

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

STATE OF RHODE ISLAND,

Plaintiff

v.

CHEVRON CORP.; CHEVRON USA, INC.;
EXXONMOBIL 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 OIL
COMPANY; MARATHON OIL CORPORATION;
MARATHON PETROLEUM CORP.; MARATHON
PETROLEUM COMPANY, LP; SPEEDWAY, LLC;
HESS CORP.; LUKOIL PAN AMERICAS, LLC;
GETTY PETROLEUM MARKETING, INC.; AND
DOES 1 through 100, inclusive,

Defendants.

C.A. No. PC-2018-4716

**DEFENDANTS CONOCOPHILLIPS' AND CONOCOPHILLIPS COMPANY'S
SUPPLEMENTAL MOTION TO DISMISS FOR LACK OF PERSONAL
JURISDICTION**

Defendants ConocoPhillips (“COP”) and ConocoPhillips Company (“COPCO”), who are parties to and have joined in Defendants’ Joint Motion to Dismiss for Lack of Personal Jurisdiction (“Joint Motion”) and all arguments made therein, now move this Court, per this supplemental motion, to dismiss Plaintiff’s complaint with prejudice for lack of personal jurisdiction pursuant to R.I. R. Civ. P. 12(b)(2). COP and COPCO submit this supplemental motion, pursuant to paragraph (1)(b) of the Stipulated Order regarding motions to dismiss (filed Nov. 12, 2019), in order to address jurisdictional issues peculiar to COP and COPCO.

To invoke this Court’s jurisdiction over a defendant, “a plaintiff must allege sufficient facts to make out a *prima facie* case of jurisdiction.” *Cerberus Partners, L.P. v. Gadsby & Hannah, LLP*, 836 A.2d 1113, 1118 (R.I. 2003).¹ COP and COPCO bring this supplemental motion, separate from the Joint Motion, because Plaintiff has not alleged *any* appreciable connection between the State of Rhode Island and either defendant, thereby failing to allege a *prima facie* case of jurisdiction and making jurisdiction by this Court singularly inappropriate.

JURISDICTIONAL ALLEGATIONS

Plaintiff’s Complaint concedes that both COP and COPCO are “incorporated in the State of Delaware” and headquartered outside of Rhode Island. Compl. ¶¶ 25(a) & (d).² The Complaint’s lone allegations connecting COP or COPCO to Rhode Island are as follows:

- COPCO is “qualified to do business in Rhode Island and has a registered agent for service of process in Rhode Island.” *Id.* ¶ 25(d).
- COP allegedly “transacts and has transacted substantial fossil fuel-related business in Rhode Island. A substantial portion of ConocoPhillips’s fossil fuel products are or have been extracted, refined, transported, traded, distributed, promoted, marketed, manufactured, sold, and/or consumed in Rhode Island, from which ConocoPhillips derives and has derived substantial revenue. For instance, ConocoPhillips shipped gasoline manufactured at their refineries via common carrier pipelines intended to deliver gasoline to Petroleum Administration for Defense District 1, including Rhode Island.” *Id.* ¶ 25(h).³

¹ As set forth in the Joint Motion, jurisdiction is also inappropriate because none of Plaintiff’s claims arise out of any alleged Rhode Island-directed activity.

² The Complaint incorrectly alleges that COPCO’s principal place of business is in Bartlesville, Oklahoma, rather than in Houston, Texas (Compl. at ¶ 25(d)), but this incorrect allegation is immaterial for personal jurisdiction purposes.

³ For the purposes of this motion COP and COPCO assume *arguendo* Plaintiff’s (erroneous) premise that the Complaint properly imputes to both COP and COPCO the alleged forum contacts of their direct and indirect subsidiaries throughout history. Even with this assumption, Plaintiff’s nebulous allegations attempting to connect COP and COPCO to Rhode Island fall far short of those necessary to establish *prima facie* personal jurisdiction.

DISCUSSION

A. Plaintiff Cannot Establish General Jurisdiction

The Supreme Court has identified two definitive bases for general jurisdiction: (1) a company's place of incorporation, and (2) its principal place of business. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Neither exists to supports the Court's exercise of general jurisdiction in this matter, as neither COP nor COPCO is incorporated or headquartered in Rhode Island. Thus, neither company is at "home" in this forum or subject to general personal jurisdiction here. *See* Compl. ¶¶ 25(a), (d); *see also* Defs.' Joint Motion.⁴

B. Plaintiff Cannot Establish Specific Jurisdiction

To establish specific jurisdiction, a Plaintiff must allege sufficient facts to establish a *prima facie* case that: (1) a defendant purposefully availed itself of the privilege of conducting business in Rhode Island; (2) the claims arise out of activities directed toward Rhode Island; and (3) personal jurisdiction in Rhode Island is constitutionally reasonable. *See Cerberus Partners*, 836 A.2d at 1119-22. The United States Supreme Court has held that a defendant's "suit-related conduct" must "create a substantial connection with the forum State" for specific jurisdiction to exist. *Walden v. Fiore*, 571 U.S. 277, 284 (2014).

Plaintiff's bareboned allegations that COP "transacts and has transacted substantial fossil fuel-related business in Rhode Island," and that "[a] substantial portion of ConocoPhillips's fossil fuel products are or have been extracted, refined, transported, traded, distributed, promoted, marketed, manufactured, sold, and/or consumed in Rhode Island," Compl. ¶ 25(h), cannot justify jurisdiction. Indeed, the latter assertion, expressly phrased in the alternative, does not even allege that COP or COPCO undertook *any* activity in Rhode Island. Regardless, in

⁴ Moreover, the mere act of registering an agent of service and qualifying to do business cannot establish jurisdiction. *N. Am. Catholic Educ. Programming Found., Inc. v. Cardinale*, 567 F.3d 8, 16 n.6 (1st Cir. 2009) ("courts have consistently held that the appointment of an agent of process alone does not suffice to allow for the exercise of general jurisdiction") (applying Rhode Island law); *Phoenix Ins. Co. v. Cincinnati Indem. Co.*, No. 16-223S, 2017 U.S. Dist. LEXIS 109977, at *9 (D.R.I. Mar. 3, 2017) ("it has been held that the mere designation of an agent for service of process cannot alone establish general jurisdiction").

assessing personal jurisdiction, courts do not “credit conclusory allegations.” *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass’n*, 142 F.3d 26, 34 (1st Cir. 1998); *see also Sawtelle v. Farrell*, 70 F.3d 1381, 1389 (1st Cir. 1995).

Plaintiff’s most specific allegation of any tie to Rhode Island is that “ConocoPhillips shipped gasoline manufactured at their refineries via common carrier pipelines intended to deliver gasoline to Petroleum Administration for Defense District 1, including Rhode Island,” Compl. ¶ 25(h). Yet this allegation cannot justify specific jurisdiction because, at most, it indicates that COP only shipped gasoline to a large region that merely *included* Rhode Island.⁵ And it says nothing of the purported timing or volume shipped to that region. (As the complaint tacitly recognizes, COP and COPCO for several years have not sold or delivered gasoline in such a manner as all of COP’s “formerly owned” “downstream fossil fuel processing, refining, transport, and marketing segments” are now part of Phillips 66. Compl. ¶ 25(e).) There is no allegation whatsoever that COPCO or COP (or any subsidiaries for that matter) purposefully availed itself of Rhode Island.

Plaintiff’s meager allegations fall far short of the allegations necessary to establish a *prima facie* case of jurisdiction which justifies haling COP and COPCO into Rhode Island courts for *any* claims, let alone justifying jurisdiction for Plaintiff’s sweeping claims related to alleged worldwide contribution to global climate change. *See Cerberus*, 836 A.2d at 1118 (“It is well established that to withstand a defendant’s Rule 12(b)(2) motion to dismiss a complaint for lack of *in personam* jurisdiction, a plaintiff must allege sufficient facts to make out a *prima facie* case of jurisdiction.”), citing *Ben’s Marine Sales v. Sleek Craft Boats*, 502 A.2d 808, 809 (R.I. 1985).

CONCLUSION

Plaintiff’s lawsuit against Defendants ConocoPhillips and ConocoPhillips Company should be dismissed for lack of personal jurisdiction.

⁵ Petroleum Administration for Defense District 1 has seventeen states and runs the length of the East coast from Florida to Maine. *See* <https://www.eia.gov/todayinenergy/detail.php?id=4890>.

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Respectfully submitted,

By: /s/ Michael J. Colucci

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed and served a copy of the within via the Court's Electronic Filing System to all counsel of record registered and able to receive Electronic Filings in this case on this 13th day of January, 2020.

/s/ Michael J. Colucci