

CITY OF ANNAPOLIS,

*Plaintiff,*

v.

BP PLC, ET AL.,

*Defendants.*

IN THE

CIRCUIT COURT FOR

ANNE ARUNDEL COUNTY

MARYLAND

Case No.: C-02-CV-21-000250

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ANNE ARUNDEL COUNTY  
MARYLAND,

*Plaintiff,*

v.

BP PLC, ET AL.,

*Defendants.*

IN THE

CIRCUIT COURT FOR

ANNE ARUNDEL COUNTY

MARYLAND

Case No.: C-02-CV-21-000565

\* \* \* \* \*

**MEMORANDUM OPINION AND ORDER OF COURT**

**I. INTRODUCTION**

Before this Court are the respective and collective Motions to Dismiss Plaintiffs' First Amended Complaint filed by the Defendants in the above cases and the Plaintiffs' Oppositions to those Motions.

The Court's previous Memorandum and Order of Court disposing of the original Motions to Dismiss filed by the Defendants, docketed on May 16, 2024 dismissed certain Counts of the Complaint as well as the only Count against Defendant, American Petroleum Institute. In doing so, the Court granted leave to amend to the Plaintiffs to add a Conspiracy Count, claim punitive damages, and a separate Conspiracy Count against the Defendant, American Petroleum Institute. There was no leave to amend the other previous dismissals.

1/23/2025 KMC

### **A. History of Case After Court's Ruling on Original Motions to Dismiss**

Since the Court's ruling on the original Motions to Dismiss, Plaintiffs filed First Amended Complaints on June 17 and 25, 2024. The Defendants thereafter filed Motions to Stay and a Memorandum of Law in Support of Defendants' Motion to Stay on August 16, 2024. An Opposition and Reply were filed in response thereto. A Memorandum and Order of Court was docketed on September 13, 2024.

That Memorandum and Order of Court denied the Defendants' Motion to Stay without prejudice. It further ordered that the proceedings, pleadings, and deadlines set forth in this Court's Orders docketed June 13, 2024, June 20, 2024, and June 21, 2024 shall remain in full force and effect, that the Court shall further review and consider the Defendants' Motion to Stay after disposition of the pending Motions to Dismiss Amended Complaints not later than before or at the Case Management and Scheduling Conference on January 31, 2025. This Court's Orders stayed all discovery until January 31, 2025 subject to further Order of Court. A Motions Hearing took place on October 25, 2024.

### **B. Other Cases**

The context of these cases is that similar litigation is going on all over the country. The Defendants have brought several cases to this Court's attention. One of those cases is *City of New York v. Chevron Corporation*, 993 F.3d 81 (2021) ("New York case"), where the Second Circuit affirmed the granting of the Defendants Motion to Dismiss on the grounds that the claims are preempted by federal common and statutory law. Another one of those cases is from the Superior Court of the State of Delaware in the case *State ex rel. Jennings v. BP Am. Inc.*, C.A. No. N20C-09-097 EMD CCLD, in October of 2024 where the Trial Court was requested to grant a partial final judgment in order to establish a final judgment which could be appealed. The Court at an

earlier point granted in part and denied in part Defendants' motions to dismiss the Complaint. *State ex rel. Jennings v. BP Am. Inc.*, 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024) ("Delaware case"). In addition, in the case *City & Cnty. of Honolulu v. Sunoco, LP.*, 537 P.3d 1173 (Haw. 2023), the Hawaii Supreme Court denied the Motion to Dismiss holding that the state claims had not been preempted by federal common or statutory law. On January 13, 2025 the United States Supreme Court denied the pending Petitions for Writs of Certiorari in the Hawaii cases without dissent thereby leaving in place the Hawaii Supreme Court's unanimous holding that federal law does not preempt the City of Honolulu's climate-deception claims.

### **C. Circuit Court for Baltimore City Case**

On July 10, 2024, Judge Videtta A. Brown, now Senior Judge Videtta A. Brown, of the Circuit Court for Baltimore City granted Defendants' Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim Upon Which Relief Can Be Granted. *See Mayor & City Council of Baltimore v. BP P.L.C., et al.*, No. 24-C-18-004219 (Md. Cir. Ct. July 10, 2024) ("Baltimore case."). Judge Videtta A. Brown found that "the Constitution's federal structure does not allow the application of state law to claims like those presented by Baltimore." Further, Judge Brown stated: "The instant case goes beyond the limits of Maryland state law" and that "Baltimore's claims cannot survive because they are preempted by federal common law (and the CAA) [Clean Air Act]." *See* Memorandum Opinion and Order at 11, 12, and 14 in *Mayor & City Council of Baltimore v. BP P.L.C., et al.*, No. 24-C-18-004219 (Md. Cir. Ct. July 10, 2024). Judge Brown's decision was appealed to the Appellate Court of Maryland.

### **D. Defendants' Motions to Dismiss Plaintiffs' First Amended Complaint**

This Court notes that the Plaintiffs' First Amended Complaint adds conspiracy counts, but it does not ask for punitive damages for that or any other Count. Individual Motions to Dismiss

Plaintiffs' First Amended Complaints were filed as well as Joint Motions to Dismiss by the Defendants. The arguments made in these Motions include among others that the Court does not have personal jurisdiction over the Defendants, that the new civil conspiracy claims do not allege the requisite agreement with particularity and does not allege any underlying tortious conduct and overall that it fails to adequately plead the conspiracy claims, that the conspiracy claim is time-barred, and that federal law precludes and preempts the application of state law. One of the arguments made regarding personal jurisdiction was that a remand order does not confer personal jurisdiction.

Upon further review, this Court is now persuaded that the logic of the disposition and the authorities cited by Senior Judge Videtta A. Brown in the *Baltimore* case, the ruling by the Superior Court Judge in the *Delaware* case and the ruling in the *New York* case as well as the Second Circuit's affirmance of that ruling compel dismissal of these cases for the reasons stated below.

## **II. CAUSES OF ACTION**

### **A. Original Complaint**

The causes of action in the Original Complaint were Public Nuisance, Private Nuisance, Strict Liability Failure to Warn, Negligent Failure to Warn, Trespass, and the Consumer Protection Act.<sup>1</sup>

### **B. Court's Decision on Motions to Dismiss Original Complaint**

This Court's Memorandum and Order of Court from the original Motions to Dismiss filed by the Defendants was docketed on May 16, 2024. The Order of Court was also docketed on May 16, 2024. The two grounds that were asserted by the Defendants that were alleged in the Joint Motions to Dismiss were: (1) Lack of Personal Jurisdiction and (2) Failure to State a Claim Upon

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<sup>1</sup> See Page 4-6 of the Memorandum and Order of Court, docketed on May 16, 2024.

Which Relief Can Be Granted. The Court denied Defendants' [Joint] Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction, and Request for Hearing. The Court further exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of the Defendants' [Joint] Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim Upon Which Relief Can Be Granted, and Request for Hearing.

When it came to the Defendants Individual Motions to Dismiss, the Court did the following:

- The Court exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of Defendant, CNX Resources Corporation's Individual Motion to Dismiss for Failure to State a Claim.
- The Court denied Defendant, CNX Resources Corporation's Individual Motion to Dismiss for Lack of Personal Jurisdiction.
- The Court exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of Defendant, CITGO Petroleum Corporation's Motion to Dismiss for Failure to State a Claim.
- The Court exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of the Defendants, BP P.L.C., BP America Inc., and BP Products North America Inc.'s Individual Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Request for Hearing.
- The Court exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of the Defendants, CONSOL Energy Inc.'s and CONSOL Marine Terminals LLC's Supplemental Motion to Dismiss for Failure to State a Claim.

- The Court denied the Defendants, CONSOL Energy Inc.'s and Consol Marine Terminals LLC's Supplemental Motion to Dismiss for Lack of Personal Jurisdiction.
- The Court granted the Defendant, American Petroleum Institute's Motion to Dismiss with thirty (30) days leave to amend granted to Plaintiffs to include if alleged a separate conspiracy Count.
- The Court exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of the Defendant, Hess Corp's Supplemental Motion to Partially Dismiss Plaintiff's Complaint for Failure to State a Claim Upon Which Relief Can Be Granted on Statute of Limitation Grounds and Request for Hearing.
- The Court exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of the Defendants, Crown Central LLC's, Crown Central New Holdings LLC's and Rosemore Inc.'s Defendant-Specific Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted.
- The Court exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of the Defendants, Marathon Petroleum Corporation and Speedway LLC's Motion to Dismiss for Failure to State a Claim.
- The Court exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of the Defendants, Chevron Corporation and Chevron U.S.A. Inc Motion to Dismiss the Complaint Under Maryland's ANTI-SLAPP Law, and Request for Hearing.

- The Court exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of the Defendants, Shell PLC and Shell USA, Inc.’s Individual Motion to Dismiss for Failure to State a Claim.
- The Court exercised its discretion pursuant to Maryland Rule 2-322(c) and deferred the determination of the Defendants, Marathon Oil Corporation’s & Marathon Oil Company’s Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted.
- This Court held that if the Plaintiffs desired to allege a “conspiracy” by and against the Defendants, the Plaintiffs were required to plead that in separate Count(s) pursuant to Md. Rule 2-303(a). Plaintiffs were then granted thirty (30) days leave to amend the Complaints to properly allege a conspiracy pursuant to Md. Rule 2-322.
- This Court granted each of the Defendants’ Motions to Dismiss all claims for punitive damages in these cases.

### **C. New Causes of Action**

Plaintiffs in their First Amended Complaint on June 17 and 25, 2024 allege two additional causes of action. Those are Civil Conspiracy (Against Fossil Fuel Defendants)<sup>2</sup> and Civil Conspiracy (Against Defendant, American Petroleum Institute (“API”). The Plaintiffs allege

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<sup>2</sup> According to the First Amended Complaint, Defendants BP (BP P.L.C., BP America, Inc., and BP Products North America, Inc.), Crown Central (Crown Central LLC, Crown Central New Holdings, LLC, and Rosemore, Inc.), Chevron (Chevron Corporation and Chevron U.S.A. Inc.), Exxon (Exxon Mobil Corporation and ExxonMobil Oil Corporation), Shell (Royal Dutch Shell PLC and Shell Oil Company), Citgo (Citgo Petroleum Corporation), ConocoPhillips (ConocoPhillips, ConocoPhillips Company, Phillips 66, and Phillips 66 Company), Marathon (Marathon Oil Corporation, Marathon Oil Company, Marathon Petroleum Corporation, and Speedway LLC), Hess (Hess Corporation), and CONSOL (CNX Resources Corporation, CONSOL Energy Inc., and CONSOL Marine Terminals LLC) are collectively referred to as “Fossil Fuel Defendants.”

among other things in the First Amended Complaint the following in the Seventh Cause of Action, which is the Civil Conspiracy Count against the Fossil Fuel Defendants:

“312. [309.] Fossil Fuel Defendants directly and proximately caused Plaintiff’s injuries by conspiring with each other and other co-conspirators, including API, to conceal and misrepresent the dangers of fossil fuels to consumers and the public; to knowingly withhold material information regarding the consequences of using fossil fuels; to deceptively obscure the connection between fossil fuel consumption and global warming and the environmental, physical, social, and economic consequences flowing from it; and to promote fossil fuel products despite knowing that doing so would exacerbate climate change and its related consequences...

313. [310.] Fossil Fuel Defendants reached an agreement and understanding with each other and their other co-conspirators, including API, to jointly enter into and carry out this conspiracy. . .

314. [311.] Fossil Fuel Defendants and their co-conspirators committed numerous tortious acts in furtherance of the conspiracy and its goals. . .

315. [312.] As set forth above, Fossil Fuel Defendants’ conduct in furtherance of the conspiracy was tortious and unlawful because that conduct, in combination with the acts of their co-conspirators, substantially contributed to the public nuisance in Anne Arundel County [and in Annapolis] alleged herein; substantially contributed to the private nuisance on Plaintiff’s property alleged herein; substantially contributed to trespasses upon Plaintiff’s property alleged herein; breached Fossil Fuel Defendants’ duty to warn consumers of the dangers of their fossil fuel products about which they were aware as alleged herein; and omitted, suppressed, or concealed from Maryland consumers their knowledge of the material fact that the use of their fossil fuel products contributes to climate change in violation of the CPA.

316. [313.] This conspiracy, and the overt acts Fossil Fuel Defendants and their co-conspirators committed in furtherance of the conspiracy, directly and proximately caused Plaintiff’s injuries, and were a substantial factor in causing Plaintiff’s injuries.”

Page 164-167 of Plaintiff’s First Amended Complaint in Case No. C-02-CV-21-000250.  
Page 172-175 of Plaintiff’s First Amended Complaint in Case No. C-02-CV-21-000565.

The Plaintiffs allege among other things in the First Amended Complaint the following in the Eighth Cause of Action, which is the Civil Conspiracy Count against API:



“319. [316.] API directly and proximately caused Plaintiff’s injuries by conspiring with Fossil Fuel Defendants to conceal and misrepresent the dangers of fossil fuels to consumers and the public; to knowingly withhold material information regarding the consequences of using fossil fuels; to deceptively obscure the connection between fossil fuel consumption and global warming and the environmental, physical, social, and economic consequences flowing from it; and to promote fossil fuel products despite knowing that doing so would exacerbate climate change and its related consequences . . .

320. [317.] API reached an agreement and understanding with Fossil Fuel Defendants to jointly enter into and carry out this conspiracy. .

321. [318.] API committed numerous tortious acts in furtherance of the conspiracy and its goals.

322. [319.] As set forth above, API’s conduct in furtherance of the conspiracy was tortious and unlawful because that conduct, in combination with the acts of the Fossil Fuel Defendants, substantially contributed to the public nuisance in Anne Arundel County [and in Annapolis] alleged herein; substantially contributed to the private nuisance on Plaintiff’s property alleged herein; substantially contributed to trespasses upon Plaintiff’s property alleged herein; and omitted, suppressed, or concealed from Maryland consumers their knowledge of the material fact that the use of Fossil Fuel Defendants’ fossil fuel products contributes to climate change in violation of the CPA.

323. [320.] This conspiracy, and the overt acts API and its co-conspirators committed in furtherance of the conspiracy, directly and proximately caused Plaintiff’s injuries, and were a substantial factor in causing Plaintiff’s injuries.

Page 167-170 of Plaintiff’s First Amended Complaint in C-02-CV-21-000250. Page 175-178 of Plaintiff’s First Amended Complaint in C-02-CV-21-000565.

### **III. DISCUSSION ON GROUNDS OF MOTION TO DISMISS FIRST AMENDED COMPLAINT**

This Court has always been aware notwithstanding the impression to the contrary apparently created by my language in the Opinion disposing of the initial Motion to Dismiss in this case that a finding that grounds exist for remanding a case from Federal Court to State Court which were referenced and cited as authority by U.S. District Court Judge Stephanie A. Gallagher

in remand do not establish jurisdiction in the State Court as a matter of law. That said, various previous rulings in the other cases, including in Baltimore City and around the country illustrate that the Federal Courts and State Courts are not of one mind on the ultimate issues which relate to whether State Courts including the Circuit Court for Anne Arundel County can exercise jurisdiction in cases, such as the instant cases.

The result of this failure of state and federal judicial minds to agree on this fundamental issue and to therefore accept responsibility for addressing the possible remedies for the effects of “climate change” and the deception of the public – which are alleged to have contributed to it is the understandable frustration from the public. The frustration is illustrated by the exchange between this Court and Counsel.

THE COURT: -- your position is this Court clearly is not the right forum to address it.

MR. BOUTROUS: Yes.

THE COURT: The Federal court said they weren't the right forum. Who is?

MR. BOUTROUS: Yes, so the Supreme Court name --

THE COURT: It's not for either me or you or anyone else in this room to decide that today. I'm just curious because the public is obviously frustrated that there's no forum to address these issues, and therefore, these lawsuits show up.

Page 6-7 of the Court's Memorandum and Order of Court from the original Motions to Dismiss filed by the Defendants, docketed on May 16, 2024.

For these legal and practical reasons, this Court has now reconsidered its earlier opinion denying the Motions to Dismiss and concludes that Motion should be granted on the grounds of preemption for essentially the same reasons as Judge Videtta A. Brown of the Circuit Court for

Baltimore City granted the same Motion in her Memorandum Opinion and Order in *Mayor and City Council of Baltimore v. BP P.L.C., et al.*, No. 24-C-18-004219 (Md. Cir. Ct. July 10, 2024). The Court acknowledges being persuaded on this second go-round by the Defendants authorities<sup>3</sup> and Judge Videtta A. Brown’s logic.

This Court therefore holds that the U.S. Constitution’s federal structure does not allow the application of State Court claims like those presented in the instant cases. This conclusion is in effect articulated, reiterated and reinforced by the Superior Court of the State of Delaware’s decision in the case *State ex rel. Jennings v. BP Am. Inc.*, 2024 WL 98888 (Del. Super. Ct. Jan. 9, 2024), where the Court granted in part and denied in part Defendants’ motions to dismiss the Complaint. The Superior Court of the State of Delaware found “that claims in this case seeking damages for injuries resulting from out-of-state or global greenhouse emissions and interstate pollution, are pre-empted by the CAA” and that “these claims are beyond the limits of Delaware common law.” *State ex rel. Jennings v. BP Am. Inc.*, 2024 WL 98888, at \*9 (Del. Super. Ct. Jan. 9, 2024).

This holding does not by itself lead to the conclusion that the instant cases in their current form – setting forth State Court tort actions and a violation of the Maryland Consumer Protective Act belong in Federal Court. This Court recognizes that it is certainly not for this State Court or any State Court to tell the Federal Judiciary that it does or does not have jurisdiction over this or any case however it may be pleaded. That said, the U.S. Supreme Court in *American Electric Power Company, Inc. v. Connecticut*, 564 U.S. 410, 131 S.Ct. 2527 (2011) with Justice Ginsburg writing for the Supreme Court of the United States informs what will likely be the ultimate disposition of the issues arising out of the introduction of fossil fuel products into the stream of

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<sup>3</sup> See *Int’l Paper Co. v. Ouellette*, 479 U.S. 481 (1987), *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410 (2011) among others cited by the Defendants.

commerce and the alleged connection between these products and global warming with all of the perceived environmental, physical, social and economic consequences flowing from it. In light of the reality-based logic of that Opinion in *American Electric Power Company, Inc. v. Connecticut*, this Court reconsiders its exercise of discretion pursuant to Maryland Rule 2-322(c) and rules on the second ground for dismissal. This Court now holds that Plaintiffs have failed to state a claim upon which relief can be granted since the Circuit Court for Anne Arundel County's jurisdiction, in the above captioned cases is federally preempted.

The disposition of this issue is a question that the U.S. Supreme Court in *American Electric Power Company, Inc. v. Connecticut* expressly left to lower Federal Courts on another day. For the reasons explained *supra*, the preemption is operable possibly by federal common law but surely by the Federal Clean Air Act.

The Federal Clean Air Act as Justice Ginsburg points out in *American Electric Power Company, Inc. v. Connecticut* clearly prescribes a specific statutory means to seek limits on emissions. The States such as Plaintiffs here, the City of Annapolis and the County of Anne Arundel can participate in the efforts to limit emissions collaboratively, but not in the form of litigation.

As Justice Ginsburg explains in *American Electric Power Company, Inc. v. Connecticut*:

The Act's prescribed order of decisionmaking –first by the expert agency, and then by federal judges – is yet another reason to resist setting emissions standards by judicial decree under federal tort law. The appropriate amount of regulation in a particular greenhouse gas-producing sector requires informed assessment of competing interests. The *Clean Air Act entrusts such complex balancing to EPA in the first instance, in combination with state regulators*. The expert agency is surely better equipped to do the job than federal judges, who lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order.

*American Electric Power Company, Inc. v. Connecticut*, 131 S. Ct. 2527, 2531 (2011).


That judgment about untrained federal judges comparative ability to master complex scientific, economic and technological issues and balance competing and complex interests certainly applies as well to state court judges even in the face of the Supreme Court’s overruling *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

The clear message to be had, and this Court gets it, is as Justice Ginsburg for a unanimous Supreme Court says is that there is a prescribed order of decision-making—first by the expert then by *federal* judges. If states and municipalities even private parties are dissatisfied with the Federal rule making or the outcome of cases, they may seek federal court review. “There is no room for a parallel track” (federal or state). *American Electric Power Company, Inc. v. Connecticut*, 131 S. Ct. 2527, 2531 (2011).

#### IV. CONCLUSION

The Court reaches the same conclusion that Judge Videtta A. Brown of the Circuit Court for Baltimore City reaches in her case *Mayor & City Council of Baltimore v. BP P.L.C., et al.*, No. 24-C-18-004219 (Md. Cir. Ct. July 10, 2024), which is this Court need not consider the individual state law claims. However, unlike Judge Videtta A. Brown, this Court yields to its further conclusion that if one or more Maryland Appellate Courts ultimately reach a different conclusion and reverse this decision this case will no doubt come back on remand regardless of this Court’s decision on the state law claims against individual Defendants. The Court therefore declines to reach those issues at this time. An Order will follow this Memorandum Opinion and Order of Court.

11/23/25  
Date

  
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Steven I. Platt, Senior Judge  
Circuit Court for Anne Arundel County