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Plaintiff,

v.

BP P.L.C., *et al.*,

Defendants.

Case No. 24-C-18-004219

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**MARATHON OIL CORPORATION'S AND MARATHON OIL COMPANY'S
SUPPLEMENTAL MOTION TO DISMISS FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Pursuant to Maryland Rule 2-322(b)(2) and the Court's August 15, 2023 Scheduling Order, Defendants Marathon Oil Corporation (Defendant 20) and Marathon Oil Company (Defendant 19) respectfully submit this Supplemental Motion to Dismiss the Complaint for Failure to State a Claim Upon Which Relief Can Be Granted. In addition, Defendants Marathon Oil Corporation and Marathon Oil Company join the joint brief filed today titled, Defendants' Motion to Dismiss for Failure to State a Claim upon which Relief Can Be Granted.

Respectfully submitted,

Robert Reznick (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
1152 15th Street NW
Washington, DC 20005
Tel.: (202) 339-8600
Fax: (202) 339-8500
rreznick@orrick.com



Mark S. Saudek (AIS No. 9512140123)
Joseph C. Dugan (AIS No. 1812110109)
GALLAGHER EVELIUS & JONES LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Tel.: (410) 347-1365
Fax: (410) 468-2786
msaudek@gejlaw.com

James Stengel (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
51 West 52nd Street
New York, New York 10019-6142
Tel.: (212) 506-5000
Fax: (212) 506-5151
jstengel@orrick.com

Marc R. Shapiro (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
51 West 52nd Street
New York, New York 10019-6142
Tel: (212) 506-5000
Fax: (212) 506-5151
mrshapiro@orrick.com

Attorneys for Defendants Marathon Oil Corporation and Marathon Oil Company

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Case No. 24-C-18-004219

**MEMORANDUM OF LAW IN SUPPORT OF MARATHON OIL
CORPORATION'S AND MARATHON OIL COMPANY'S SUPPLEMENTAL MOTION
TO DISMISS FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED**

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Pursuant to Maryland Rule 2-322(b)(2) and the Court's August 15, 2023, Scheduling Order, Defendants Marathon Oil Corporation ("MRO") and Marathon Oil Company ("MOC") respectfully submit this Memorandum of Law in Support of their Motion to Dismiss the Complaint for Failure to State a Claim.

MRO and MOC join the Joint Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim (the "Joint Motion") filed this day, incorporate by reference the arguments made in the supporting memorandum of law ("Joint Mem."), and believe the Complaint should be dismissed as to all Defendants. MRO and MOC separately file this Memorandum to address grounds for dismissal with prejudice that are specific to Plaintiff's minimal and legally inadequate allegations made against each of MRO and MOC.

INTRODUCTION

Plaintiff's 132-page Complaint in this massive action contains no well-pleaded allegations that state a claim against MRO or MOC. Only *one paragraph* of the Complaint mentions MRO and MOC specifically, and it does nothing more than identify them as defendants in the case generally. Otherwise, MRO and MOC are lumped in with unaffiliated entities under the moniker, "Marathon," and even there, Plaintiff offers just two more paragraphs, focusing largely on "Marathon's" alleged membership in trade associations during unspecified periods of time and its receipt of a "status report" that summarized a four-year-old survey of published research. Every other allegation against MRO and MOC arises through undifferentiated claims against "Defendants"—a hodgepodge of companies occupying one position or another in the energy distribution chain and united only by the fact that they have been sued.

Plaintiff's allegations establish no violation of law, particularly under the heightened pleading standard applicable to Plaintiff's claims. Nor does the Complaint allege either conduct

or circumstances from which an allegation of conspiracy or agency may reasonably be inferred making MRO or MOC responsible for actions that other defendants are alleged to have taken.

For the reasons set forth in the Joint Memorandum and herein, the Complaint should be dismissed as to MRO and MOC with prejudice.

STATEMENT OF FACTS

MRO is a publicly-traded Delaware corporation headquartered in Houston, Texas, that, considered with subsidiaries, is alleged to be “involved in the exploration for, extraction, production, and marketing of fossil fuel products.” Complaint (“Compl.”) ¶ 27 (b). MRO and MOC are two of twenty-six Defendants in this case.

The Complaint purports to plead eight “Causes of Action”: public nuisance, private nuisance, strict liability failure to warn, strict liability for design defect, negligent design defect, negligent failure to warn, trespass, and violation of the Maryland Consumer Protection Act (“MCPA”). But, importantly for the pleading standard to which Plaintiff must be held, all of these claims purportedly arise from an alleged failure to disclose the “dangers” associated with “high use and combustion” of fossil fuel products and an alleged decades-long “campaign” that “focused on concealing, discrediting, and/or misrepresenting information.” Compl. ¶¶ 6, 146.

ARGUMENT

I. THE COMPLAINT MAKES NO WELL-PLEADED ALLEGATIONS OF WRONGFUL CONDUCT AGAINST MRO OR MOC.

We address, in turn, each of the paragraphs of the Complaint in which MRO, MOC, or “Marathon” is named specifically and explain why none states or supports a claim against the Company.

As Plaintiff told the Fourth Circuit, their claims against Defendants, including MRO and MOC, are based on an alleged campaign of deception. *See Mayor & City Council of Baltimore v.*

BP P.L.C., 952 F.3d 452, 457 (4th Cir. 2020) (characterizing Plaintiff as alleging Defendants engaged in a coordinated effort to “conceal ... knowledge” and “champion[] ... disinformation campaigns”). All are thus subject to the heightened pleading standard applicable to claims of fraud. “‘It is the settled rule that [one] seeking any relief on the ground of fraud must distinctly state the particular facts and circumstances constituting the fraud and the facts so stated must be sufficient in themselves to show that the conduct complained of was fraudulent.’” *Thomas v. Nadel*, 427 Md. 441, 453 (2012). That rule applies with equal force to claims, like Plaintiff’s, that sound in misrepresentation and concealment because Maryland courts consider “claim[s] for deceit . . . as equivalent to fraud.” *Kantsevov v. LumenR LLC*, 301 F. Supp. 3d 577, 601 (D. Md. 2018). And Maryland courts have specifically recognized that the MCPA “replicates common-law fraud insofar as it includes ‘[d]eception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with . . . [t]he promotion or sale of any consumer goods’” *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 529 (2014). “Accordingly, if a party alleges an ‘unfair or deceptive trade practice’ under that specific subsection, he or she must allege fraud with particularity.” *Id.* To satisfy that standard, Plaintiff must specify: (i) the allegedly fraudulent statement, (ii) who made it, (iii) when it was made, (iv) how it was made, (v) why it is false, and (vi) the reasons for believing it was made with the intent to deceive. *McCormick*, 219 Md. App. at 528.

1. *Paragraph 27, Identifying MRO and MOC as Defendants, Contains No Well-Pleaded Allegation Of Unlawful Conduct By MRO Or MOC.*

MRO and MOC are first named in Paragraph 27 of the Complaint, just to allege their corporate characteristics and to assert the conclusion, unsupported by facts, that MRO “controlled . . . companywide decisions about the quantity and extent of fossil fuel production and sales,

including those of [its] subsidiaries.” *See* Compl. ¶ 27(e); *see also id.* ¶ 27(d) (duplicative subparagraph).

Paragraph 27(g) defines a purported Defendant group, “Marathon,” which deceptively includes not just MRO and MOC but an unaffiliated public corporation, Marathon Petroleum Corporation.¹ Subparagraph 27(h) is a textbook example of conclusory, cookie-cutter, and fact-free statements that fail to satisfy even the notice-pleading standard, let alone the higher pleading standard applicable to Plaintiff’s claims. Plaintiff alleges:

Marathon transacts and has transacted substantial fossil fuel-related business in Maryland. A substantial portion of Marathon’s fossil fuel products are or have been extracted, refined, transported, traded, distributed, promoted, marketed, manufactured, sold, and/or consumed in Maryland, from which Marathon derives and has derived substantial revenue. For example, Marathon marketed or markets gasoline and other fossil fuel products to consumers in Maryland, including through over 25 Marathon-and Speedway-branded petroleum service stations in Maryland.

Compl. ¶ 27(h). This vague assertion, amounting to little more than a paraphrase of elements of violations of law or the requirements for personal jurisdiction, reflects no reasonable investigation of facts and indeed appears almost verbatim against most other Defendants. *See, e.g.,* Compl. ¶¶ 20(g) (BP Entities), 21(c) (Crown Central Entities), 22(g) (Chevron Entities), 23(g) (Exxon Entities), 24(g) (Shell Entities), 25(e) (Citgo Petroleum Corporation), 26(i) (ConocoPhillips Entities), 28(e) (Hess Corporation), and 29(f) (CONSOL Entities). Plaintiff has pleaded no “facts” regarding MRO or MOC in furtherance of the above conclusory allegations. Even under notice-pleading standards, these allegations must be ignored as to MRO and MOC. “The facts in the complaint must be pled with specificity; . . . bald allegations and conclusory statements are not sufficient to support a complaint.” *Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 350–51

¹ “Marathon” is the only defined Defendant group that includes unaffiliated public corporations—MRO and the separate and unaffiliated Marathon Petroleum Corporation. *See id.* ¶¶ 20(f), 21(b), 22(f), 23(e), 24(f), 26(h), & 29(e).

(2012); *see also* *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 644 (2010) (the “facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.”); *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000); *Bobo v. State*, 346 Md. 706, 708–09 (1997); *see also* *Baltimore County v. Baltimore County Deputy Sheriffs*, 2016 WL 687503, at *4 (Md. Ct. Spec. App. February 18, 2016) (“[a] court will not accept bald assertions and conclusory statements by the pleader”).

2. Paragraph 31, Identifying “Marathon” as a Member of Certain Trade Organizations, Contains No Well-Pleaded Allegation of Unlawful Conduct by MRO or MOC.

Paragraph 31(a) of the Complaint identifies “Marathon” as one of nine Defendant groups alleged to have been members of Defendant trade association American Petroleum Institute (“API”) “at [unspecified] times relevant to this litigation.” Paragraphs 31(c) and (d) of the Complaint allege “Marathon” was a member of The American Fuel and Petrochemical Manufacturers and the U.S. Oil & Gas Association, respectively. However, the Complaint does not allege that any organization did anything unlawful or even in furtherance of an unlawful act by another party. “Marathon” is also alleged to have been a member of API at some unspecified time, but mere membership in a trade association—all that is alleged here—is not unlawful, of course, nor does it carry a reasonable implication of conspiracy. *See, e.g., Silkworth v. Cedar Hill Cemetery, Inc.*, 95 Md. App. 726 (1993) (rejecting membership in statewide trade association as basis to establish conspiracy under Maryland Antitrust Act, Md. Code, Com. Law § 11-201, *et seq.*); *Acquah v. State*, 113 Md. App. 29, 51–52, 686 (1996) (recognizing that “a defendant’s mere association with conspirators is not enough to support a conspiracy conviction”); *see also* *infra* Section III.

3. Paragraph 111, Alleging “Marathon,” Along With Every Other API Member, Received a “Status Report” on “Environmental Research Projects” Contains No Well-Pleaded Allegation of Unlawful Conduct by MRI or MOC.

Paragraph 111 of the Complaint, in Section V.G (“FACTUAL BACKGROUND/Defendants Went to Great Lengths to Understand, and Either Knew or Should Have Known About, the Dangers Associated with Extraction, Promotion, and Sale of Their Fossil Fuel Products”) alleges that, along with every other API member, “Marathon” “received a status report” on API-funded “environmental research projects” that included a summary of a then-four-year-old Stanford Research Institute (“SRI”) report. Each Defendant’s alleged “unique” knowledge of the link between burning of fossil fuels and climate change or special access to that information is a critical element of Plaintiff’s claims, *see, e.g.*, Compl. ¶ 140, but that is not shown in Paragraph 111. Receipt of the “status report” would not be unlawful, nor would it hardly even have been noteworthy. The report appears to do nothing more than summarize published research.² Moreover, as Plaintiff’s outside counsel admitted in their Complaint filed on behalf of Anne Arundel County, the report merely “endorsed the findings of President Johnson’s Scientific Advisory Council” announced publicly and made even four years further in the past.³

With this, the discussion of paragraphs of the Complaint mentioning MRO, MOC, or even “Marathon” specifically is exhausted.

² Paragraph 107 provides a citation to the SRI report directing the reader to a private website. Only the cover and four pages of the SRI report are shown on that website, and they appear to reflect only published research.

³ Complaint, *Anne Arundel County, Maryland v. BP P.L.C.*, Civil Action No. C-02-CV-21-000565 (Md. Cnty. Filed Apr. 26, 2021), ¶ 71.

II. ALLEGATIONS AGAINST GROUPS OF DEFENDANTS DO NOT SATISFY THE HEIGHTENED PLEADING STANDARD.

Plaintiff's other allegations purportedly made against MRO and MOC arrive in the form of allegations made collectively and without differentiation against the twenty-six "Defendants" in this case.

All these allegations are conclusory and cannot be considered in addressing the sufficiency of the Complaint against MRO or MOC. *See* pp. 2-3, *supra*. Not one of them identifies MRO or MOC specifically, much less identifies any particularized misstatement or omission that allegedly would support liability. As the Maryland Court of Special Appeals has explained, "defendants are not fungible; we must examine what each is charged with doing or failing to do." *Wells v. State*, 100 Md. App. 693, 703 (1994). As such, a "conclusory" "characterization" of Defendants' alleged conduct is insufficient to state a claim. *Id.*; *see also Samuels v. Tschechtelin*, 135 Md. App. 483, 528–29 (2000) (allegations that were "lumped under the general title of 'Defendants' and summarily included in each of appellant's seven counts" were insufficient); *Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.*, 143 Md. App. 698, 710–11 (2002) (same).

The Complaint's undifferentiated and anonymous allegations against "Defendants" are to be contrasted against the dozens of purported factual allegations made specifically against one defendant group or another. We do not suggest the allegations against any other Defendant are adequate; they are not. The point is that the absence of *any* purported factual allegations of wrongdoing against MRO or MOC underscores Plaintiff's failure to even concoct a claim of wrongdoing against MRO or MOC. Because each defendant is entitled to understand the particular conduct with which it is charged, Plaintiff must allege "what each [defendant] is charged with doing or failing to do." *Wells*, 100 Md. App. at 703. That is particularly so in a case that Plaintiff asserts is centered on false advertising that purportedly spans decades. MRO and MOC simply

cannot defend against Plaintiff's allegations without knowing what advertisements were allegedly problematic, when they aired, and in what location(s). Thus, for example, alleging that "Defendants" conducted allegedly unlawful "advertising campaigns," Compl. ¶ 147, tells MRO and MOC *nothing* about the allegedly deceptive advertisements that they are vaguely claimed to have disseminated.⁴ Compare *id.* ¶¶ 152-157. The Complaint leaves MRO, MOC, and the Court guessing as to any conduct specifically engaged in by MRO or MOC that is the subject of Plaintiff's allegations.

III. NO WELL-PLEADED ALLEGATIONS SUPPORT A REASONABLE INFERENCE THAT MRO OR MOC CONSPIRED WITH ANY OTHER DEFENDANT.

In a one-sentence paragraph in a one-paragraph Section of its Complaint (Section III, "AGENCY"), Plaintiff asserts that each Defendant is responsible for the conduct of every other defendant:

At all times herein mentioned, each of the Defendants was the agent, servant, partner, aider and abettor, co-conspirator, and/or joint venturer of each of the remaining Defendants herein and was at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy, and joint venture and rendered substantial assistance and encouragement to the other Defendants, knowing that their conduct was wrongful and/or constituted a breach of duty.

Compl. ¶ 32. This allegation, nothing more than a collection of legal conclusions and restatements of the elements of legal relationships made without differentiation among Defendants, does not

⁴ For most subsections of the "Factual Background" in the Complaint, Plaintiff makes no allegations of *any* kind against MRO and MOC. These include: Section V.H ("Defendants Did Not Disclose Known Harms Associated with the Extraction, Promotion, and Consumption of Their Fossil Fuel Products, and Instead Affirmatively Acted to Obscure Those Harms and Engaged in a Concerted Campaign to Evade Regulation"), Section V.I ("In Contrast to Their Public Statements, Defendants' Internal Actions Demonstrate Their Awareness of and Intent to Profit from the Unabated Use of Fossil Fuel Products"), Section V.J ("Defendants' Actions Prevented the Development of Alternatives That Would Have Eased the Transition to a Less Fossil Fuel Dependent Economy"), and Section V.K ("Defendants Caused Plaintiff's Injuries").

properly allege that MRO or MOC were responsible for any other Defendants' acts. *See, e.g., Silkworth*, 95 Md. App. 726 (1993) (per curiam) (dismissing claims of conspiracy because the "complaint [was] devoid of factual allegations pointing to an actual agreement among appellees. Instead, appellant infers such an agreement from the similarity of business practices engaged in by all appellees and their common membership in a statewide trade association"). Plaintiff's boilerplate assertion underscores why Plaintiff's generalized allegations against "groups" run afoul of Maryland pleading standards: it leaves MRO and MOC guessing as to what theory is even being advanced, much less whether a basis exists to advance that theory.

IV. THE COMPLAINT SHOULD BE DISMISSED AGAINST MRO AND MOC BECAUSE IT PLEADS NO FACTS ON WHICH PLAINTIFF'S CAUSES OF ACTION MAY BE BASED.

Section III.D. of the Joint Memorandum catalogues the Complaint's failure on its face to plead the elements of the six claims alleged. We write separately to observe that the Complaint's failure to allege well-pleaded facts of any kind against MRO and MOC provides an independent basis to dismiss MRO and MOC on a claim-by-claim basis.

V. THE COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE AS TO MRO AND MOC.

The Joint Motion requests dismissal with prejudice as to all Defendants. Independent reasons exist to enter a dismissal with prejudice against MRO and MOC. Plaintiff's failure to allege claims against MRO and MOC is not for want of trying. Plaintiff was armed with the full resources of its governmental status and private counsel that boasts experience in bringing substantially similar climate change litigation starting four years before the present action was filed, and the Complaint could have been amended at any time since it was filed in 2018 to add

more facts, had any existed to be found.⁵ And yet only a few legally insignificant paragraphs of the Complaint—the bulk of which just identify MRO and MOC as Defendants—address MRO or MOC specifically. The Court should also not turn a blind eye toward the enormous scope of this sprawling suit and the burdens it places on the Court and litigants alike. No cause exists to reset the clock to Day One and precipitate yet additional litigation and demands on the resources of the Court and the litigants.

CONCLUSION

For the foregoing reasons, the Complaint should be dismissed with prejudice against MRO and MOC.

Respectfully submitted,

GALLAGHER EVELIUS & JONES LLP



Mark S. Saudek (AIS No. 9512140123)
Joseph C. Dugan (AIS No. 1812110109)
218 N. Charles Street, Suite 400
Baltimore MD 21201
(410) 727-7702
(410) 468-2786 (fax)
msaudek@gejlaw.com
jdugan@gejlaw.com

⁵ See *Climate Change Litigation Experience*, Sher Edling LLP at 7 (Feb. 2022), <https://www.sheredling.com/wp-content/uploads/2022/02/SELLP-QUALIFICATIONS-Envntl-General-Feb-2022.pdf>.

Robert Reznick (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
1152 15th Street NW
Washington, D.C. 20005
Tel.: (202) 339-8600
Fax: (202) 339-8500
rreznick@orrick.com

James Stengel (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
51 West 52nd Street
New York, New York 10019-6142
Tel.: (212) 506-5000
Fax: (212) 506-5151
jstengel@orrick.com

Marc R. Shapiro (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
51 West 52nd Street
New York, New York 10019-6142
Tel.: (212) 506-5000
Fax: (212) 506-5151
mrshapiro@orrick.com

*Attorneys for Defendants Marathon Oil Company
and Marathon Oil Corporation*

Dated: October 16, 2023

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Case No. 24-C-18-004219

**REQUEST OF MARATHON OIL CORPORATION AND MARATHON OIL
COMPANY FOR HEARING ON SUPPLEMENTAL MOTION
TO DISMISS FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF CAN BE GRANTED**

Pursuant to Maryland Rule 2-311(f), Defendants Marathon Oil Corporation and Marathon Oil Company respectfully request a hearing on all issues raised in the accompanying Supplemental Motion to Dismiss of Defendants Marathon Oil Corporation and Marathon Oil Company, as well as the accompanying Memorandum of Law, and the Joint Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim filed this day, and the accompanying Memorandum of Law.

Respectfully submitted,

Robert Reznick (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
1152 15th Street NW
Washington, DC 20005
Tel.: (202) 339-8600
Fax: (202) 339-8500
rreznick@orrick.com



Mark S. Saudek (AIS No. 9512140123)
Joseph C. Dugan (AIS No. 1812110109)
GALLAGHER EVELIUS & JONES LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Tel.: (410) 347-1365
Fax: (410) 468-2786
msaudek@gejlaw.com

James Stengel (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
51 West 52nd Street
New York, New York 10019-6142
Tel.: (212) 506-5000
Fax: (212) 506-5151
jstengel@orrick.com

Marc R. Shapiro (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
51 West 52nd Street
New York, New York 10019-6142
Tel: (212) 506-5000
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ORDER

Upon consideration of the October 16, 2023 Supplemental Motion to Dismiss of Defendants Marathon Oil Corporation and Marathon Oil Company, any opposition and reply thereto, the argument of counsel, and the entire record in this case, it is hereby:

1. **ORDERED** that the October 16, 2023 Supplemental Motion to Dismiss of Defendants Marathon Oil Corporation and Marathon Oil Company shall be and hereby is **GRANTED**; and it is further

2. **ORDERED** that the complaint of Plaintiff the Mayor and City Council of Baltimore, shall be and hereby is **DISMISSED WITH PREJUDICE**; and it is further

3. **ORDERED** that the Clerk of Court shall deliver copies of this Order to all parties of record.

So **ORDERED** this ____ day of _____, 202__.

Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2023, a copy of the Supplemental Motion to Dismiss of Defendants Marathon Oil Corporation and Marathon Oil Company, the accompanying memorandum in support, and the proposed Order were served via email transmission and first class mail, postage prepaid, on the parties set forth on the attached Mailing Matrix.



Mark S. Saudek (AIS No. 9512140123)

MAILING MATRIX

<p>Sara Gross (CPF No. 412140305) Chief, Affirmative Litigation Division BALTIMORE CITY LAW DEPT. 100 N. Holliday Street, Suite I09 Baltimore, MD 21202 Telephone: (410) 396-3947 sara.gross@baltimorecity.gov</p> <p>Victor M. Sher (<i>pro hac vice</i>) Matthew K. Edling (<i>pro hac vice</i>) Corrie J. Yackulic (<i>pro hac vice</i>) Stephanie D. Biehl (<i>pro hac vice</i>) Martin D. Quinones (<i>pro hac vice</i>) Katie H. Jones (<i>pro hac vice</i>) Quentin Karpilow SHER EDLING LLP 100 Montgomery St., Ste. 1410 San Francisco, CA 94104 Telephone: (628) 231-2500 Facsimile: (628) 231-2929 vic@sheredling.com matt@sheredling.com corrie@sheredling.com stephanie@sheredling.com marty@sheredling.com katie@sheredling.com quentin@sheredling.com</p> <p><i>Counsel for Plaintiff MAYOR AND CITY COUNCIL OF BALTIMORE</i></p>	<p>Ty Kelly Cronin (CPF No. 0212180158) Alison C. Schurick (CPF No. 1412180119) Kyle S. Kushner (CPF No. 151260025) BAKER, DONELSON, BEARMAN, CALDWELL & BERKOVITZ, P.C. 100 Light Street, 19th Floor Baltimore, MD 21202 Telephone: (410) 862-1049 Facsimile: (410) 547-0699 tykelly@bakerdonelson.com aschurick@bakerdonelson.com Email: kskushner@bakerdonelson.com</p> <p>Peter Seley (<i>pro hac vice</i>) GIBSON, DUNN & CRUTCHER LLP 1050 Connecticut Avenue, N.W. Washington, DC 20036-5306 Telephone: (202) 955-8217 Facsimile: (202) 530-9614 pseley@gibsondunn.com</p> <p>Theodore J. Boutrous, Jr. (<i>pro hac vice</i>) GIBSON, DUNN & CRUTCHER LLP 333 South Grand Avenue Los Angeles, CA 90071-3197 Telephone: (213) 229-7804 Facsimile: (213) 229-6804 tboutrous@gibsondunn.com</p> <p>Joshua D. Dick GIBSON, DUNN & CRUTCHER LLP 555 Mission Street San Francisco, CA 94105 Telephone: (415) 393-8331 jdick@gibsondunn.com</p> <p>Andrea E. Neuman GIBSON, DUNN & CRUTCHER LLP 200 Park Avenue New York, NY 10166 (212)351-3883 anewman@gibsondunn.com</p> <p><i>Counsel for Defendants CHEVRON CORP. and CHEVRON U.S.A. INC.</i></p>
--	---

William N. Sinclair (CPF No. 0808190003)
Ilona Shparaga (CPF No. 1712140176)
**SILVERMAN THOMPSON SLOTKIN
& WHITE, LLC**

400 E. Pratt Street, 9th Floor
Baltimore, MD 21202
Telephone: (410) 385-2225
bsinclair@silvermanthompson.com
ishparaga@silvermanthompson.com

David C. Frederick (*pro hac vice*)
James M. Webster, III
Grace W. Knofczynski (*pro hac vice*)
Daniel S. Severson
**KELLOGG, HANSEN, TODD, FIGEL &
FREDERICK, P.L.L.C.**

1615 M. Street, NW, Suite 400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
dfrederick@kellogghansen.com
jwebster@kellogghansen.com
gknofczynski@kellogghansen.com
dseverson@kellogghansen.com

*Counsel for Defendants SHELL PLC
(f/k/a ROYAL DUTCH SHELL, PLC)
and SHELL USA, INC. (f/k/a SHELL
OIL CO.)*

Steven M. Bauer (*pro hac vice*)
Margaret A. Tough (*pro hac vice*)
Nicole C. Valco
Katherine A. Rouse
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111-6538
Telephone: (415) 391-0600
Facsimile: (415) 395-8095
steven.bauer@lw.com
margaret.tough@lw.com
nicole.valco@lw.com
katherine.rouse@lw.com

Matthew J. Peters (CPF No. 1212120369)
LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004-1304
Telephone: (202) 637-2200
Facsimile: (202) 637-2201
matthew.peters@lw.com

Jameson R. Jones (*pro hac vice*)
Daniel R. Brody (*pro hac vice*)
BARTLIT BECK LLP
1801 Wewatta Street, Suite 1200
Denver, CO 80202
Telephone: (303) 592-3123
Facsimile: (303) 592-3140
jarneson.Jones@bartlit-beck.com
dan.brody@bartlit-beck.com

David B. Hamilton (CPF No. 8406010156)
A. Neill Thupari
William F. Kiniry, III
DLA PIPER LLP (US)
650 S. Exeter Street, 11th Floor
Baltimore, MD 21202
Telephone: (410) 580-4120
david.hamilton@us.dlapiper.com
neill.thupari@us.dlapiper.com
William.kiniryIII@us.dlapiper.com

Rebecca Weinstein Bacon
BARTLIT BECK
54 W. Hubbard Street
Chicago, IL 60654
(312) 494-4400
Rweinstein.bacon@bartlitbeck.com

Counsel for Defendants
CONOCOPHILLIPS,
CONOCOPHILLIPSCO, and
LOUISIANA LAND AND EXPLORATION
CO LLC

Linda Woolf
Richard Barnes
Sean Gugerty
Derek Stikeleather
GOODELL, DEVRIES, LEECH & DANN
One South Street, 20th Floor
Baltimore, MD 21202
Telephone: (410) 783-4011
lsw@gdldlaw.com
rmb@gdldlaw.com
sgugerty@gdldlaw.com
dstikeleather@gdldlaw.com

Theodore V. Wells, Jr. (*pro hac vice*)
Daniel J. Toal (*pro hac vice*)
Yahonnes Cleary (*pro hac vice*)
Caitlin E. Grusauskas (*pro hac vice*)
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: (212) 373-3089
Facsimile: (212) 492-0089
twells@paulweiss.com
dtoal@paulweiss.com
ycleary@paulweiss.com
cgrusauskas@paulweiss.com

Counsel for Defendants EXXON MOBIL CORPORATION and EXXONMOBIL OIL CORPORATION

Warren N. Weaver (CPF No. 8212010510)
WHITEFORD TAYLOR & PRESTON LLP
7 Saint Paul Street., Suite 1400
Baltimore, MD 21202
Telephone: (410) 347-8757
Facsimile: (410) 223-4177
wweaver@whitefordlaw.com

Nathan P. Eimer (*pro hac vice*)
Pamela R. Hanebutt (*pro hac vice*)
Lisa S. Meyer (*pro hac vice*)
ELMER STAHL LLP
224 S. Michigan Avenue, Suite 1100
Chicago, IL 60604
Telephone: (312) 660-7600
Facsimile: (312) 435-9348
neimer@eimerstahl.com
phanebutt@eimerstahl.com
lmeyer@eimerstahl.com

Robert E. Dunn
ELMER STAHL LLP
99 South Almaden Blvd, Suite 600
San Jose, CA 95113
rdunn@eimerstahl.com

Counsel for Defendant CITGO PETROLEUM CORPORATION

Shannon S. Broome (*pro hac vice*)
Ann Marie Mortimer
HUNTON ANDREWS KURTH LLP
50 California Street, Suite 1700
San Francisco, CA 94111
Telephone: (415) 975-3700
Facsimile: (415) 975-3701
sbroome@huntonak.com
amortimer@HuntonAK.com

Shawn Patrick Regan (*pro hac vice*)
HUNTON ANDREWS KURTH LLP
200 Park Avenue, 52nd Floor
New York, NY 10166
Telephone: (212) 309-1000
Facsimile: (212) 309-1100
sregan@huntonak.com

Perie Reiko Koyama (CPF No.
1612130346)
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: (202) 778-2247
Facsimile: (202) 778-2201
PKoyarna@huntonAK.com

Sandy C. Collins
HUNTON ANDREWS KURTH LLP
Riverfront Plaza East Tower
951 E. Byrd Street
Richmond, VA 23219
Telephone: (804) 788-8692
scollins@HuntonAK.com

*Counsel for Defendants MARATHON
PETROLEUM CORPORATION and
SPEEDWAY LLC*

Daniella A. Einik (CPF No. 1012140232)
Noel J. Francisco
David M. Morrell
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
deinik@jonesday.com
njfancisco@jonesday.com
dmorell@jonesday.com

Joseph Parsons
Andy Stanton
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219
Telephone: (412) 394-9590
jparsons@jonesday.com
astanton@jonesday.com
David C. Kiernan
JONES DAY
555 California Street, 26th Floor
San Francisco, CA 94104
Telephone: (415) 875-5745
dkiernan@jonesday.com

J. Benjamin Aguiñaga
JONES DAY
2727 N. Harwood Street, Suite 500
Dallas, TX 75201
Telephone: (214) 220-3939
jbaguinaga@jonesday.com

*Counsel for Defendant CNX RESOURCES
CORPORATION (#24)*

<p>Thomas K. Prevas (CPF No. 0812180042) SAUL EWING ARNSTEIN & LEHR LLP 1001 Fleet Street, 9th Floor Baltimore, MD 21202 Telephone: (410) 332-8683 Facsimile: (410) 332-8123 thomas.prevas@saul.com</p> <p>Michelle N. Lipkowitz (CPF No. 0212180016) MINTZ LEVIN 555 12th Street NW Suite 1100 Washington, DC 20004 Telephone: (202) 434-7448 MNLipkowitz@mintz.com</p> <p><i>Counsel for Defendants CROWN CENTRAL LLC and CROWN CENTRAL NEW HOLDINGS LLC</i></p>	<p>Martha Thomsen (CPF No. 1212130213) Megan Berge (<i>admitted pro hac vice</i>) Sterling Marchand BAKER BOTTS L.L.P. 700 K St. NW Washington, D.C. 20001 Telephone: (202) 639-1308 Facsimile: (202) 639-1171 martha.thomsen@bakerbotts.com megan.berge@bakerbotts.com Sterling.Marchand@bakerbotts.com</p> <p>Scott Janoe (<i>pro hac vice</i>) BAKER BOTTS L.L.P. 910 Louisiana Street Houston, Texas 77002 Telephone: (713) 229-1553 Facsimile: (713) 229-7953 Scott.janoe@bakerbotts.com <i>Counsel for Defendant HESS CORP.</i></p>
<p>Steven M. Bauer (<i>pro hac vice</i>) Margaret A. Tough (<i>pro hac vice</i>) Katherine A. Rouse Nicole C. Valco LATHAM & WATKINS LLP 505 Montgomery Street, Suite 2000 San Francisco, CA 94111-6538 Telephone: (415) 391-0600 Facsimile: (415) 395-8095 steven.bauer@lw.com margaret.tough@lw.com katherine.rouse@lw.com Nicole.valco@lw.com</p> <p>Matthew J. Peters (CPF No. 1212120369) LATHAM & WATKINS LLP 555 Eleventh Street NW, Suite 1000 Washington, DC 20004-1304 Telephone: (202) 637-2200 Facsimile: (202) 637-2201 matthew.peters@lw.com</p> <p><i>Counsel/or Defendants PHILLIPS 66 (#17) and PHILLIPS 66 CO. (#18)</i></p>	<p>Jerome A. Murphy (CPF No. 9212160248) Kathleen Taylor Sooy (<i>pro hac vice</i>) Tracy A. Roman (<i>pro hac vice</i>) CROWELL & MORING LLP 1001 Pennsylvania Ave, NW Washington, DC 20004 Telephone: (202) 624-2500 Facsimile: (202) 628-5116 jmurphy@crowell.com ksooy@crowell.com troman@crowell.com</p> <p>Honor R. Costello (<i>pro hac vice</i>) CROWELL & MORING LLP 590 Madison Avenue New York, NY 10022 Telephone: (212) 223-4000 Facsimile: (212) 223-4134 hcostello@crowell.com</p> <p><i>Counsel/or Defendants CONSOL ENERGY INC. (#25) and CONSOL MARINE TERMINALS LLC. (#26)</i></p>

John B. Isbister (CPF No. 7712010171)
Jaime W. Luse (CPF No. 0212190011)
TYDINGS & ROSENBERG LLP
One East Pratt Street, Suite 901
Baltimore, MD 21202
Tel: (410) 752-9700
Fax: (410) 727-5460
jisbister@tydings.com
jluse@tydings.com

Nancy G. Milburn (*pro hac vice*)
Diana E. Reiter (*pro hac vice*)
**ARNOLD & PORTER KAYE
SCHOLER LLP**
250 West 55th Street
New York, NY 10019
Tel: (212) 836-8000
Fax: (212) 836-8689
nancy.milburn@arnoldporter.com
diana.reiter@arnoldporter.com

John D. Lombardo (*pro hac vice*)
**ARNOLD & PORTER KAYE
SCHOLER LLP**
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Tel: (213) 243-4000
Fax: (213) 243-4199
john.lombardo@arnoldporter.com

*Counsel for Defendants BP P.L.C., BP
America Inc., and BP Products North
America Inc.*