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February 24, 2016

Via CM/ECF

Lyle W. Cayce, Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: No. 15-30162, *Board of Commissioners of the Southeast Louisiana Flood Protection Authority – East, et al. v. Tennessee Gas Pipeline Company, LLC*
Oral Argument Scheduled February 29, 2016

Dear Mr. Cayce:

We write in response to the three Rule 28(j) letters submitted yesterday by appellants (the "Board").

As to arising-under jurisdiction, the Board's letters cite only one new appellate decision and, like the cited district court cases, it is easily distinguished. In *MHA LLC v HealthFirst, Inc.*, 2015 WL 7253669 (3d Cir. 11/17/2015), the court concluded that the federal Medicare statute could be "informative," but that it was not necessary to construe federal law to adjudicate plaintiff's state-law claims. There was no legal dispute about the statute's meaning, only a fact-bound dispute over how to apply it.

Here, in sharp contrast, the Board's complaint relies expressly on federal laws as the basis for its claims, and the Board has never shown how its claims could be resolved in its favor without construing federal law. Unlike *MHA*, this case implicates important federal interests—management of the nation's coastline—and raises significant questions of federal law that are not fact-bound. Indeed, in advancing a third-party beneficiary claim, the complaint seeks to sue on federal permits that only the federal government can enforce. The Board has abandoned its third-party beneficiary claim on appeal, but the claim is no less a basis for jurisdiction. "Once a case is properly removed, the district court retains jurisdiction even if the federal claims are later dropped . . .." *Spear Marketing v. Bancorp South*, 791 F.3d 586, 592 (5th Cir. 2015).

Finally, as to maritime jurisdiction, the Board's district court opinions merely underscore the confusion in the lower courts. Meanwhile, the only appellate decision on point, *Junhong v. Boeing Co.*, 792 F.3d 805 (7th Cir. 2015), explains why maritime

claims are now removable. *Junhong* does not address the savings-to-suitors clause, but the plain language of that clause guarantees only a state remedy, not a state-court forum. Indeed, where Congress plainly provided "exclusive" federal jurisdiction for maritime cases in 28 USC § 1333, it would make little sense to conclude that it nullified that exclusive grant in its next breath merely by "saving to suitors in all cases all other remedies to which they are otherwise entitled."

Very truly yours,

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