

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

<p>KING COUNTY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BP P.L.C., a public limited company of England and Wales, CHEVRON CORPORATION, a Delaware corporation, CONOCOPHILLIPS, a Delaware corporation; EXXON MOBIL CORPORATION, a New Jersey corporation, ROYAL DUTCH SHELL PLC, a public limited company of England and Wales, and DOES 1 through 10,</p> <p style="text-align: center;">Defendants.</p>
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Case No. 2:18-cv-00758

**CONOCOPHILLIPS’ MOTION TO  
DISMISS FOR LACK OF PERSONAL  
JURISDICTION; MEMORANDUM  
OF POINTS AND AUTHORITIES**

NOTED ON MOTION CALENDAR:

October 5, 2018

*ORAL ARGUMENT REQUESTED*

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INTRODUCTION

King County asks this Court to adjudicate ConocoPhillips’ responsibility for global climate change, here in Washington courts, using Washington law. As set forth in Defendants’ joint motion to dismiss, the global nature of King County’s allegations (along with the thorny federal questions raised) makes this suit both nonjusticiable and substantively meritless.

But King County’s claims must be dismissed for another fundamental, predicate reason—the Court lacks personal jurisdiction to adjudicate the dispute. ConocoPhillips is not “essentially at home” in Washington. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). Nor do King County’s claims “arise out of” ConocoPhillips’ alleged Washington contacts. *Walden v. Fiore*, 571 U.S. 277, 284 (2014). ConocoPhillips’ “suit-related conduct” simply does not “create a substantial connection with the forum State.” *Id.* For these very reasons, the Northern District of California dismissed nearly identical claims against ConocoPhillips for lack of personal jurisdiction in California. *See California v. BP P.L.C.*, Nos. C 17-06011 WHA, C 17-06012 WHA (N.D. Cal. July 27, 2018) (Doc. # 287). The same result is warranted here.

Ninth Circuit precedent requires that a defendant’s contacts with Washington be a “necessary” or “but for” cause of the alleged harm before this court can exercise specific jurisdiction. *Doe v. Unocal Corp.*, 248 F.3d 915, 924–25 (9th Cir. 2001), *abrogated on other grounds by Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1024 (9th Cir. 2017). Yet far from asserting claims based on forum-directed activity, King County’s complaint unabashedly rests on alleged worldwide fossil fuel production, promotion, and resulting emissions: ConocoPhillips’ alleged contribution to the necessarily global “increase in atmospheric carbon dioxide” causing “planetary warming.” Compl. ¶ 93; *see also id.* ¶¶ 79–96.

King County has not even plausibly asserted that ConocoPhillips’ alleged worldwide fossil fuel production and promotion appreciably contributed to global climate change. *See* Defendants’ Joint 12(b)(6) Motion at 36–37 (“Joint Motion”). There is still less basis for concluding that ConocoPhillips’ minimal Washington-connected conduct constitutes a sufficient cause of the claimed nuisance for a Washington court to exercise jurisdiction. The

1 Court thus lacks personal jurisdiction over ConocoPhillips to adjudicate any contribution to  
2 the complex, international, and decades-in-the-making effects of global climate change.

3 The absence of jurisdiction is no mere technicality, procedural gambit, or pleading  
4 footfault. Instead, Washington courts' inability to referee worldwide contributions to climate  
5 change reflects time-honored geographic limitations on judicial power. Consistent with courts'  
6 abstention from disputes with vast international, political, and economic consequences, *see*  
7 Joint Motion at 38–40, the limits on jurisdiction to regulate a global phenomenon like climate  
8 change are necessary to preserve order and consistency. If *any* climate-change claims are  
9 viable (they are not), plaintiffs must assert them where ConocoPhillips is at home.

### 10 CONOCOPHILLIPS-SPECIFIC ALLEGATIONS

11 ConocoPhillips is incorporated in Delaware and has its principal place of business in  
12 Texas. Compl. ¶ 18. While ConocoPhillips allegedly “does business in Washington, including  
13 through its subsidiaries,” *id.* ¶ 58, the asserted forum-specific contacts are de minimis.<sup>1</sup>

14 King County’s basis for hauling ConocoPhillips into this Court is its assertion that  
15 ConocoPhillips itself “is the ultimate decision maker” on “climate change risks.” *Id.* ¶ 55. Yet  
16 there is no allegation that any such decision-making has *ever* occurred in Washington or has  
17 *ever* been directed at the state. As for other claimed forum-related contacts, King County has  
18 pleaded only two facts. First, that ConocoPhillips operated a single refinery six years ago—  
19 before ConocoPhillips “spun off its downstream [i.e. refining and marketing] assets as a new  
20 independent energy company, Phillips 66.” *Id.* ¶ 59. And second, that ConocoPhillips  
21 periodically “ships Alaskan crude oil to Washington.” *Id.* ¶ 60.

22 King County’s complaint otherwise barely mentions ConocoPhillips, providing no  
23 basis for jurisdiction. For example, there is no allegation that ConocoPhillips has *ever*  
24 extracted fossil fuels in Washington or that it promotes fossil fuels in the state today. Nor is  
25

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26 <sup>1</sup> ConocoPhillips is a distinct legal entity from its subsidiaries but does not move for  
27 dismissal on corporate separateness grounds. Even assuming that the activities of its  
28 subsidiaries could be imputed to ConocoPhillips, personal jurisdiction is lacking.

1 there an allegation that any of ConocoPhillips’ forum-specific contacts make ConocoPhillips  
2 “at home” in the state or constitute a but-for cause of climate change.

### 3 ARGUMENT

4 King County bears the burden of establishing personal jurisdiction consistent with due  
5 process. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128–  
6 30 (9th Cir. 2003). King County must meet that burden “as to each defendant,” *Bristol-Myers*  
7 *Squibb Co. v. Super. Ct. of Cal., S.F. Cty.*, 137 S. Ct. 1773, 1783 (2017), based on either  
8 general jurisdiction (*i.e.*, “all-purpose” jurisdiction) or specific jurisdiction (*i.e.*, “case-linked”  
9 jurisdiction), *id.* at 1779–80. As explained below, ConocoPhillips is neither “at home” in  
10 Washington for general jurisdiction nor susceptible to specific jurisdiction for its global  
11 exploration and production activities.

#### 12 I. There Is No General Jurisdiction Over ConocoPhillips in Washington

13 For a state to exercise general jurisdiction, a defendant’s affiliations with the forum  
14 must be “so ‘continuous and systematic’ as to render them essentially at home in the forum  
15 State.” *Daimler AG*, 571 U.S. at 127. For corporations, the “paradigm” fora are “the place of  
16 incorporation and principal place of business.” *Id.* at 137. Only in an “exceptional” case may  
17 general jurisdiction exist elsewhere. *Id.* at 139 n.19; *see also AM Tr. v. UBS AG*, 681 F. App’x  
18 587, 588 (9th Cir. 2017) (“[A] corporation is typically subject to general personal jurisdiction  
19 only in a forum where it is incorporated or where it maintains its principal place of business.”).

20 ConocoPhillips’ place of incorporation (Delaware) and its principal place of business  
21 (Texas), Compl. ¶ 18, both begin and end the general-jurisdiction inquiry. King County has  
22 alleged nothing to establish that this is an “exceptional” case where general jurisdiction in  
23 Washington would nevertheless be proper. King County’s meager jurisdictional facts—that  
24 ConocoPhillips and its subsidiaries are registered to do business in Washington, ship crude oil  
25 to Washington, and at one time operated a refinery, *see id.* ¶¶ 58–60—fall far short. *See BNSF*  
26 *Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (holding that BNSF is not subject to general  
27 jurisdiction in Montana despite more than 2,000 employees and over 2,000 miles of track).

## 1 II. The Court Lacks Specific Jurisdiction Over ConocoPhillips

2 Nor are there case-linked grounds for jurisdiction. For a court to exercise specific  
 3 jurisdiction over a defendant, there must be a close nexus between the defendant’s activities,  
 4 the forum, and the plaintiff’s alleged harms. *See Bristol-Myers*, 137 S. Ct. at 1780. Among  
 5 other hurdles, the Ninth Circuit requires that any claim “arise[] out of or relate[] to” the  
 6 defendant’s forum contacts, which means the defendant’s relationship with the forum must  
 7 constitute a “necessary” or “but for” cause of the harm. *Unocal Corp.*, 248 F.3d at 923–25; *see*  
 8 *also Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000); *Doe*  
 9 *v. Am. Nat’l Red Cross*, 112 F.3d 1048, 1051–52 (9th Cir. 1997); *Ballard v. Savage*, 65 F.3d  
 10 1495, 1500 (9th Cir. 1995).<sup>2</sup> In addition, any assertion of jurisdiction must “comport with fair  
 11 play and substantial justice, i.e. it must be reasonable.” *Axiom Foods, Inc. v. Acerchem Int’l,*  
 12 *Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017).

13 Taking the Complaint’s allegations as true, ConocoPhillips’ activities in Washington  
 14 cannot conceivably be considered a but-for cause of the claimed nuisance or King County’s  
 15 alleged injuries. King County’s claims rest on a complex and lengthy alleged causal chain, that  
 16 (1) ConocoPhillips extracts fossil fuels, (2) which are later refined into finished products and  
 17 promoted, (3) which are combusted by millions of consumers, (4) causing the emission of  
 18 greenhouse gases, (5) which combine with other greenhouse gases from innumerable other  
 19 sources, (6) which accumulate in the atmosphere over long periods of time, (7) which  
 20 accumulation results in a warmer global climate, (8) which leads to higher air temperatures,  
 21 rising sea levels, changing weather patterns, extreme weather events, and other environmental  
 22 effects, (9) which ultimately harm Plaintiff’s proprietary interests. *See Compl.* ¶¶ 93–95, 133–  
 23 54.

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24  
 25 <sup>2</sup> Other circuits have held, correctly, that a defendant’s contacts with the forum must not  
 26 only be a but-for cause of the injury but also the *proximate* cause to justify the exercise of  
 27 specific jurisdiction. *See SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018)  
 (discussing circuit split). ConocoPhillips preserves this issue for appeal. Regardless, King  
 28 County cannot show that its claims arise from Washington-specific conduct under either test.

1 In *Walden*, the Supreme Court held that specific jurisdiction cannot rest “on the  
 2 ‘random, fortuitous, or attenuated’” contacts connecting out-of-state conduct with the forum.  
 3 571 U.S. at 286. So too here. The numerous, attenuated links in the causal chain between  
 4 ConocoPhillips’ conduct and the harms claimed foreclose any argument that ConocoPhillips’  
 5 alleged worldwide activities are either directed at Washington State or that any Washington-  
 6 focused contacts constitute a but-for cause of the claimed harms.

7 King County’s claims necessarily arise from the *global* effect of the *global* conduct of  
 8 a whole host of actors—including countless other energy companies, businesses, governments  
 9 (including King County itself), and other consumers. King County does not even attempt to  
 10 allege that ConocoPhillips’ activities in Washington—previously operating a single refinery  
 11 and shipping an unspecified amount of crude (*i.e.*, unrefined) oil, Compl. ¶¶ 58–60—are a  
 12 substantial cause, let alone a but-for cause, of global climate change. None of King County’s  
 13 claimed injuries can be traced to any Washington-related ConocoPhillips conduct.

14 A judge in the Northern District of California just today held that personal jurisdiction  
 15 over climate-change claims did not exist over ConocoPhillips in California, applying binding  
 16 Ninth Circuit precedent. As the court explained, “whatever [alleged] sales or events occurred  
 17 in California were causally insignificant in the context of the worldwide conduct leading to the  
 18 international problem of global warming.” *California*, Nos. C 17-06011 WHA, C 17-06012  
 19 WHA (N.D. Cal. July 27, 2018) (Doc. # 287), at 6. “It is manifest that global warming would  
 20 have continued in the absence of all California-related activities of defendants. Plaintiffs have  
 21 therefore failed to adequately link each defendants’ alleged California activities to plaintiffs’  
 22 harm.” *Id.* at 5. The same analysis mandates dismissal of King County’s complaint against  
 23 ConocoPhillips in this Court.

24 In all events, personal jurisdiction over ConocoPhillips’ alleged worldwide conduct—  
 25 premised on de minimis connections with the State of Washington—is not “reasonable” and  
 26 does not “comport with fair play and substantial justice.” *Axiom*, 874 F.3d at 1068. King  
 27 County’s theory of jurisdiction cannot be squared with due process.



### 1 III. Traditional Limits on Judicial Power Support the Absence of Jurisdiction

2 The conclusion that there is no personal jurisdiction over ConocoPhillips in  
3 Washington related to global warming is not just a procedural quirk. The requirements of  
4 personal jurisdiction set forth in binding Supreme Court and Ninth Circuit precedent are not  
5 technicalities but fundamental principles reflecting the proper role of courts and the  
6 geographical limits on their reach. Courts' limited geographical power, enshrined in the Due  
7 Process Clause, is also echoed in longstanding doctrines about which disputes are justiciable  
8 and which are not. *See* Joint Motion at 38–40. The Supreme Court has of late been jealously  
9 guarding the outer bounds of personal jurisdiction against novel or expansive theories of  
10 judicial power like the one invoked by King County here. *See, e.g., Daimler AG*, 571 U.S. at  
11 134–36 (general jurisdiction); *Bristol-Myers*, 137 S. Ct. at 1780–81 (specific jurisdiction).

12 Under Plaintiff's theory, ConocoPhillips—and countless other named and unnamed  
13 defendants—could be hauled into court not just in King County but virtually anywhere.  
14 Numerous courts in every state or district would then have a “super” form of jurisdiction to  
15 regulate and adjudicate ConocoPhillips' alleged worldwide contribution to global climatic  
16 events. Indeed, 13 plaintiffs have already asserted lawsuits in 13 different courts, seeking to  
17 bring ConocoPhillips to account for the same worldwide conduct.

18 For the same reasons that a uniform federal rule of decision is required for climate-  
19 change claims, *see* Joint Motion at 7–11; *City of New York v. BP P.L.C.*, No. 18 Civ. 182  
20 (JFK), 2018 WL 3475470, at \*4 (S.D.N.Y. July 19, 2018) (citing *California v. BP P.L.C.*, Nos.  
21 C 17-06011 WHA, C 17-06012 WHA, 2018 WL 1064293, at \*3 (N.D. Cal. Feb. 27, 2018)),  
22 personal jurisdiction related to global climate change cannot exist in an unlimited number of  
23 courts. Otherwise courts could split along a patchwork of inconsistent determinations  
24 regarding the same alleged global conduct and global harms. King County was required to  
25 bring this lawsuit, if at all, where ConocoPhillips is home.

**CONCLUSION**

For the foregoing reasons, King County’s claims against ConocoPhillips should be dismissed for lack of personal jurisdiction.

DATED this 27th day of July, 2018.

By: /s/ Katherine A. Christofilis  
/s/ Adam Rosenberg  
/s/ Sean C. Grimsley  
/s/ Jameson R. Jones  
/s/ Alex J. Harris  
/s/ Tracie J. Renfroe  
/s/ Carol M. Wood

Adam Rosenberg, WSBA #39256  
Katherine A. Christofilis, WSBA #42584  
WILLIAMS, KASTNER & GIBBS PLLC  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
Telephone: (206) 628-6600  
Facsimile: (206) 628-6611  
Email: arosenberg@williamskastner.com  
Email: kchristofilis@williamskastner.com

Sean C. Grimsley (*pro hac vice*)  
Jameson R. Jones (*pro hac vice*)  
Alex J. Harris (*pro hac vice*)  
BARTLIT BECK HERMAN  
PALENCHAR & SCOTT LLP  
1801 Wewatta St., Suite 1200  
Denver, Colorado 80202  
Telephone: (303) 592-3123  
Facsimile: (303) 592-3140  
Email: sean.grimsley@bartlit-beck.com  
Email: jameson.jones@bartlit-beck.com  
Email: alex.harris@bartlit-beck.com

Tracie J. Renfroe (*pro hac vice*)  
Carol M. Wood (*pro hac vice*)  
KING & SPALDING LLP  
1100 Louisiana Street, Suite 4000  
Houston, Texas 77002  
Telephone: (713) 751-3200  
Facsimile: (713) 751-3290  
E-mail: trenfroe@kslaw.com  
E-mail: cwood@kslaw.com

*Attorneys for Defendant*  
**CONOCOPHILLIPS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 27, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants.

DATED this 27th day of July, 2018.

/s/ Jameson R. Jones

Jameson R. Jones (*pro hac vice*)  
BARTLIT BECK HERMAN  
PALENCHAR & SCOTT LLP  
1801 Wewatta St., Suite 1200  
Denver, Colorado 80202  
Telephone: (303) 592-3123  
Facsimile: (303) 592-3140  
Email: jameson.jones@bartlit-beck.com