

CITY OF ANNAPOLIS,

Plaintiff,

v.

BP PLC, ET AL.,

Defendants.

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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.

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IN THE
CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY
MARYLAND
Case No.: C-02-CV-21-000565

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MEMORANDUM AND ORDER OF COURT

Before this Court are the respective and collective Motions to Dismiss filed by the Defendants in the above captioned cases and the Plaintiffs' Oppositions to those Motions. The history which explains the reasons why these cases are in the Circuit Court for Anne Arundel County, Maryland and not in The United States District Court for the District of Maryland is thoroughly explained by U.S. District Court Judge Stephanie A. Gallagher in the Memorandum Opinion in Case: 1:21-cv-01323-SAG, Document 150, Filed 09/29/22. For the reasons set forth in Judge Gallagher's Opinion the journey of these cases to the Federal Court from this Court and back will not be repeated here.

The gravamen of the two substantively identical Complaints by the City of Annapolis, Maryland and Anne Arundel County, Maryland against the Defendants named as "major corporate

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members of the fossil fuel industry” are that these Defendants committed five Maryland common-law torts and that they violated the Maryland Consumer Protection Act when they allegedly concealed climate-related harms to the environment caused by fossil fuels. Specifically, the Complaints in both cases charge the commission of six (6) Maryland causes of action: (1) Public Nuisance, (2) Private Nuisance, (3) Strict Liability/Failure to Warn, (4) Negligent Failure to Warn, (5) Trespass, and (6) Violations of Maryland’s Consumer Protection Act.

As U.S. District Court Judge Stephanie A. Gallagher noted and the undersigned agrees with, Plaintiffs’ accurately summarize their allegations as follows:

Defendants’ individual and collective conduct, including, but not limited to, their introduction of fossil fuel products into the stream of commerce while knowing but failing to warn of the threats posed to the world’s climate; their wrongful promotion of their fossil fuel products and concealment of known hazards associated with the use of those products; their public deception campaigns designed to obscure the connection between their products and global warming and the environmental, physical, social, and economic consequences flowing from it; and their failure to pursue less hazardous alternatives; actually and proximately caused the City’s injuries. In other words, Defendants’ concealment and misrepresentation of their products’ known dangers—and simultaneous promotion of their unrestrained use—drove consumption, and thus greenhouse gas pollution, and thus the climate crisis.

It is important to note that none of the parties take issue with the fact, not denied for obvious reasons that the Defendants produce, support and market the production of oil and gas as well as their products. Rather, the Defendants take issue with the allegations of the Plaintiffs that individually and collectively Defendants concealed the harms caused by their products while promoting their use and also failed to warn consumers regarding the perils and dangers stemming from their continued use.

Maryland Rule 2-322 – Preliminary Motions governs the disposition of the substantively

identical pending Motions to Dismiss. In pertinent part it states as follows:

(a) Mandatory. The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

(b) Permissive. The following defenses may be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the subject matter, (2) failure to state a claim upon which relief can be granted, (3) failure to join a party under Rule 2-211, (4) discharge in bankruptcy, and (5) governmental immunity. If not so made, these defenses and objections may be made in the answer, or in any other appropriate manner after answer is filed.

(c) Disposition. A motion under sections (a) and (b) of this Rule shall be determined before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend. The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action. If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

This Court in exercising its discretion formally on the remand from Federal Court advised the parties and their counsel that it would **not** consider matters outside the pleadings at this stage of the proceedings and therefore would not convert and address the pending Motions as Motions for Summary Judgment. Rather, consideration of the Motions would be limited to the issues raised by the pleadings. This Court will therefore proceed accordingly.

The elements for each of the six (6) causes of action are:

1. First Cause of Action – Public Nuisance

The Restatement (Second) of Torts defines a public nuisance as:

(1) A public nuisance is an unreasonable interference with a right common to the general public.

(2) Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:

- (a) Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
- (b) whether the conduct is proscribed by a statute, ordinance or administrative regulation, or
- (c) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

Restatement (Second) of Torts § 821B (1979).

2. Second Cause of Action – Private Nuisance

The Appellate Court of Maryland (formerly the Maryland Court of Special Appeals) stated in *Blue Ink, Ltd. v. Two Farms, Inc.*, 218 Md. App. 77 (2014) that: “Maryland requires that in order to recover for private nuisance, a plaintiff must demonstrate that the defendant’s interference with plaintiff’s property rights is both unreasonable and substantial, and that the harm or inconvenience created by such interference is ‘objectively reasonable’ to the ordinary person.” *Id.* at 80. That said, “Maryland courts have adopted Section 821D of the Restatement (Second) of Torts (1965), which more narrowly defines a private nuisance as ‘a nontrespassory invasion of another’s interest in the private use or enjoyment of land.’” *Id.* at 92 (citations omitted). In addition, “[a] finding of private nuisance requires a two-part analysis: (1) viewing the defendant’s activity, was the interference unreasonable and substantial? and (2) viewing the plaintiff’s alleged harm, was the inconvenience or harm caused by the interference objectively reasonable?” *Id.* at 94.

3. Third Cause of Action – Strict Liability Failure to Warn

The Maryland Civil Pattern Jury Instructions 26:17 (Strict Tort Liability-Duty of Manufacturer to Warn) states:

If despite exercising reasonable care in the design, manufacturing, testing, and inspection of the product, the product still cannot be made safe for its reasonably foreseeable use, and the dangerous condition is not obvious to the user of the product, the manufacturer has a duty to give an adequate warning of the danger.

MPJI-CV 26:17.

4. Fourth Cause of Action – Negligent Failure to Warn

The Maryland Civil Pattern Jury Instructions 26:3 (Supplier’s Duty to Warn) states:

A supplier of a product must give adequate warnings of those dangers which are known to it or by the use of reasonable care should be known to it and which would not be obvious to users.

A failure to fulfill that duty is negligence.

MPJI-CV 26:3.

5. Fifth Cause of Action – Trespass

The Appellate Court of Maryland (formerly the Maryland Court of Special Appeals) stated in *Uthus v. Valley Mill Camp, Inc.*, 243 Md. App. 539 (2019) that: “The tort of trespass is defined as ‘an intentional or negligent intrusion upon or to the possessory interest in property of another.’” *Id.* at 555 (citation omitted). Further, that “‘In order to prevail on a cause of action for trespass, the plaintiff must establish: (1) an interference with a possessory interest in his property; (2) through the defendant's physical act or force against that property; (3) which was executed without his consent.’” *Id.* (citation omitted).

6. Sixth Cause of Action – Consumer Protection Act

The Maryland Civil Pattern Jury Instructions 7:9 (Private Cause of Action Created by Maryland Consumer Protection Act) states:

To recover for unfair, abusive, or deceptive trade practices, a consumer must prove that a merchant:

[Engaged in an unfair, abusive, or deceptive trade practice as defined in § 13-301 of the Com. Law Article and applicable to the evidence in this case] that

Resulted in actual injury or harm to the plaintiff that was a reasonably foreseeable consequence of the defendant's trade practice.

MPJI-CV 7:9.

The two grounds 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 Which Relief Can Be Granted.

With respect to the Defendants' Joint Motion to Dismiss on the ground that this Court lacks personal jurisdiction over the Defendants because the Defendants are not subject to "general jurisdiction" in Maryland, this Court's short answer is that the Defendants' Motion on this ground will be **DENIED** for essentially the reasons stated by U.S. District Court Judge Stephanie A. Gallagher in her Opinion remanding these cases back to this State Court and illustrated by this Court's exchange with designated counsel for the Defendants at the Hearing on the Motions. The transcript of the proceedings reflects as follows:

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.

In a nutshell then, this Court agrees with Judge Gallagher's Opinion in this case citing the majority of federal district and circuit courts around the country concluding “. . . that these state law claims for private misconduct belong in state court.”

In addition for these same reasons the Joint Defendants' Motion to Dismiss on the grounds that Defendants are not subject to the “specific jurisdiction” in Maryland because the Plaintiffs' “. . . claims do not ‘arise out of or relate to’ Defendants' alleged contacts with Maryland. . .” and therefore “[e]xercising [p]ersonal [j]urisdiction [o]ver Defendants [w]ould [b]e [u]nreasonable [a]nd [c]onflict [w]ith [p]rinciples [o]f [f]ederalism” will be **DENIED**. A quick look at the Plaintiffs' Complaints reveal ample language alleging more than sufficient “contacts” with Maryland which if shown can justify the invoking of the specific jurisdiction of this Court. This is particularly true in light of the mandate of Maryland Rule 2-303 Form of Pleadings requiring only “. . . statements of fact as may be necessary to show the pleader's entitlement to relief” as well as the admonition that the pleading “. . . shall not include arguments, unnecessary recitals of law, evidence, or documents. . .”

With respect to the second ground asserted by all Defendants to support their Joint Motion to Dismiss “Failure to State a Claim Upon Which Relief Can Be Granted” this Court's short disposition of that Motion is to exercise its discretion pursuant to Maryland Rule 2-322(c) and defer the determination of the defense of failure to state a claim upon which relief can be granted until trial and/or until a further dispositive motion is considered after facts are discovered which

can or cannot support the allegations of the Plaintiffs' Complaint. That having been said and done, the parties and their counsel should notice this Court's focus on the clear requirement that facts be discovered and proven which not only constitute the causes of action pleaded, but equally, importantly justify the entry of a "*judgment for the relief requested*" (emphasis added).

That will necessitate a thorough practical review and critical examination of the nature of the relief requested and any federal and/or state statutory, regulatory or juridical impediments to the granting and implementation of such relief.

This Court will now proceed to rule on the merits of each individual Defendants' Motion to Dismiss and the grounds therefore.

INDIVIDUAL DEFENDANTS' MOTIONS TO DISMISS

Defendant, CNX Resources Corporation's Individual Motion to Dismiss for Failure to State a Claim and for Lack of Personal Jurisdiction and Request for Hearing and Memorandum of Law in Support of its Individual Motion to Dismiss for Failure to State a Claim and for Lack of Personal Jurisdiction (10/2/2023)

Defendant, CNX Resources Corporation in its Individual Motion to Dismiss for Failure to State a Claim and for Lack of Personal Jurisdiction and Request for Hearing and Memorandum of Law in Support of its Individual Motion to Dismiss for Failure to State a Claim and for Lack of Personal Jurisdiction first argues that the Complaint fails to state a claim as ". . . the Complaint does not allege that CNX [Resources Corporation] made any misrepresentations or had any special knowledge that it concealed." Further, Defendant, CNX Resources Corporation argues that ". . . the Complaint alleges no facts suggesting that CNX [Resources Corporation] had actual or constructive knowledge about the dangers of climate change or the role its products allegedly played in contributing to climate change before such knowledge became readily available to the public."

The Court finds that the Plaintiffs' have sufficiently plead under Maryland Rule 2-303(b), which requires only “. . . statements of fact as may be necessary to show the pleader's entitlement to relief. . .” as well as the admonition that the pleading “. . .shall not include arguments, unnecessary recitals of law, evidence, or documents. . .” This Court will therefore exercise its discretion pursuant to Maryland Rule 2-322(c) and defer the determination of the defense of failure to state a claim upon which relief can be granted until trial and/or a further dispositive motion is considered after facts are discovered which can or cannot support the allegations of the Plaintiffs' Complaints. That having been said and done, this Court again suggests that the parties and counsel should notice this Court's repeated focus on the clear requirement that evidentiary facts be discovered and proven which are legally sufficient to generate or refer to a jury or other fact-finder the determination as to whether the elements of each state tort pleaded have been proven to the extent necessary to not only persuade the fact-finder that commission of the tort has taken place but also to justify the relief requested as well as this Court's authority to grant that specific relief.

Defendant, CNX Resources Corporation also alleges in its Individual Motion to Dismiss for Failure to State a Claim and for Lack of Personal Jurisdiction and Request for Hearing and Memorandum of Law in Support of its Individual Motion to Dismiss for Failure to State a Claim and for Lack of Personal Jurisdiction that this Court lacks personal jurisdiction over the Corporation. One of the arguments that Defendant, CNX Resources Corporation makes “. . . is that the Complaint does not identify a single CNX [Resources Corporation] misrepresentation (or even a statement) made in Maryland.” The Court will deny this for the reasons set forth, *supra*.

Defendant, CITGO Petroleum Corporation’s Motion to Dismiss for Failure to State a Claim and Memorandum of Law in Support of its Motion to Dismiss for Failure to State a Claim (10/2/2023)

Defendant, CITGO Petroleum Corporation in its Motion to Dismiss for Failure to State a Claim and Memorandum of Law in Support of its Motion to Dismiss for Failure to State a Claim argues that “. . . the Complaint would have to be dismissed as to CITGO [Petroleum Corporation] because it does not sufficiently allege (i) that CITGO [Petroleum Corporation] made, or can be held responsible for, *any* misrepresentations about the connection between oil and gas products and global climate change, or (ii) that CITGO [Petroleum Corporation] had special knowledge that use of its products would likely contribute to climate change.” The Court will exercise its discretion pursuant to Maryland Rule 2-322(c) and defer on this defense for the reasons set forth, *supra*.

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 and Memorandum of Law in Support of BP P.L.C., BP America Inc., and BP Products North America Inc.’s Individual Motion to Dismiss for Failure to State a Claim (10/2/2023)

Defendants, BP P.L.C., BP America Inc., and BP Products North America Inc.’s in its Individual Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Request for Hearing and Memorandum of Law in Support of BP P.L.C., BP America Inc., and BP Products North America Inc.’s Individual Motion to Dismiss for Failure to State a Claim argues that “[f]irst, the Complaint fails to plead a single ‘climate change denial’ statement by BP[,]” “[s]econd, Plaintiff[s]’ ‘greenwashing’ theory of MCPA [Maryland Consumer Protection Act] liability against BP is equally unavailing[,]” “[t]hird, Plaintiff[s]’ cannot state a claim under the MCPA against BP based on BP’s alleged statements about Invigorate (a gasoline additive) and BP Diesel[,]” and “[f]ourth, Plaintiff[s]’ general allegation that ‘Defendants’ advertising and promotional materials fail[ed] to disclose the extreme safety risk associated with the use of fossil

fuel products’ cannot support an MCPA claim against BP.” The Court will exercise its discretion pursuant to Maryland Rule 2-322(c) and defer on this defense for the reasons set forth, *supra*.

**Defendants, CONSOL Energy Inc.’s and CONSOL Marine Terminals LLC’s
Supplemental Motion to Dismiss for Failure to State a Claim and Memorandum of Law in
Support of Their Supplemental Motion to Dismiss for Failure to State a Claim and
Defendants, CONSOL Energy Inc.’s and CONSOL Marine Terminals LLC’s
Supplemental Motion to Dismiss for Lack of Personal Jurisdiction and Memorandum of
Law in Support of their Supplemental Motion to Dismiss for Lack of Personal Jurisdiction
(10/2/2023)**

Defendants, CONSOL Energy Inc. and CONSOL Marine Terminals LLC in its Supplemental Motion to Dismiss for Failure to State a Claim and Memorandum of Law in Support of Their Supplemental Motion to Dismiss for Failure to State a Claim argues that “. . . the complaint does not allege that CONSOL Energy or CONSOL Marine made any misrepresentations that deceived Maryland consumers or the public about their products’ connection to global climate change or that CONSOL Energy or CONSOL Marine had any special knowledge that use of their products would likely contribute to climate change.” The Court will exercise its discretion pursuant to Maryland Rule 2-322(c) and defer on this defense for the reasons set forth, *supra*.

Defendants, CONSOL Energy Inc. and CONSOL Marine Terminals LLC Supplemental Motion to Dismiss for Lack of Personal Jurisdiction and Memorandum of Law in Support of their Supplemental Motion to Dismiss for Lack of Personal Jurisdiction claim that the Plaintiffs’ cannot establish personal jurisdiction over them under Maryland law. The Court will deny this for the reasons set forth, *supra*.

**Defendant, American Petroleum Institute’s Motion to Dismiss and Memorandum of Law in
Support of its Motion to Dismiss (10/2/2023)**

Defendant, American Petroleum Institute in its Motion to Dismiss and Memorandum of Law in Support of its Motion to Dismiss moves to dismiss the only count in both Complaints

against it, to wit: violation of the Maryland Consumer Protection Act (MCPA) because the actions and speech attributed to it in Plaintiffs' Complaints do not constitute "the sale of consumer goods." Further, Defendant, American Petroleum Institute claims that the Plaintiffs' "attempt[s] to punish API's [American Petroleum Institute] advocacy violates bedrock constitutional guarantees."

The Complaints allege that the Defendant, American Petroleum Institute "[o]ver the last fifteen years, [has] spent substantial amounts on television, newspaper, radio, and internet advertisements in the Maryland market." Md. Code, Commercial Law § 13-104 sets forth the exemptions regarding the Maryland Consumer Protection Act. Md. Code, Commercial Law § 13-104(3) states:

This title does not apply to:

(3) A television or radio broadcasting station or a publisher or printer of a newspaper, magazine, or other form of printed advertising who broadcasts, publishes, or prints an advertisement which violates this title, unless the station, publisher, or printer engages in an unfair or deceptive trade practice in the sale of its own goods or services or has knowledge that the advertising is in violation of this title.

Md. Code, Comm. Law § 13-104(3).

The Complaints allege that the Defendant, American Petroleum Institute ". . . is the country's largest oil trade association." The Complaints further allege that the Defendant, American Petroleum Institute's ". . . purpose is to advance its individual members' collective business interests, which includes increasing consumer consumption of oil and gas to Fossil Fuel Defendants' financial benefits" and that "[a]mong other functions, API also coordinates among members of the petroleum industry, gathers information of interest to the industry, and disseminates that information to its members."

The Maryland Court of Special Appeals, now the Appellate Court of Maryland, in *Hogan vs. Maryland State Dental Association*, 155 Md. App. 556 (2004) stated that the Maryland Consumer Protection Act “. . . allows consumers to recover from persons who engage in deceptive trade practices related to the sale or offering for sale of consumer goods, consumer realty, or consumer services; the extension of consumer credit; or the collection of consumer debts.” *Id.* at 563 (citations omitted). The Appellate Court of Maryland further stated: “Section 13-303 states that a ‘person’ who offers to sell or sells consumer goods may not engage in deceptive trade practices related to that offer or sale.” *Id.* Also, that “[a] ‘person’ is a ‘merchant’ because section 13-101(g) defines ‘merchant’ as one who ‘directly or indirectly either offers or makes available to consumers any consumer goods. . . .” *Id.* This Court finds that the Defendant, American Petroleum Institute is not a “person/merchant” within the meaning of the Maryland Consumer Protection Act as the Defendant, American Petroleum Institute advocates rather than sells or offers to sell consumer goods. The Court will **GRANT** Defendant, American Petroleum Institute’s Motion to Dismiss and Defendant, American Petroleum Institute will be dismissed from both of these cases. However, it appears that Plaintiffs are attempting to allege a “conspiracy,” which directly includes Defendant, American Petroleum Institute as a conspirator. If so, Plaintiffs will be granted thirty (30) days leave to amend their respective Complaints to properly plead in a separate Count that conspiracy as a separate cause of action to include Defendant, American Petroleum Institute.

The language alleging a “conspiracy” is in the Complaint on page 41 and 43 in the Sections labeled “Agency” and “Jurisdiction and Venue” in the *City of Annapolis vs. BP PLC, et al.* case and in the Complaint on pages 43 and 45 in the *Anne Arundel County Maryland vs. BP PLC, et al.* case in the Sections labeled “Agency” and “Jurisdiction and Venue.” Notwithstanding the labeling of the Defendants’ conduct as a “conspiracy” in the Complaints, Plaintiffs have not pleaded that

cause of action in the manner that would allow the Defendants to respond definitively and directly.

Md. Rule 2-303(a) states:

(a) Paragraphs, Counts, and Defenses. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each cause of action shall be set forth in a separately numbered count. Each separate defense shall be set forth in a separately numbered defense.

If Plaintiffs are alleging “conspiracy” they will be required to plead it in a separate Count, as required by Md. Rule 2-303(a). If they desire to do so, this Court will grant them that opportunity and for that reason, pursuant to Md. Rule 2-322, the Plaintiffs are granted thirty (30) days leave to amend the Complaints to properly allege a conspiracy.

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 Limitations Grounds and Request for Hearing and Memorandum of Law in Support of its Supplemental Motion to Partially Dismiss Plaintiff’s Complaint for Failure to State a Claim Upon Which Relief Can Be Granted on Statute of Limitations Grounds (10/2/2023)

Defendant, Hess Corp in its Supplemental Motion to Partially Dismiss Plaintiff’s Complaint for Failure to State a Claim Upon Which Relief Can Be Granted on Statute of Limitations Grounds and Request for Hearing and Memorandum of Law in Support of its Supplemental Motion to Partially Dismiss Plaintiff’s Complaint for Failure to State a Claim Upon Which Relief Can Be Granted on Statute of Limitations Grounds argues that “. . . Plaintiff[s]’ Complaint lack[] *any* specific allegations regarding conduct by Hess [Corp] that is violative of the MCPA [Maryland Consumer Protection Act], let alone conduct within the three years preceding the filing of the Complaint.” Further, Defendant, Hess Corp alleges that “. . . Plaintiff[s]’ cannot allege such conduct because by that time Hess [Corp] had ceased all retail sales of oil and gas products in Maryland, including any advertising and/or marketing that could have formed the basis

of Plaintiff[s'] MCPA claim[]” and that “. . . any discussion of tolling or concealment of the statute of limitations by Plaintiff[s'] [are] unavailing.” The Court will exercise its discretion pursuant to Maryland Rule 2-322(c) and defer on this defense for the reasons set forth, *supra*.

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 and Memorandum in Support of Crown Central LLC's, Crown 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 (10/2/2023)

Defendants, Crown Central LLC's, Crown Central New Holdings LLC's and Rosemore Inc.'s in its Defendant-Specific Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Memorandum in Support of Crown Central LLC's, Crown 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 argues that “Plaintiff[s'] [have] [f]ailed to [p]lead [m]isrepresentation with the [r]equisite [p]articularity[,]” “Plaintiff[s'] [have] [n]ot and [c]annot [e]stablish the Crown-Affiliated Entitites [u]ndertook [a]ny [c]onduct, [i]ncluding MCPA [Maryland Consumer Protection Act] [v]iolative [c]onduct, [w]ithin the [a]pplicable [s]tatute of [l]imitations” and that “Plaintiff[s'] [have] [f]ailed to [m]eet the [m]inimum [p]leading [r]equirements under Maryland [l]aw.” The Court will exercise its discretion pursuant to Maryland Rule 2-322(c) and defer on this defense for the reasons set forth, *supra*.

Defendants, Marathon Petroleum Corporation and Speedway LLC's Motion to Dismiss for Failure to State a Claim and Memorandum of Law in Support of Their Motion to Dismiss for Failure to State a Claim (10/2/2023)

Defendants, Marathon Petroleum Corporation and Speedway LLC in its Motion to Dismiss for Failure to State a Claim and Memorandum of Law in Support of Their Motion to Dismiss for Failure to State a Claim argue that the “Plaintiff[s'] fail[] to state a claim. . .” as well as “Plaintiff[s'] fail[] to state the circumstances of fraud or misrepresentation with particularity.” The

Court will exercise its discretion pursuant to Maryland Rule 2-322(c) and defer on this defense for the reasons set forth, *supra*.

Chevron Defendants' Motion to Dismiss the Complaint Under Maryland's ANTI-SLAPP Law, and Request for Hearing and Memorandum of Law in Support of Motion to Dismiss the Complaint Under Maryland's ANTI-SLAPP Law (10/2/2023)

Defendants, Chevron Corporation and Chevron U.S.A. Inc. in its Motion to Dismiss the Complaint Under Maryland's ANTI-SLAPP Law, and Request for Hearing and Memorandum of Law in Support of Motion to Dismiss the Complaint Under Maryland's ANTI-SLAPP Law claims that "Chevron's [s]peech [i]s protected [u]nder the Maryland Anti-SLAPP Statute[]" and that "[a]ny [s]peech-[b]ased [c]laims are [b]arred by the *Noerr-Pennington* Doctrine." The Court will be treating this as a failure to state a claim defense argument. The Court will exercise its discretion pursuant to Maryland Rule 2-322(c) and defer on this defense for the reasons set forth, *supra*.

Defendants, Shell PLC and Shell USA, Inc.'s Individual Motion to Dismiss for Failure to State a Claim and Individual Memorandum of Law in Support of Shell Defendants' Motion to Dismiss (10/2/2023)

Defendants, Shell PLC and Shell USA, Inc. (check) in its Individual Motion to Dismiss for Failure to State a Claim and Individual Memorandum of Law in Support of Shell Defendants' Motion to Dismiss argue that "Plaintiff[s]' [f]ail[] [t]o [a]llege [t]hat Shell [m]ade [a] [d]eceptive [s]tatement [o]r [o]mission" and that "Plaintiff[s]' [f]ail[] [t]o [a]llege [c]ausation." Thus, that the Plaintiffs' fail to state a claim. The Court will exercise its discretion pursuant to Maryland Rule 2-322(c) and defer on this defense for the reasons set forth, *supra*.

Defendants, Marathon Oil Corporation's & Marathon Oil Company's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Memorandum of Law in Support of Marathon Oil Corporation's and Marathon Oil Company's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (10/2/2023)

Defendants, Marathon Oil Corporation's & Marathon Oil Company in its Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Memorandum of Law in Support of Marathon Oil Corporation's and Marathon Oil Company's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted argues that "Plaintiff[s]' allegations establish no violation of law, particularly under the heightened pleading standard applicable to Plaintiff[s]' claims[,] " "[n]or does the Complaint allege either conduct or circumstances from which an allegation of conspiracy may reasonably be inferred making MRO or MOC responsible for conduct alleged against others throughout the Complaint." The Court will exercise its discretion pursuant to Maryland Rule 2-322(c) and defer on this defense for the reasons set forth, *supra*.

PUNITIVE DAMAGES

The Plaintiffs are seeking judgment against all of the Defendants for punitive damages on each and every Count among other relief requested. The Court will **GRANT** each of the Defendants' Motions to Dismiss all claims for punitive damages in these cases as they are pleaded. The Maryland Court of Appeals, now the Supreme Court of Maryland, in *Bowden vs. Caldor, Inc.*, 350 Md. 4 (1998) stated: "Consequently, 'with respect to both intentional and non-intentional torts, ... an award of punitive damages must be based upon actual malice, in the sense of conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will, or fraud.'" *Id.* at 23 (citations omitted). *Caldors'* progeny have reiterated that holding. *Caldor* further states: "...[F]or a plaintiff to recover punitive damages, the complaint must contain a specific claim for punitive damages and 'must set forth facts that, if proven true, would entitle the plaintiff to punitive

damages.” *Id.* at 22 (citation omitted). This Court does not find that such facts have been sufficiently pleaded as to both form and substance in the pleadings in both of these cases.

CONCLUSION

An Order will follow this Memorandum Opinion and Order.

5/16/24

Date



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