THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

KING COUNTY,

Plaintiff,

v.

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,

Defendants.

Case No. 2:18-cv-00758

CONOCOPHILLIPS' MOTION TO DISMISS FIRST AMENDED COMPLAINT 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 international 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). The First Amended Complaint principally focuses on ConocoPhillips' *past* connections with Washington to establish jurisdiction. But those prior activities cannot support general jurisdiction today and are far too minor to suffice for specific jurisdiction. 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 City of Oakland v. BP P.L.C.*, Case No. 17-06011 WHA, 2018 WL 3609055 (July 27, 2018). 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." First Am. Compl. ¶ 136 ("Compl."); *id.* ¶¶ 122–139.

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

The absence of jurisdiction is no mere technicality, procedural gambit, or pleading footfault. Instead, Washington courts' inability to referee worldwide contributions to climate change reflects time-honored geographic limitations on judicial power. Consistent with courts' abstention from disputes with vast political consequences, *see* Joint Motion at 39–40, the limits on jurisdiction are necessary to preserve order and consistency. If *any* climate-change claims are viable (they are not), plaintiffs must assert them where ConocoPhillips is at home.

CONOCOPHILLIPS-SPECIFIC ALLEGATIONS

ConocoPhillips is incorporated in Delaware and has its principal place of business in Texas. Compl. ¶ 18. While ConocoPhillips allegedly "does business in Washington, including through its subsidiaries," *id.* ¶ 80, the asserted forum-specific contacts are de minimis.[1]

King County's main basis for hauling ConocoPhillips into Court is its assertion that ConocoPhillips itself "is the ultimate decision maker" on "climate change risks." *Id.* ¶ 77. Yet King County does not allege that any such decisions have *ever* occurred in Washington or have *ever* been directed at the state. King County otherwise focuses on Washington contacts that *no longer exist*. King County principally alleges that ConocoPhillips previously operated the Ferndale refinery, owned various gasoline terminals, and owned gas stations under the Tosco, Phillips 66, and 76 brands. *Id.* ¶¶ 81, 84, 86. Yet the complaint acknowledges (as it must) that these contacts ended six years ago—when ConocoPhillips "spun off its downstream [i.e. refining and marketing] assets as a new independent energy company, Phillips 66."

[1] ConocoPhillips is a distinct legal entity from its subsidiaries but does not move for dismissal on corporate separateness grounds. Even assuming that the activities of its subsidiaries could be imputed to ConocoPhillips, personal jurisdiction is lacking.

Id. ¶ 81. Beyond ConocoPhillips' minimal *past* connections with Washington, the complaint only alleges that ConocoPhillips periodically "ships Alaskan crude oil to Washington" and supplies other companies' refineries with crude oil through pipelines and rail. *Id.* ¶¶ 82–83, 85.

Aside from these allegations, King County's complaint barely mentions ConocoPhillips. For example, there is no allegation that ConocoPhillips has *ever* extracted fossil fuels in Washington or that it promotes fossil fuels in the state today. Nor is there an allegation that any of ConocoPhillips' forum-specific contacts make ConocoPhillips "at home" in the state or constitute a but-for or proximate cause of climate change.

ARGUMENT

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

I. There Is No General Jurisdiction Over ConocoPhillips in Washington

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

ConocoPhillips' place of incorporation is Delaware and its principal place of business is Texas. Compl. ¶ 18. That ends the general-jurisdiction inquiry. King County has alleged nothing to establish that this is an "exceptional" case where general jurisdiction in Washington would nevertheless be proper. King County's meager jurisdictional facts fall far short. The fact that ConocoPhillips and its subsidiaries are registered to do business in Washington, ship crude oil to Washington, and at one time in the past operated a refinery, various terminals, and some gas stations, *see id.* ¶¶ 80–86, does not clear the high bar. *See BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (holding that BNSF is not subject to general jurisdiction in Montana despite more than 2,000 employees and over 2,000 miles of track).

II. The Court Lacks Specific Jurisdiction Over ConocoPhillips

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

[2] Other circuits have held, correctly, that a defendant's contacts with the forum must not only be a but-for cause of the injury but also the *proximate* cause to justify the exercise of 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 County cannot show that its claims arise from Washington-specific conduct under either test.

Taking the complaint's allegations as true, ConocoPhillips' activities in Washington cannot conceivably be considered a but-for cause of the claimed nuisance or King County's alleged injuries. King County's claims rest on a complex and lengthy alleged causal chain, that (1) ConocoPhillips extracts fossil fuels, (2) which are later refined into finished products and promoted, (3) which are combusted by millions of consumers, (4) causing the emission of greenhouse gases, (5) which combine with other greenhouse gases from innumerable other sources, (6) which accumulate in the atmosphere over long periods of time, (7) which accumulation results in a warmer global climate, (8) which leads to higher air temperatures, rising sea levels, changing weather, extreme weather events, and other environmental effects, (9) which ultimately harm King County's proprietary interests. Compl. ¶¶ 136–38, 177–99.

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

King County's claims necessarily arise from the *global* effect of the *global* conduct of a whole host of actors—including countless other energy companies, businesses, governments (including King County itself), and other consumers. King County does not even attempt to allege that ConocoPhillips' activities in Washington—previously operating a single refinery and owning various gas stations, and currently shipping an unspecified amount of crude (*i.e.*, unrefined) oil, Compl. ¶¶ 80–86—are a substantial cause, let alone a but-for cause, of climate change. None of King County's alleged injuries can be traced to any Washington-related ConocoPhillips conduct.

The Northern District of California has held that personal jurisdiction over climate-change claims does not exist over ConocoPhillips in California, applying the same Ninth Circuit precedent that binds this Court. As the court explained, "whatever [alleged] sales or

events occurred in California were causally insignificant in the context of the worldwide conduct leading to the international problem of global warming." *City of Oakland*, 2018 WL 3609055, at *3. "It is manifest that global warming would have continued in the absence of all California-related activities of defendants. Plaintiffs have therefore failed to adequately link each defendant's alleged California activities to plaintiffs' harm." *Id.* The same analysis mandates dismissal of King County's complaint against ConocoPhillips in this Court.

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

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

The conclusion that there is no jurisdiction over ConocoPhillips in Washington related to global warming is no procedural quirk. The jurisdictional standards set forth in binding Supreme Court and Ninth Circuit precedent reflect fundamental principles regarding the role of courts and the geographical limits on their reach. Courts' limited geographical power, enshrined in the Due Process Clause, is also echoed in longstanding doctrines about which disputes are justiciable. *See* Joint Motion at 39–40. The Supreme Court has of late jealously guarded the outer bounds of personal jurisdiction against novel or expansive theories of like the one invoked by King County here. *See, e.g.*, *Daimler AG*, 571 U.S. at 134–36 (general jurisdiction); *Bristol-Myers*, 137 S. Ct. at 1780–81 (specific jurisdiction).

Under King County's theory, ConocoPhillips—and countless other entities—could be hauled into court virtually anywhere. Numerous courts in every state would then have a "super" form of jurisdiction to adjudicate ConocoPhillips' alleged worldwide contribution to global climatic events. Indeed, 13 plaintiffs have already asserted lawsuits in 13 different courts, seeking to bring ConocoPhillips to account for the same worldwide conduct.

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

CONCLUSION

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

DATED this 31st day of August, 2018.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 31, 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 31st day of August, 2018.

/s/ Jameson R. Jones

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