



State of Rhode Island and Providence Plantations

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June 22, 2020

By Email

Hon. Netti C. Vogel
Associate Justice
Rhode Island Superior Court
250 Benefit Street
Providence, RI 02903

Re: *State v. Chevron Corp., et al.* No. PC-2018-4716
Webex Hearing Calendared June 24, 2020, 9:30 am

Dear Judge Vogel,

This letter-brief supplements the State's prior submissions. We focus here on the specific issues the Court identified for discussion at the June 24, 2020 hearing.

Question 1: Should the Court stay consideration of Defendants' Personal Jurisdiction Motion pending disposition of *Ford Motor Co. v. Montana Eight Judicial District Court*, 443 P.3d 407 (Mont. 2019), *cert. granted*, 140 S.Ct. 917 (Jan. 17, 2020) (No. 19-368), and *Martins v. Bridgestone Ams. Tire Operations, LLC*, SU-201 8-0143-A (R.I. Super. Ct. Mar. 8, 2018), *on appeal*, PC-2017-2420?

Answer: The parties agree the answer is No. The State provides here a short explanation of its position.

Both *Ford Motor* and *Martins* ask a different question than presented in this case, so disposition of those cases will not affect – much less resolve – the jurisdictional issue here. The issue in those cases, as articulated by petitioner Ford Motor Company, is: “whether the ‘arise out of or relate to’ requirement [for specific jurisdiction] is met when *none* of the defendants’ forum contacts caused the plaintiff’s claims, such that the plaintiff’s claims would be the same even if the defendant had no forum contacts.” Pet. for Cert., *Ford Motor Co. v. Bandemer*, No. 19-368 (Sept. 18, 2019) (emphasis added). The issue here, in contrast, focuses on the relationship

between the plaintiff's "claims" and the defendant's forum contacts. The State need not prove the merits of its tort claims to establish personal jurisdiction to attach to Defendants.

The "relatedness" requirement looks to the "relationship between the defendant, the forum, and the litigation." *Beddoe-Greene v. Basic, Inc.*, No. 2011-2617, 2012 WL 1440600, at *3 (R.I. Super. Ct. Apr. 20, 2012) (Gibney, P.J.) (quoting *Cerberus Partners v. Gadsby & Hannah, LLP*, 836 A.2d 1113, 1119 (R.I. 2003)). This "relationship 'need not be terribly robust.'" *Id.* The plaintiff's claim must have "a 'demonstrable nexus' to the defendant's forum contacts." *Knox v. MetalForming, Inc.*, 914 F.3d 685, 691 (1st Cir. 2019) (quoting *Mass. Sch. of Law v. ABA*, 142 F.3d 26, 34 (1st Cir. 1998)); accord *Nowak v. Tak How Invs.*, 94 F.3d 708, 714 (1st Cir. 1998) (relatedness "'focuses on the nexus between the defendant's contacts and the plaintiff's cause of action'").

In the First Circuit, this requirement incorporates a "causative threshold." *Nowak*, 94 F.3d at 714. Here, the State's causes of action derive from and are integrally related to Defendants' contacts with Rhode Island. Specifically, Defendants' acts of concealment and misrepresentation of their products' known dangers, and their promotion of those products' sale and use, both occurred in Rhode Island and targeted Rhode Island. *See* State's Mem. in Support of Mot. to Compel, at 2-4 (complaint allegations re: Defendants' forum acts and omissions giving rise to State's causes of action).

In contrast, the issue in the *Ford Motor* and *Martins* cases is whether the relatedness prong contains any "causative threshold" *at all*. The plaintiffs-respondents in the *Ford Motor* cases do not contend that Ford's forum contacts (*e.g.*, dealerships and marketing) caused their claims. Likewise, the *Martins* plaintiff's wrongful death claim lacks any causal connection to the defendant's Rhode Island contacts. The crash that caused the harm occurred in Connecticut, the Bridgestone tire that failed was "original equipment" installed on the PACCAR truck in Tennessee, and it was not sold to PACCAR or the decedent in Rhode Island. Unlike here, both parties in *Martins* agreed the *Ford Motor* appeal is likely to dictate the result in the *Martins* appeal and jointly requested the Rhode Island Supreme Court stay the appeal pending the outcome at the U.S. Supreme Court. Judge Stern's subsequent *denial* of the defendant truck manufacturer's motion to dismiss for lack of personal jurisdiction is not before the state Supreme Court.

In short, this case fundamentally differs from *Ford Motor* and *Martins*. In those cases, the relevant contact between the defendant manufacturer and the plaintiffs' claims is the situs of purchase, and in neither of the cases was that the forum state. Here, by contrast, the State easily satisfies any causal threshold requirement because Defendants' Rhode Island contacts "caused the State's claims," as those contacts supply the very basis for the State's causes of action.

Question #2: Should jurisdictional discovery proceed pending resolution of the *Ford Motor* and *Martins* appeals?

Answer: The parties agree that *Ford Motor* and *Martins* do not bear on the jurisdictional discovery issues here. As discussed above, those cases involve a different personal jurisdiction

issue than Defendants here have raised. There is no reason to delay jurisdictional discovery in this case pending the outcome of the *Ford Motor* and *Martins* appeals.

Question #3: Must the Court resolve the 12(b)(2) motion, which would seem to raise a threshold jurisdictional issue, before turning to the 12(b)(6) motion?

Answer: The parties agree the answer is No. The order of disposition of these preliminary motions at issues pursuant to Super. R. Civ. P. 12 is within the Court's discretion. *See, e.g., Feinstein v. Resolution Trust Corp.*, 942 F.2d 34 (1st Cir. 1991) (while "courts should ordinarily satisfy jurisdictional concerns before addressing the merits of a civil action," "the rule is not mechanically to be applied"). Moreover, given the near certainty of ultimate appellate review of both sets of issues, judicial efficiency supports this Court resolving both sets of motions. That said, if Your Honor wishes to defer ruling on Defendants' 12(b)(6) motion, there is certainly no reason to abstain ruling on the State's motion to compel jurisdictional discovery, which is fully briefed, nor subsequently on the underlying 12(b)(2) motion to dismiss.

Question #4: Why should discovery go forward, even assuming the *Ford Motor* and *Martins* cases do not control, and what should the scope of such discovery be?

Answer: The parties disagree on this question. The State respectfully submits this very issue is the point of its Motion to Compel and Reply in Support of Motion to Compel. The parties have fully briefed that motion, and it is ready for the Court to resolve.

Briefly, *Defendants* have attacked the sufficiency and specificity of the State's factual allegations about the companies' Rhode Island-targeted deceptive conduct and communications ("[t]he 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," Personal Jur. Mot. at 16). To address these alleged deficiencies asserted *by Defendants*, the State seeks discovery about Defendants' Rhode Island-focused deceptive conduct and wrongful promotion. Importantly, *Defendants* control this evidence. Before the Court takes up the Defendants' Motion to Dismiss for Lack of Personal Jurisdiction, the State should be allowed this discovery.

As for any potential dispute about the scope of the State's requests, the Court should require Defendants to meet and confer with the State, as Super.R.Civ.P. 26(c) requires. To date, Defendants have relied on their blanket contention that no discovery concerning their contacts with the State whatsoever is appropriate. Only if the parties are unable to agree would the Court need to address specific discovery questions.

Respectfully submitted,

/s/ Neil F.X. Kelly

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