

EXHIBIT D

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

GETTY PROPERTIES CORP.; POWER TEST REALTY
COMPANY LIMITED PARTNERSHIP and LEEMILT'S
PETROLEUM, INC.,

Plaintiffs,

v.

LUKOIL AMERICAS CORPORATION, VINCENT
DELAURENTIS and VADIM GLUZMAN,

Defendants.

Index No. 151772/2016

Mot. Seq. 002

Hon. O. Peter Sherwood

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS LUKOIL AMERICAS CORPORATION, VINCENT DELAURENTIS,
AND VADIM GLUZMAN'S MOTION FOR A PROTECTIVE ORDER**

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Defendants Lukoil Americas Corporation (“LAC”), Vincent DeLaurentis (“DeLaurentis”), and Vadim Gluzman (“Gluzman”) (collectively, “Defendants”), by and through their counsel, Akin Gump Strauss Hauer & Feld LLP, for their motion for a Protective Order under CPLR § 3103(a), respectfully state as follows:

PRELIMINARY STATEMENT

This is a case about environmental liabilities stemming from a specific lease agreement between Getty Petroleum Marketing, Inc. (“GPMI”) and Plaintiff Getty Properties Corporation (“Getty”). Plaintiffs Getty, Power Test Realty Company Limited Partnership, and Leemilt’s Petroleum, Inc. (collectively “Plaintiffs”) seek wide-ranging discovery, including privileged trial testimony and exhibits from an entirely separate and unrelated adversary proceeding in a bankruptcy case. The materials sought include core, privileged documents and work product such as direct testimony, internal communications and legal memoranda of LAC’s legal counsel. Plaintiffs believe they are entitled to the privileged materials because in the course of that unrelated proceeding, Plaintiff Getty’s prior counsel was permitted to access the materials. Critically, however, Getty’s prior access was conditioned upon strict limiting instructions from the Bankruptcy Court (defined below) and pursuant to a protective order limiting the use of such materials that was stipulated to by the parties and so ordered by the Bankruptcy Court.

Getty’s limited prior access to the privileged materials at issue did not effect a waiver of the attorney-client privilege. To find a waiver here would render meaningless Getty’s promise to use the privileged materials solely for the relevant proceeding—the very basis for Getty’s access at the time—and would dissolve an attorney-client privilege that has been protected for over a decade, with ramifications in other, unrelated litigations. Thus, Defendants respectfully seek a Protective Order from the Court preventing disclosure of these privileged materials.

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