

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In Re Ex Parte Application of Eni S.p.A. for an
Order Pursuant to 28 U.S.C. § 1782 Granting
Leave to Obtain Discovery for Use in Foreign
Proceedings.

Case No.

***EX PARTE* APPLICATION OF ENI S.P.A. FOR AN ORDER
PURSUANT TO 28 U.S.C. § 1782 GRANTING LEAVE TO OBTAIN
DISCOVERY FOR USE IN FOREIGN PROCEEDINGS**

Based on the memorandum of law, declarations, and other supporting documents accompanying this application, Eni S.p.A. (“Eni”) respectfully applies to this Court for an Order pursuant to 28 U.S.C. § 1782 (“Section 1782”) and Federal Rules of Civil Procedure 26, 30, and 45 granting Eni leave to serve the following entities incorporated in Delaware with subpoenas for the production of documents and deposition testimony for use in Italian court proceedings and an international investor-state arbitration: Poplar Falls, LLC; Drumcliffe Partners I LLC; Drumcliffe Partners II LLC; Drumcliffe Partners III LLC; Drumcliffe Partners III SMA I, LLC; Drumcliffe Partners IV LLC; and Drumcliffe Partners IV SMA1, LLC (together, “Respondents”).

Eni’s application meets the requirements of Section 1782. Respondents are “found” within this district; the narrow discovery Eni requests is for use in proceedings before a foreign tribunal; Eni, as a party to the foreign proceedings, is an “interested person”; and the application does not require disclosure of privileged materials. The factors set out by the Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), also weigh heavily in favor of Eni’s limited discovery requests: (1) the evidence sought likely is unobtainable without this Court’s assistance; (2) there is no indication that either the Italian court or the international arbitration tribunal will be unreceptive to the requested discovery; (3) Eni is not using this application to circumvent any

proof-gathering restrictions or policies; and (4) the targeted discovery Eni seeks is narrowly tailored and not unduly burdensome or intrusive.

Finally, as courts in this Circuit have recognized, Section 1782 applications made on an *ex parte* basis are properly filed and routinely granted. *See, e.g., In re Mota*, 2020 WL 95493, at *1 (D. Del. Jan. 8, 2020) (“Discovery applications under § 1782 are often granted *ex parte* because, *inter alia*, witnesses and other recipients can ‘raise[] objections and [otherwise] exercise[] their due process rights by motions to quash.’”); *In re Ex parte Petition of Republic of Turkey for an Order Directing Discovery From Hamit Çiçek Pursuant to 28 U.S.C. § 1782*, 2020 WL 2539232, at *3 (D.N.J. May 18, 2020) (“‘[An] *ex parte* application is an acceptable method for seeking discovery pursuant to Section 1782,’ in part because the person subpoenaed may exercise their due process rights with a motion to quash.”); *In re Ex Parte Application of Societe d’Etude de Realisation et d’Exploitation Pour le Traitement du Mais*, 2013 WL 6164435, at *2 (E.D. Pa. Nov. 22, 2013) (“Any fair interpretation of § 1782(a)’s plain language . . . should read it to encompass *ex parte* proceedings[.]”); *In re Platebright Ltd.*, 2014 WL 341568, at *6 (D.V.I. Jan. 30, 2014) (“[I]t is common for parties to request and obtain [§ 1782] orders authorizing discovery *ex parte*[.]”).

Eni therefore respectfully requests that this Court enter an Order granting this application.

Dated: October 6, 2020

LANDIS, RATH & COBB LLP

/s/ Rebecca L. Butcher

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[PROPOSED] ORDER

Upon consideration of the *Ex Parte* Application of Eni S.p.A. for an Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use in Foreign Proceedings filed by Eni S.p.A. (“Eni”), the Memorandum in Support of *Ex Parte* Application of Eni S.p.A. for an Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use in Foreign Proceedings, and the Declaration of Nicolas Bourtin and exhibits attached thereto, and for good cause shown,

IT IS HEREBY ORDERED that the Application of Eni is GRANTED and Eni is authorized, pursuant to 28 U.S.C. § 1782 and Rules 26, 30 and 45 of the Federal Rules of Civil Procedure, to serve Poplar Falls, LLC, Drumcliffe Partners I LLC, Drumcliffe Partners II LLC, Drumcliffe Partners III LLC, Drumcliffe Partners III SMA I, LLC, Drumcliffe Partners IV LLC, and Drumcliffe Partners IV SMA1, LLC (collectively, “Respondents”) with narrowly tailored subpoenas for production of documents and Rule 30(b)(6) deposition testimony regarding (1) the identities of Respondents’ beneficial owners and/or ultimate stakeholders; (2) Respondents’ relationship to current or former Federal Republic of Nigeria officials; and (3) any contractual and/or financial arrangements that Respondents have entered into with respect to proceedings

relating to a Nigerian oil prospecting license known as OPL 245. The deadline for Respondents to comply with the subpoena shall be thirty days from service of the subpoena.

IT IS FURTHER ORDERED that Respondents shall preserve relevant documents in their possession, custody or control.

Date: _____

United States District Court Judge

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

In re Ex Parte Application of Eni S.p.A. for an Order Pursuant to 28 U.S.C. § 1782 Granting Leave to Obtain Discovery for Use in Foreign Proceedings.

(b) County of Residence of First Listed Plaintiff Italy (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, (302) 467-4400

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1782

Brief description of cause: Applicant Eni S.p.A. seeks discovery for use in foreign proceedings.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/06/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Rebecca L. Butcher

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE