Case Number: PC-2018-4716
Filed in Providence/Bristol County Superior Court
Submitted: 1/13/2020 9:22 PM
Envelope: 2422214
Reviewer: Carol M.

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

STATE OF RHODE ISLAND,
Plaintiff

v.

CHEVRON CORP.; CHEVRON USA, INC.; EXXON MOBIL CORP.; BP, PLC; BP AMERICA, INC.; BP PRODUCTS NORTH AMERICA, INC.; ROYAL DUTCH SHELL, PLC; MOTIVA ENTERPRISES, LLC; SHELL OIL PRODUCTS COMPANY, LLC; CITGO PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; MARATHON PETROLEUM CORP.; MARATHON PETROLEUM COMPANY, LP; SPEEDWAY, LLC; HESS CORP.; MARATHON OIL COMPANY; MARATHON OIL CORPORATION; LUKOIL PAN AMERICAS, LLC; GETTY PETROLEUM MARKETING, INC.; AND DOES 1 through 100, inclusive
Defendants.

C.A. No. PC-2018-4716

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' JOINT MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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INTRODUCTION

Plaintiff, the State of Rhode Island, seeks to hold these twenty Defendants liable, in tort, for all of the injuries it allegedly has sustained or will sustain as a result of global climate change. According to Plaintiff, Rhode Island law permits it to obtain damages (compensatory and punitive) and equitable relief from this small group of defendants for harms resulting from nearly two centuries of society's decisions about energy consumption and climatic events around the world. The complaint has many flaws, including those addressed in Defendants' Joint Motion To Dismiss for Failure To State a Claim. This motion focuses on an additional fatal defect of Plaintiff's complaint: it was filed in a forum where the Defendants are not subject to personal jurisdiction.

General jurisdiction—jurisdiction over a defendant for any and all claims, regardless of a claim's relationship to the forum—is unavailable because none of these Defendants is incorporated or headquartered in Rhode Island, and thus none of them is "at home" in the forum. *See Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014).

Specific jurisdiction—jurisdiction over claims arising from a defendant's forum contacts—is also lacking here because Plaintiff cannot demonstrate either that its alleged injuries arise out of the limited alleged contacts of Defendants with Rhode Island or that exercising jurisdiction here would be reasonable as a matter of due process, both of which are required. *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1780 (2017).

First, based on Plaintiff's own allegations, the complaint's claims do not "arise out of" Defendants' alleged contacts with Rhode Island. *Id.* The complaint expressly attributes Rhode Island's injuries to "*global* greenhouse gas pollution" from *worldwide* combustion of fossil fuels produced and sold by Defendants, as well as countless other sources. Compl. ¶ 1 (emphasis

added); *see also id.* ¶¶ 19, 97. Plaintiff alleges that Defendants' products—when ultimately processed and/or combusted by energy users around the world—collectively can be traced to "over 14.5% of *global* fossil fuel product-related CO_2 between 1965 and 2015," *id.* ¶ 97 (emphasis added). Notably, Plaintiff does not even attempt to quantify the miniscule percentage of total emissions purportedly resulting from Defendants' alleged Rhode Island contacts. Plaintiff further claims that its injuries stem from an alleged misinformation campaign, but does not allege that such "campaigns" took place in Rhode Island, nor does it allege facts that would show how any purported Rhode Island-directed campaign caused climate change. *See, e.g., id.* ¶ 10. Indeed, Plaintiff does not even generally allege that its harms arise from those in-state activities. No basis thus exists for this Court to conclude that Plaintiff has satisfied its burden of showing that its claims would not have occurred "but for" Defendants' forum contacts. Under these circumstances, exercising personal jurisdiction over Defendants would violate well-settled legal principles that prevent nonresident corporations like Defendants from being haled into court to defend against claims that relate to *all* of their business activities wherever they conduct *any* business activities.

Indeed, the only court to have addressed this issue to date dismissed for lack of personal jurisdiction claims nearly identical to those presented here against several out-of-state energy producers, all of whom are Defendants here. *See City of Oakland v. BP p.l.c.*, 2018 WL 3609055 (N.D. Cal. July 27, 2018), *appeal docketed*, No. 18-16663 (9th Cir. Sept. 4, 2018). In *City of Oakland*, the court dismissed on motion, without any need for discovery, the plaintiffs' claims of injury from global climate change because those claims did not arise out of the defendants' conduct in California—conduct that allegedly included in-state fossil-fuel production and was far more pronounced than that alleged to have occurred in Rhode Island. *Id.* at *3–4. As the court

recognized, it was "manifest" that "whatever sales or events occurred in California were causally insignificant in the context of the worldwide conduct leading to the international problem of global warming." *Id.* at *3. The same is even more true here. Defendants' alleged conduct in Rhode Island—far less substantial than the *City of Oakland* defendants' alleged conduct in California—is not alleged to be, and cannot be, a but-for cause of Plaintiff's claimed injuries.

Second, the Court should independently decline to exercise specific personal jurisdiction over Defendants because doing so would be unreasonable under the Due Process Clause. *See St. Onge v. USAA Fed. Sav. Bank*, 219 A.3d 1278, 1285–88 (R.I. 2019). Litigating this case in Rhode Island would impermissibly require out-of-state Defendants to submit to the "coercive power" of an out-of-state tribunal. *See Bristol-Myers Squibb*, 137 S. Ct. at 1780. Proceeding in this Court also would not further "the interstate judicial system's interest in efficiently resolving disputes" because such claims implicate global conduct and are not localized to Rhode Island. *See State of Md. Cent. Collection Unit v. Bd. of Regents for Educ. of Univ. of Rhode Island*, 529 A.2d 144, 151 (R.I. 1987). And it would threaten the "interest of the several States in furthering fundamental social policies" because, among other things, many States promote the very energy production that Plaintiff seeks to penalize. *Id.*

Because Plaintiff has failed to plead any basis for exercising personal jurisdiction under the Due Process Clause and these flaws are inherent in Plaintiff's theory of the case, the Court should dismiss the claims against Defendants with prejudice.[1]

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[1] This joint motion, filed on behalf of nineteen Defendants, argues that the broad assertion of personal jurisdiction by the State fails on grounds common to all Defendants. Pursuant to paragraph (1)(b) of the Stipulated Order regarding motions to dismiss (filed Nov. 12, 2019), certain Defendants join this brief but have also filed separate briefs to address company-specific allegations. Individual defendants may have additional defenses to Plaintiff's claims based on personal jurisdiction and merits grounds, and joinder in this motion should not be taken to waive any of them.

BACKGROUND

Plaintiff's complaint alleges that there has been a substantial "increase in global greenhouse gas pollution and a concordant increase in the concentration of greenhouse gases, particularly carbon dioxide ("CO_2") and methane, in the Earth's atmosphere." Compl. ¶ 1. (footnote omitted). This increase in global greenhouse gas emissions—resulting from the independent activities of countless individuals, businesses, and governments around the world to purchase, resell, refine, transport, and ultimately combust products produced by the global energy industry, including some of the Defendants, as well as non-industrial sources Plaintiff ignores—has, according to Plaintiff, helped alter the atmospheric composition, causing the atmosphere to trap heat and increase global temperature. *Id.* ¶¶ 1, 37–43. Plaintiff alleges that the increase in global temperature has contributed to melting polar ice caps, rising global sea levels, and changing weather patterns. *Id.* ¶¶ 1, 47–87. Plaintiff contends that it has suffered, and will suffer, injury from the alleged effects of climate change. *Id.* ¶¶ 1, 3, 8–9. The complaint purports to assert state law claims against Defendants for public and private nuisance, negligent and strict liability failure to warn, negligent and strict liability design defect, trespass, impairment of public trust resources, and violations of the State Environmental Rights Act, R.I. Gen. Laws § 10-20-1 *et seq*. Compl. ¶ 11.

Although the complaint contains allegations about the various global causes of climate change, *id.* ¶¶ 37–46, the alleged global effects of climate change, *id.* ¶¶ 47–93, Defendants' alleged contribution to climate change, *id.* ¶¶ 94–196, and Rhode Island's vulnerability to climate change, *id.* ¶¶ 197–224, it is nearly devoid of allegations concerning activity by Defendants *in Rhode Island* and any impact of that in-state conduct on Plaintiff. Instead, Plaintiff asserts that Defendants, collectively, through the worldwide operations of their subsidiaries and affiliates,

extracted, produced, and sold fossil fuel materials that, when combusted by consumers between 1965 and 2015, comprised approximately "14.5% of global fossil fuel product-related CO2." *Id.* ¶ 97. Plaintiff then makes conclusory, boilerplate assertions with respect to each alleged "family" of corporations that "[a] substantial portion of [its] fossil fuel products are or have been extracted, refined, transported, traded, distributed, marketed, promoted, manufactured, sold, *and/or* consumed in Rhode Island, from which [it] derives and has derived substantial revenue." *Id.* ¶¶ 21(g), 22(g), 23(g), 24(g), 25(h), 26(e), 27(i), 28(e) (emphasis added).[2]

The complaint's few non-conclusory allegations are even narrower. Plaintiff alleges that some Defendants owned or operated storage or distribution facilities in Rhode Island. *Id.* ¶¶ 21(g), 22(g), 23(g), 24(g), 29(f); *see also id.* ¶¶ 25(h), 26(e) (alleging supply of fossil-fuel products to Rhode Island). It also asserts that certain Defendants have marketed fossil fuel products in Rhode Island through branded service stations, *id.* ¶¶ 21(g), 22(g), 23(g), 24(g), 26(e), 27(i), 28(e), and that some Defendants maintain publicly available websites accessible from Rhode Island that allow individuals to locate a branded service station in Rhode Island. *Id.* ¶¶ 23(g), 24(g), 26(e), 27(i). Plaintiff does not allege—nor could one reasonably assume—that any of these activities caused global climate change, much less Plaintiff's alleged injuries.

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[2] The complaint improperly conflates the activities of Defendants with the activities of their separately organized predecessors, subsidiaries, and affiliates. There is no basis alleged in the complaint for imputing to any Defendant the alleged jurisdictional contacts of any other entity. And Defendants deny that their subsidiaries' fossil-fuel operations can properly be imputed to them for jurisdictional purposes. Solely for purposes of this joint motion, however, Defendants assume *arguendo* Plaintiff's (erroneous) imputation of the alleged forum contacts of each Defendant's direct and indirect subsidiaries and affiliates throughout history. Even with this assumption, Plaintiff's allegations are insufficient. Defendants reserve all rights to challenge Plaintiff's invalid imputation theory and incorrect allegations about corporate relationships for any other purpose or proceeding. *See City of Oakland*, 2018 WL 3609055, at *3 ("Defendants do not concede that these activities are attributable to them . . . but argue that plaintiffs still fail to demonstrate specific jurisdiction even assuming [that the] forum contacts can be imputed.").

LEGAL STANDARD

A court may exercise personal jurisdiction only when doing so: (1) is authorized by the State's long-arm statute; and (2) comports with the due process requirements of the Fourteenth Amendment. *See Rose v. Firstar Bank*, 819 A.2d 1247, 1250 (R.I. 2003). The Rhode Island long-arm statute, R.I. Gen. Laws § 9-5-33(a), authorizes "the exercise of jurisdiction over nonresident defendants to the fullest extent allowed by the United States Constitution." *Rose*, 819 A.2d at 1250.

Applying the Due Process Clause, the U.S. Supreme Court has recognized two types of personal jurisdiction: general and specific. *Bristol-Myers Squibb*, 137 S. Ct. at 1779–80. General jurisdiction allows a court to adjudicate any claim against a defendant, regardless of the connection between the claim and the forum, so long as the defendant is "at home" in that forum. *Id.* Specific jurisdiction allows a court to adjudicate only a limited set of claims: those that arise out of the defendant's purposeful contacts with the forum. *Id.* These jurisdictional restrictions "are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limits on the power of the respective States" and a State's exercise of sovereign power "implie[s] a limitation on the sovereignty" of other States and even foreign nations. *Id.* at 1780 (brackets in original); *see also Cerberus Partners, L.P. v. Gadsby & Hannah, LLP*, 836 A.2d 1113, 1118 (R.I. 2003) ("The minimum contacts requirement . . . ensures that states 'do not reach out beyond [their] limits . . . as coequal sovereigns in a federal system.'") (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (alterations in original)). "[E]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most

convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *Bristol-Myers Squibb*, 137 S. Ct. at 1780–81.

When faced with a motion to dismiss, the plaintiff bears the burden of establishing personal jurisdiction. *See Ben's Marine Sales v. Sleek Craft Boats*, 502 A.2d 808, 810 (R.I. 1985). To survive the motion, "the plaintiff must allege sufficient facts to make out a *prima facie* case of jurisdiction." *Cerberus*, 836 A.2d at 1118; *accord Rose*, 819 A.2d at 1250 ("To establish that the forum court possesses personal jurisdiction over a nonresident defendant a plaintiff *must allege and prove* the existence of either general or specific personal jurisdiction." (emphasis added)).

ARGUMENT

Plaintiff has not carried its burden of alleging facts that would justify the exercise of personal jurisdiction over Defendants. There is no *general* jurisdiction because none of the Defendants is "at home" in Rhode Island. There is no *specific* jurisdiction because the complaint avers that Plaintiff's alleged injuries arise out of worldwide conduct of countless actors, not Defendants' alleged contacts with Rhode Island, and because exercising jurisdiction would be constitutionally unreasonable.

I. Defendants Are Not Subject to General Jurisdiction in Rhode Island

Because none of the Defendants is incorporated or headquartered in Rhode Island, they are not at "home" in Rhode Island, and thus they are not subject to general personal jurisdiction in this forum. Under the Due Process Clause, a court may exercise general jurisdiction over a corporation only when the corporation's contacts with the forum are so "continuous and systematic" that it is "at home" in the forum. *Daimler*, 571 U.S. at 127. As the Court explained

in *Daimler*, the place of incorporation and the principal place of business are the "paradigm" forums where a corporation is "at home." *Id.* at 137. Here, Plaintiff cannot show that Defendants are "at home" in Rhode Island because, as Plaintiff necessarily concedes, Defendants are incorporated and headquartered in other States and foreign countries. *See* Compl. ¶¶ 21(a), (e), 22(a), (d), 23(a), (d), 24(a), (d), (e), 25(a), (d), (f), 26(a), 27(a)–(c), (f)–(g), 28(a), 29(a).

Only in "an exceptional case" would a corporation's contacts be "so substantial and of such a nature as to render the corporation at home" somewhere other than its State of incorporation and principal place of business. *Daimler*, 571 U.S. at 139 n.19; *see id.* at 129–30 (discussing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952), where the forum was "the corporation's principal, if temporary, place of business"); *St. Onge*, 219 A.3d at 1284 ("the level of affiliation must be comparable to that of a principal place of business or incorporation in order to render the corporation 'essentially at home'" (quoting *Daimler*, 571 U.S. at 139)). Regularly conducting business, even extensive business, in a forum does not render an out-of-state defendant "at home" there. *See Daimler*, 571 U.S. at 123, 136 (rejecting general jurisdiction in California even though "California sales account[ed] for 2.4% of Daimler's worldwide sales"); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (rejecting general jurisdiction in Montana, even though defendant maintained "over 2,000 miles of railroad track and more than 2,000 employees" in the forum). Defendants' alleged minimal contacts with Rhode Island are far from the "exceptional case" where a business is temporarily at home somewhere other than the State in which it is incorporated or headquartered. *See Daimler*, 571 U.S. at 129–30, 139 n.19; *St. Onge*, 219 A.3d at 1282–83. The Due Process Clause thus prohibits the exercise of general jurisdiction over Defendants.

II. Defendants Are Not Subject to Specific Jurisdiction In This Case

Because none of the Defendants is subject to general jurisdiction in Rhode Island, Plaintiff may proceed only if it can establish specific personal jurisdiction over each Defendant. Specific personal jurisdiction exists if a defendant purposefully availed itself of the privilege of conducting business in the forum, the plaintiff's claims arise from those forum contacts, and litigation in the forum state does not offend traditional notions of fair play and substantial justice. *See, e.g., St. Onge*, 219 A.3d at 1284. Plaintiff fails to allege a *prima facie* case of specific personal jurisdiction because the claims asserted in the complaint do not arise from any alleged contacts with Rhode Island and because exercising personal jurisdiction in this case would be constitutionally unreasonable.[3]

A. Plaintiff's Claims Do Not Arise Out of Defendants' Alleged Contacts With Rhode Island

Plaintiff has failed to establish specific personal jurisdiction over Defendants, first, because the complaint does not allege that Plaintiff's claims arise from Defendants' alleged forum contacts. To support specific jurisdiction, a defendant's "suit-related conduct must create a substantial connection with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284 (2014). In particular, a plaintiff's claims must "aris[e] out of or relat[e] to" the defendant's contacts with the forum. *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (brackets in original). "When there is no such connection to the forum state, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the state." *St. Onge*, 219 A.3d at 1285 (quoting *Bristol-*

[3] Because Defendants' motion to dismiss can be resolved based solely on Plaintiff's failure to establish that its injuries arise from Defendants' alleged contacts with Rhode Island or that exercising personal jurisdiction over Defendants would be reasonable, the Court does not need to consider whether Defendants have purposefully availed themselves of the privilege of conducting business in Rhode Island.

Myers Squibb, 137 S. Ct. at 1781 (brackets omitted)); *see also Sawtelle v. Farrell*, 70 F.3d 1381, 1389 (1st Cir. 1995) (requiring that the action "directly arise out of the specific contacts between the defendant and the forum state").

A plaintiff must establish "something more than a 'but-for' relationship" between the conduct creating a substantial connection with the forum and the plaintiff's claims. *Martins v. Bridgestone Ams. Tire Operations, LLC*, 2019 WL 469097, at *7 (R.I. Super. Ct. Jan. 29, 2019), *amended by* 2019 WL 938206 (R.I. Super. Ct. Feb. 19, 2019) (citing *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996)).[4] If the plaintiff's injury would have occurred regardless of the defendant's forum contacts, specific personal jurisdiction is lacking. *See Rose*, 819 A.2d at 1254 (no personal jurisdiction where beneficiary's mismanagement claims did not arise from trustee's contacts with Rhode Island). In *Kalooski v. Albert-Frankenthal AG*, 770 A.2d 831 (R.I. 2001) (per curiam), the plaintiff sued the manufacturer of a machine that injured him in Rhode Island. The defendant had manufactured the machine outside of Rhode Island, and did not sell it directly to the Rhode Island employer of the plaintiff. *Id.* at 832. The Court concluded that it did not have specific personal jurisdiction "[b]ecause the plaintiff's claim of injury did not arise out of *the defendant's actions occurring in Rhode Island*," which were limited to the sale to a Rhode

[4] Although we focus here on but-for causation, Defendants respectfully submit that proximate causation is also required to establish personal jurisdiction. Rhode Island courts have on occasion indicated that "something less than 'proximate cause'" is required for personal jurisdiction, but have done so only when a foreign corporation directly targets an in-state resident, which has not been alleged here. *Martins*, 2019 WL 469097, at *7. And "[b]ecause 'but for' events can be very remote, . . . due process demands something like a 'proximate cause' nexus." *Harlow v. Children's Hosp.*, 432 F.3d 50, 61 (1st Cir. 2005)); *see also Scottsdale Capital Advisors Corp. v. The Deal, LLC*, 887 F.3d 17, 21 (1st Cir. 2018) (requiring that plaintiff establish "cause in fact (i.e., the injury would not have occurred 'but for' the defendant's forum-state activity) and legal cause (i.e., the defendant's in-state conduct gave birth to the cause of action)"); *Nowak*, 94 F.3d at 715 (applying proximate causation in evaluating personal jurisdiction because proximate causation "better comports with the relatedness inquiry" and "but for" causation has no "limiting principle").

Island company of a machine similar to the one that injured plaintiff. *Id.* at 834 (emphasis added); *see Platten v. HG Bermuda Exempted Ltd.*, 437 F.3d 118, 138 (1st Cir. 2006) (concluding that alleged harm arose from other actions and not defendants' forum contacts); *Harlow v. Children's Hosp.*, 432 F.3d 50, 60–61 (1st Cir. 2005) ("[T]he defendant's in-state conduct must form an important, or at least material, element of proof in the plaintiff's case." (brackets omitted)).[5]

Here, Plaintiff has not pleaded—and the allegations of its complaint demonstrate it could not plead—facts that would satisfy the requirement that its claims arise out of any of Defendants' purposeful contacts with Rhode Island. Indeed, Plaintiff has not even alleged but-for causation with respect to Defendants' Rhode Island contacts, let alone "something more." *Martins*, 2019 WL 469097, at *7. Thus, regardless of whether "strict adherence to a proximate cause standard" or "but-for" causation is required to support personal jurisdiction, *id.*, Plaintiff has not established personal jurisdiction over Defendants here.

Climate change is a worldwide phenomenon, and Plaintiff's claims "depend on a global complex of geophysical cause and effect involving all nations of the planet." *City of Oakland*, 2018 WL 3609055, at *3. As other courts have recognized, the "undifferentiated nature of greenhouse gas emissions from all global sources and their worldwide accumulation over long periods of time" mean that "there is no realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, [or] group at any particular point in time." *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880

[5] When there is substantial identity between a federal and state procedural rule, Rhode Island courts have held that "[f]ederal precedent offers significant guidance, particularly with respect to the rule's due process considerations." *Heal v. Heal*, 762 A.2d 463, 466–67 (R.I. 2000).

(N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012). In other words, "it is not plausible to state which emissions—emitted by whom and at what time in the last several centuries *and at what place in the world*—'caused' Plaintiffs' alleged global warming related injuries." *Id.* at 881 (emphasis added).

A federal court dismissed nearly identical claims for lack of personal jurisdiction in *City of Oakland*. There, as here, government entities sued energy companies, all of which are also Defendants here, seeking to hold them liable in tort for the alleged local effects of global climate change. 2018 WL 3609055, at *1–2. Applying a due process analysis, the court explained that "[i]t is manifest that global warming would have continued in the absence of all California-related activities of defendants." *Id.* at *3. The court thus concluded plaintiffs had "failed to adequately link each defendants' alleged California activities to plaintiffs' harm." *Id.* The court reached this conclusion despite the fact that—unlike here—plaintiffs had "list[ed] significant fossil-fuel-related activities that defendants ha[d] allegedly conducted in California." *Id.* What was "[l]acking," the court explained, was "a causal chain sufficiently connecting plaintiffs' harm and defendants' California activities," because plaintiffs could not "sufficiently explain how these 'slices' of global-warming-inducing conduct causally relate to the worldwide activities alleged." *Id.* at *3, *4. The same was true of the foreign defendants' contacts "with the nation as a whole." *Id.* at *4 (applying Fed. R. Civ. P. 4(k)(2)).

That conclusion applies squarely here. Plaintiff's complaint asserts the alleged injuries occur only as a result of total, cumulative, worldwide greenhouse gas emissions from global combustion of fossil fuels produced and sold by Defendants, as well as countless other sources. Compl. ¶ 1; *see also id.* ¶¶ 7, 19, 96, 97. Indeed, Plaintiff concedes that Defendants' worldwide operations supply only a fraction of global oil demand. *Id.* ¶¶ 7, 94 n.100. Plaintiff also

concedes—as it must—that there are countless contributors to greenhouse gas emissions and climate change worldwide. *See, e.g., id.* ¶¶ 42, 44–45, 49. Given the innumerable other contributors and Defendants' operations outside of Rhode Island, Plaintiff cannot credibly allege that its injuries would not have occurred absent Defendants' alleged contacts with Rhode Island.

The only three non-boilerplate assertions Plaintiff makes about contacts with Rhode Island involve assertions that certain Defendants: (i) maintained storage or distribution facilities in Rhode Island, *see id.* ¶¶ 21(g), 22(g), 23(g), 24(g), 29(f); *see also id.* ¶¶ 25(h), 26(e) (alleging supply of fossil-fuel products to Rhode Island); (ii) marketed gasoline through branded service stations in Rhode Island, *see id.* ¶¶ 21(g), 22(g), 23(g), 24(g), 26(e), 27(i), 28(e); and (iii) operated widely accessible websites allegedly allowing individuals to locate branded service stations in Rhode Island, *see id.* ¶¶ 23(g), 24(g), 26(e), 27(i). Plaintiff has not articulated any theory by which these particular contacts with Rhode Island could be a but-for cause of Plaintiff's alleged injuries. To the contrary, the sum of those activities is "causally insignificant in the context of the worldwide conduct leading to the international problem of global warming," and, thus, they cannot support specific personal jurisdiction here. *City of Oakland*, 2018 WL 3609055, at *3.

Plaintiff cannot meet its burden to establish a *prima facie* case of personal jurisdiction over each Defendant. For purposes of the specific jurisdiction analysis, all that is relevant is Defendants' contacts with Rhode Island, not their worldwide activities, and whether any Defendant's forum contacts are a cause of Plaintiff's alleged injuries. Plaintiff's assertion that Defendants' *worldwide* activities have contributed to global climate change, therefore, provides no basis for exercising specific personal jurisdiction over Defendants in Rhode Island. Compl. ¶¶ 1–2, 19, 94–97. Similarly, Plaintiff cannot rely on its conclusory assertion that a "substantial

portion" of each Defendant's fossil fuel products have been "extracted, refined, transported, traded, distributed, marketed, promoted, manufactured, sold, *and/or* consumed in Rhode Island." *Id.* ¶¶ 21(g), 22(g), 23(g), 24(g), 25(h), 26(e), 27(i), 28(e) (emphasis added). That assertion, expressly phrased in the alternative, does not even allege that any Defendant actually extracted fossil fuels in Rhode Island. Regardless, in assessing personal jurisdiction, the court does not "credit conclusory allegations." *Massachusetts Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 34 (1st Cir. 1998); *see also DiLibero v. Mortg. Elec. Registration Sys., Inc.*, 108 A.3d 1013, 1016 (R.I. 2015) ("[A]llegations that are more in the nature of *legal* conclusions rather than factual assertions are not necessarily assumed to be true."). Moreover, publicly available, judicially noticeable, government data confirms that there has been no fossil fuel production within the State of Rhode Island since at least 1960. *See* Exs. 1 & 2 to Req. for Judicial Notice in Supp. of Defs.' Joint Mot. To Dismiss for Lack of Personal Jurisdiction.

It is no answer for Plaintiff to assert that its claims arise from Defendants' Rhode Island contacts because the "effects" of Defendants' out-of-state activities are being felt in Rhode Island. As the Supreme Court has explained, although it "was 'foreseeable' that the [automobile sold by petitioners] would cause injury in" the forum state, "' foreseeability' alone is not a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide Volkswagen*, 444 U.S. at 295. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (The "foreseeability of causing *injury* in another State . . . is not a sufficient benchmark for exercising personal jurisdiction."); *Cerberus*, 836 A.2d at 1120; *see also Walden*, 571 U.S. at 290 ("mere injury to a forum resident" insufficient). Plaintiff has not alleged that any Defendant's conduct was directed at Rhode Island in any way different from any other forum. Exercising personal jurisdiction over Defendants in this case would mean that any company

whose activities anywhere in the world allegedly contribute to climate change would conceivably be subject to personal jurisdiction in every forum in the United States—if not the world—to answer for the effects of climate change. That result would deprive Defendants of the "fair warning" that "a particular activity may subject [them] to the jurisdiction of a foreign sovereign," and thus would not comport with core principles of due process. *Burger King*, 471 U.S. at 472 (brackets in original).

Indeed, the complaint's attempt to link Plaintiff's alleged injuries to the historical global activities of all of Defendants' subsidiaries and predecessors relies entirely on jurisdictionally irrelevant activities. According to the complaint, which apparently relies on a paper by Richard Heede, the combustion of *all* of the fossil fuels derived from materials that *all* of Defendants' *subsidiaries* have allegedly extracted from the ground *anywhere in the world* accounts for 14.81 % of the greenhouse gases emitted from combustion of fossil fuels between 1965 and 2015.[6] This figure is not evidence of any jurisdictionally significant causal contribution from any suit-related Rhode Island conduct of any Defendant because the emissions and climatic impacts the paper would attribute to Defendants are not based on Rhode Island conduct at all, but improperly aggregate worldwide activities with no connection to Rhode Island. In fact, because

[6] *See* Compl. ¶¶ 94 n.100, 97 (citing Richard Heede, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854-2010*, 122 Climatic Change 229, 232–33 (2014)); *cf. id.* ¶ 7. If this case were to proceed past the pleading stage, Defendants would challenge the inputs, analysis, and conclusions in this paper on multiple grounds. For purposes of this motion, however, Defendants note that this paper starts from the incorrect premise that *producers* of fossil fuels are responsible for the emissions caused by the ultimate end user. Moreover, Plaintiff cannot establish that even if Defendants had ceased all activities at issue, other fossil fuel companies would not have increased production in order to compensate for decreased supply. Plaintiff entirely ignores the other fossil-fuel producers that—according to the Heede paper—are responsible for over 85% of greenhouse gases emitted from industrial sources between 1965 and 2015. The paper also fails to account for human greenhouse-gas emissions from sources other than fossil-fuel products, which Plaintiff admits contribute to climate change. *See* Compl. ¶ 44.

no Defendant has produced fossil fuels in Rhode Island since at least 1960, any methodology that attempts to attribute emissions to a producer based upon extraction would attribute exactly *zero percent* of global greenhouse gas emissions to Defendants' Rhode Island activities over the past 60 years.

The relationship between Plaintiff's claims and this forum is even more attenuated with respect to Plaintiff's allegations of misrepresentations about climate change or wrongful marketing (including alleged failures to warn). Compl. ¶¶ 147–177. The complaint contains no *factual* allegations about misrepresentations or wrongful promotion in Rhode Island. Indeed, the complaint does not identify a single allegedly misleading publication or report that targeted Rhode Island—nor does it allege that anyone in Rhode Island even read such a publication. Plaintiff's claims, therefore, could not have arisen from any Rhode Island-directed misrepresentations.

More fundamentally, Plaintiff has not even generally asserted (let alone alleged facts showing) that Defendants' alleged misrepresentations or wrongful marketing could have been but-for causes of the State's alleged climate-change injuries, much less how any Rhode Island-directed portion could have been. Nor has Plaintiff attempted to articulate any theory of causation that would account for the substantial *publicly available* information about the causes of climate change it alleges. *See, e.g., id.* ¶¶ 106–107. Indeed, Plaintiff—like countless other energy users—continues to combust fossil fuels releasing greenhouse gases despite its allegations here that it is well-established that doing so contributes to climate change.

Having failed to allege that its claims arise out of Defendants' alleged contacts with Rhode Island, Plaintiff has not established a *prima facie* case of specific personal jurisdiction. *See Rose*, 819 A.2d at 1254.

B. Exercising Personal Jurisdiction Over Defendants Would Be Unreasonable

Because Plaintiff has failed to allege that its claims arise from Defendants' contacts with Rhode Island, the Court need not reach the reasonableness inquiry. *See Cerberus*, 836 A.2d at 1122. Nonetheless, the unreasonableness of exercising jurisdiction here is an additional reason to dismiss the complaint. *See St. Onge*, 219 A.3d at 1286. The reasonableness analysis is part of a "sliding scale: the weaker the plaintiff's showing on the first two prongs (relatedness and purposeful availment), the less a defendant need show in terms of unreasonableness to defeat jurisdiction." *Ticketmaster-N.Y. Inc.*, 26 F.3d 201, 210 (1st Cir. 1994). In determining whether jurisdiction is reasonable under the Due Process Clause, courts consider "the burden upon the defendant, the interests of the forum state, the plaintiff's interest in obtaining relief, the interstate judicial system's interest in efficiently resolving disputes, and finally the shared interest of the several states in furthering fundamental social policies." *State of Md. Cent. Collection Unit*, 529 A.2d at 151. The "primary concern" in assessing the reasonableness of personal jurisdiction is "the burden" on "the defendant," particularly the burden of "submitting to the coercive power" of a court in light of the limits of interstate federalism on a court's ability to exercise jurisdiction. *Bristol-Myers Squibb*, 137 S. Ct. at 1780. "[R]estrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.'" *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). One State's exercise of sovereign power "implie[s] a limitation on the sovereignty" of other States and even foreign nations, and in some cases that concern "may be decisive." *Id.* (brackets in original). A majority of the relevant considerations weigh decisively against the exercise of personal jurisdiction here. Indeed, the Supreme Court has admonished courts to take into consideration the interests of the "several States," and

emphasized that "[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *Asahi Metal Indus. Co. v. Super. Ct. of Cal., Solano Cty.*, 480 U.S. 102, 115 (1987).

First, permitting courts to exercise specific jurisdiction over nonresident defendants for global climate-change-related claims would expand the sovereignty of local courts well beyond the limits of due process, burdening Defendants and interfering with the power of each Defendant's home jurisdiction over its corporate citizens. It would resurrect the loose approaches to personal jurisdiction that the Supreme Court rejected in *Daimler* and *Bristol-Meyers Squibb* and make energy companies of any size operating anywhere in the world subject to climate-change suits in every forum in the country. Well-settled principles of due process do not permit such a result. As the U.S. Supreme Court explained in *Asahi*, a products liability case involving sales and distribution of tires and components by out-of-state defendants into California, "[t]he procedural and substantive interests of other nations in a state court's assertion of jurisdiction over an alien defendant will differ from case to case. In every case, however, those interests, as well as the Federal interest in Government's foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State." *Id.*

This problem is particularly pronounced with respect to foreign Defendants.[7] Under Plaintiff's theory, any foreign entity could be forced to appear before any court in the United

[7] As Plaintiff acknowledges, BP P.L.C. is registered in England and Wales with its principal place of business in London, England. Compl. ¶ 23(a). Royal Dutch Shell plc is incorporated under the laws of England and Wales and headquartered in The Hague, Netherlands. *Id.* ¶ 24(a).

States based on its alleged contribution to global climate change, even if it has no activities within that jurisdiction. If other nations adopted a similar rule, American companies could be sued on climate-change-related claims in courts around the world. And Plaintiff has not demonstrated that this violation of sovereignty is necessary for it to test the merits of its claims. Plaintiff is free to file suit against Defendants where each is subject to general jurisdiction. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

Litigating in Rhode Island would also burden Defendants—who are headquartered in other States and multiple foreign countries—because none of their witnesses reside in the State and nearly all of the relevant evidence is located elsewhere. This burden is magnified by the number of Defendants joined in this action and the potential number of witnesses involved considering the complaint's focus on Defendants' global activities over many decades.

Second, this litigation offends the principles underlying the interstate judicial system because Plaintiff is invoking Rhode Island tort law in a Rhode Island court to regulate Defendants' nationwide (indeed, worldwide) activities, including fossil-fuel production—an activity heavily regulated by the federal government, all 50 States, and every other country in the world in which these corporate entities operate. Under Plaintiff's theory, personal jurisdiction exists over every Defendant in *every* State—and every country—based on the exact same global conduct. The interests of the "interstate judicial system" would not be served by requiring witnesses and counsel to litigate the same climate change actions in multiple fora simultaneously under different legal rules, especially given the substantial risk of inconsistent decisions.

Third, the "substantive social policies" Plaintiff seeks to advance—curbing energy production and the use of fossil fuels—are not shared by many other States and nations, particularly those whose economies are heavily dependent on energy production. For example,

in parallel litigation brought by the City of New York against five of the Defendants here, 15 States—many of them energy producers—filed an *amici curiae* brief arguing that "New York City's effort to use New York's state common law of public nuisance to regulate global climate change presents issues of extraordinary importance to the *Amici* States, for it attempts to extend New York law across not only the United States, but the entire world." Ind. and 14 Other States in Supp. of Defs.-Appellees Amicus Br. at 1, *City of New York v. BP P.L.C.*, No. 18-2188 (2d Cir. Feb 14, 2019), ECF No. 200. The court shared these concerns, observing, in dismissing the complaint, that to hold five international oil and gas companies liable for climate change based on worldwide fossil-fuel production would create "serious foreign policy consequences" and implicate "countless foreign governments and their laws and policies." *City of New York v. BP P.L.C.*, 325 F. Supp. 3d 466, 475–76 (S.D.N.Y. 2018); *see City of Oakland v. BP p.l.c.*, 325 F. Supp. 3d 1017, 1026 (N.D. Cal. 2018) ("[P]laintiffs would have a single judge or jury in California impose an abatement fund as a result of such overseas behavior [*i.e.*, production and sale of fossil fuels worldwide]. Because this relief would effectively allow plaintiffs to govern conduct and control energy policy on foreign soil, we must exercise great caution."), *appeal docketed*, No. 18-16663 (9th Cir. Sept. 4, 2018). Plaintiff's claims here similarly implicate the interests of numerous other States, and this Court should not exercise jurisdiction.

The remaining factors do not support the reasonableness of exercising jurisdiction in this case because, as explained in Defendants' Joint Motion To Dismiss for Failure to State a Claim, Plaintiff's claims raise matters of federal policy and foreign affairs that are not suitable for resolution by the judiciary, or at the very least, arise under federal common law.[8]

[8] Because the complaint fails to allege even a colorable basis for personal jurisdiction, even though Defendants, for purposes of this motion, accept the allegations as true, jurisdictional discovery would be inappropriate. *See United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 626

CONCLUSION

This Court should grant Defendants' motion to dismiss with prejudice.

Dated: January 13, 2020

Respectfully submitted,

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(1st Cir. 2001) (affirming denial of jurisdictional discovery); *Martin v. Howard*, 784 A.2d 291, 297 (R.I. 2001) (requiring support for jurisdictional allegations prior to filing complaint).

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2020, I filed and served this document through the Rhode Island Judiciary's Electronic Filing System on all counsel who are registered for e-service. This document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

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