IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, *ex rel.* KATHLEEN JENNINGS, Attorney General of the State of Delaware,

Plaintiff,

v.

BP AMERICA INC., BP P.L.C., CHEVRON CORPORATION, CHEVRON U.S.A. INC., CONOCOPHILLIPS, CONOCOPHILLIPS COMPANY, PHILLIPS 66, PHILLIPS 66 COMPANY, EXXON MOBIL CORPORATION, EXXONMOBIL OIL CORPORATION, XTO ENERGY INC., HESS CORPORATION, MARATHON OIL CORPORATION, MARATHON OIL COMPANY, MARATHON PETROLEUM CORPORATION, MARATHON PETROLEUM COMPANY LP, SPEEDWAY LLC, MURPHY OIL CORPORATION, MURPHY USA INC., ROYAL DUTCH SHELL PLC, SHELL OIL COMPANY, CITGO PETROLEUM CORPORATION, TOTAL S.A., TOTAL SPECIALTIES USA INC., OCCIDENTAL PETROLEUM CORPORATION, DEVON ENERGY CORPORATION, APACHE CORPORATION, CNX RESOURCES CORPORATION, CONSOL ENERGY INC., OVINTIV,

C.A. No. N20C-09-097-MMJ CCLD

INC., and AMERICAN PETROLEUM INSTITUTE,

Defendants.

DEFENDANTS' JOINT REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR LACK OF PERSONAL JURISDICTION

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INTRODUCTION

Plaintiff's Opposition demonstrates that extending personal jurisdiction to Defendants, none of whom are incorporated or formed under Delaware law or headquartered in Delaware, would be improper.[1] Plaintiff seeks to expand dramatically the bounds of specific jurisdiction, with a theory that would apply to Defendants in any State in which they may have marketed and sold any amount of fossil fuels, at any point in time, no matter how small. Under Plaintiff's novel and expansive theory, there would be jurisdiction in this Court over *any* corporate defendant that is alleged to have conducted *any* business in the State, at any point in time, for *all* claims affiliated with that business no matter how attenuated the relationship between the business, Delaware, and the claims—virtually erasing the distinction between general and specific jurisdiction. Such an unprecedented expansion would violate Defendants' due process rights and has been soundly rejected by both the U.S. Supreme Court and Delaware Courts. *See Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 137 S. Ct. 1773, 1781 (2017); *Ross v. Earth Movers, LLC*, 288 A.3d 285, 294 (Del. Super. Ct. 2023).

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[1] The term "Defendants" is used throughout this Memorandum to refer to the seven out-of-state Defendants challenging personal jurisdiction: BP p.l.c., Chevron U.S.A. Inc., Exxon Mobil Corporation, ExxonMobil Oil Corporation, Shell plc (f/k/a Royal Dutch Shell plc), TotalEnergies SE, and American Petroleum Institute ("API").

As Defendants' Joint Brief demonstrates, personal jurisdiction is improper here for three primary reasons: (1) Plaintiff's claims do not "arise out of or relate to" Defendants' alleged activities in Delaware, *see Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021); (2) Defendants did not have the constitutionally required "clear notice" that they could be subject to suit in Delaware for the alleged impacts of global climate change given that an overwhelming majority of the conduct alleged to have contributed to that phenomenon occurred elsewhere, *id.* at 1027; and (3) exercising personal jurisdiction over Defendants would be unreasonable under the Due Process Clause, *see Intellectual Ventures I, LLC v. Ricoh Company, Ltd.*, 67 F. Supp. 3d 656, 659 (D. Del. 2014). The Court should grant the Motion and dismiss Plaintiff's Complaint as to Defendants.[2]

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[2] Contrary to Plaintiff's suggestion, *see* Opp. at 7 n.4, the U.S. Supreme Court's recent decision in *Mallory v. Norfolk Southern Railway Co.*, 143 S. Ct. 2028 (2023), has no bearing on this case. In *Mallory*, the Court held that the application of a Pennsylvania statute subjecting foreign corporations registered to do business in Pennsylvania to "general personal jurisdiction," 42 Pa. Conn. Stat. § 5301(a), comported with the Due Process Clause of the U.S. Constitution under the particular facts of that case. But as Plaintiff itself concedes, the Delaware Supreme Court has squarely held that Delaware's statutory registration scheme is best read "as providing a means for service of process and not as conferring general jurisdiction." *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 148 (Del. 2016). In *Cepec*, the Delaware Supreme Court contrasted Pennsylvania's statute, which "expressly provides . . . that registering to do business in the state is a sufficient basis for general jurisdiction over a foreign corporation," with Delaware's statute, which "does *not* refer explicitly to personal jurisdiction, much less to consent to personal jurisdiction." *Id*. at 126, 140 (emphasis added). As the Court explained, its interpretation of the Delaware statute was "intuitively sensible" and in accord with "common sense," while a contrary holding would constitute a "perverse result . . .

ARGUMENT

I. Defendants Are Not Subject to Specific Jurisdiction in Delaware.

A. Plaintiff's Claims Do Not "Relate to" Defendants' Contacts with Delaware.

Plaintiff agrees, as it must, that the Court lacks personal jurisdiction over Defendants *unless* Plaintiff's claims "arise out of or relate to" Defendants' in-state activities. Opp. at 8. Unable to satisfy this burden, however, Plaintiff erroneously accuses Defendants of arguing that a "strict causal relationship" is required and then devotes multiple pages to attacking that strawman. Opp. at 8–14. But Defendants do not argue that causation is always required to establish personal jurisdiction. Rather, Defendants argue that "the Complaint is silent as to *any* connection between Defendants' purported Delaware-specific conduct and the alleged harm underlying Plaintiff's claims." J. Br. at 15. Plaintiff has no meaningful response to that argument.

Plaintiff places heavy reliance on *Ford Motor*, but ignores the key distinction between that case and this one: in *Ford Motor*, the complaint alleged that Ford's products malfunctioned *in* the forum States, causing injury there. 141 S. Ct. at 1027;

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that would be inefficient and reduce legal certainty for businesses." *Id*. at 141–43. *Mallory*, which concerned an "explicit" Pennsylvania statute, 143 S. Ct. at 2037, does not undo *Cepec*, which remains binding.

see also J. Br. at 16–20. Plaintiff here does not and cannot allege that it was injured by the use and malfunction of Defendants' products *in Delaware*.

Plaintiff argues that it does not matter that its claims "'would be precisely the same if [Defendants] had never done anything in [the forum state]'"—and, in so doing, tacitly concedes that its alleged injuries did not result from Defendants' alleged activities in Delaware. Opp. at 13 (citing *Ford Motor*, 141 S. Ct. at 1029). But here, unlike in *Ford Motor*, Plaintiff's claims would be precisely the same even if *none of* Defendants' products had ever entered the forum State. In other words, because Plaintiff's alleged injuries are based on the accumulation of greenhouse gas emissions in the Earth's atmosphere, including from billions of consumers' use of fossil fuels in every Nation in the world, Plaintiff's alleged injuries do not depend on Defendants' fossil fuels ever being sold, marketed, or consumed in Delaware. That scenario was not present in *Ford Motor*, where the plaintiffs' claims were based on the *in-state use and malfunction* of Ford's products. And the Supreme Court has long held that the mere occurrence of an injury in the forum State is insufficient to establish specific personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980); *see also Walden v. Fiore*, 571 U.S. 277, 290 (2014) ("mere injury to a forum resident" is insufficient). Yet that is all Plaintiff alleges here—that Defendants' lawful conduct outside of Delaware purportedly caused an injury in Delaware. That failure is dispositive of the personal jurisdiction inquiry.

At bottom, Plaintiff's theory would obliterate the distinction between general and specific jurisdiction. Delaware law and due process require a stronger connection between the claims and the defendant's contacts with the forum State than Plaintiff can allege. Accordingly, this Court lacks personal jurisdiction over Defendants and dismissal is required.

1. *Ford Motor* Requires Plaintiff's Injuries to Result from the In-State Use and Malfunction of Defendants' Fossil Fuel Products.

Unable to show that its claims "relate to" Defendants' in-state activities, Plaintiff spends much of its Opposition attacking a strawman. It accuses Defendants of arguing that personal jurisdiction always requires the defendant's in-state contacts to be "a but-for cause" of the plaintiff's injuries. *See, e.g.*, Opp. at 13 ("Ford thus argued, as Moving Defendants do here in slightly different words, that there was no jurisdiction because its sales and business activities in the forum states could not have been a but-for cause of the plaintiffs' injuries.").

But Defendants already acknowledged in their Joint Brief that strict but-for causation is not always required under *Ford Motor*. *See* J. Br. at 17. Indeed, Defendants explained that the Court held in *Ford Motor* that "some relationships [between a plaintiff's claims and a defendant's contacts with the forum] will support jurisdiction without a causal showing." *Id.* (quoting *Ford Motor*, 141 S. Ct. at 1026). Critically, however, the Court explicitly stated that this "*does not mean anything*

goes," and in "the sphere of specific jurisdiction, the phrase 'relate to' incorporates *real limits*." *Id.* (quoting *Ford Motor*, 141 S. Ct. at 1026) (emphases added). The plaintiffs came within these "real limits" in *Ford Motor* by showing, even absent causation, that the defendant's products were used and malfunctioned within the forum States, injuring the plaintiffs there. Plaintiff cannot make that showing here.

Despite these clear facts of *Ford Motor*, Plaintiff incorrectly insists that the case does not require in-state use and malfunction of Defendants' products here because the Court held that a causal connection is not always required for plaintiffs to sufficiently allege personal jurisdiction. *See* Opp. at 10–11 (citing *Ford Motor*, 141 S. Ct. at 1026). But this circular argument misses the point. While it is true that a defendant's in-state conduct need not be a but-for cause of a plaintiff's claims, to come within *Ford Motor*'s holding a plaintiff still must allege that it suffered injury from the in-state use and malfunction of the defendant's product.

The Court could not have been clearer on this point. In the very first paragraph of its decision, the Court explained: "When a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit." *Ford Motor*, 141 S. Ct. at 1022. Put differently, personal jurisdiction may exist where a company "[1] serves a market for a product in the forum State and [2] the product malfunctions there" "[3] caus[ing] injury in the State to one of its residents." *Id.* at

1022, 1026–27. And the Court reiterated this point throughout the opinion. *See id.* at 1031 (explaining that the exercise of personal jurisdiction was appropriate because the plaintiffs "used the allegedly defective products in the forum States" and "suffered injuries when those products malfunctioned there"). Plaintiff does not even attempt to grapple with these parts and undisputed facts of *Ford Motor*.

Plaintiff erroneously asserts that the Supreme Court in *Ford Motor* "rejected an essentially identical argument" to the one Defendants make here. Opp. at 13. Not so—and Plaintiff, again, assiduously avoids grappling with the key language from *Ford Motor*. The Supreme Court rejected Ford's argument that "jurisdiction is improper because the particular car involved in the crash was not first sold in the forum State, nor was it designed or manufactured there." *Ford Motor*, 141 S. Ct. at 1022. But that is not Defendants' argument. Defendants do not argue that personal jurisdiction is lacking because a particular product that allegedly malfunctioned in Delaware, and thereby caused the alleged injury in Delaware, was sold or manufactured outside of Delaware. In fact, Defendants accept as true all the jurisdictional facts alleged in the Complaint for purposes of this Motion, including that fossil fuel products were sold and manufactured in Delaware. J. Br. at 2. Rather, Defendants argue that, as a matter of law, personal jurisdiction is lacking because Plaintiff's alleged injuries were <u>not</u> caused by the use and malfunction of Defendants' products in Delaware. That is the key holding from *Ford Motor*: in

order to base personal jurisdiction on in-state "advertising, selling, and servicing" of a defendant's products, a plaintiff's alleged injuries must result from *the use and malfunction* of those products within the forum State. 141 S. Ct. at 1022.

Defendants' reading of *Ford Motor* is consistent with decisions by this Court and courts across the country. J. Br. at 18–20. Plaintiff attempts to distinguish these decisions with inapposite facts but fails to address that all of these cases echo the central holding of *Ford Motor* that in-state use and malfunction must cause in-state injury. *Id.* For example: in *Martins*, the Rhode Island Supreme Court explained that "it was key in *Ford* that the injury . . . occurred in the forum state" and that the "car accident occurred in the state where the suit was brought." *Martins v. Bridgestone Am. Tire Ops., LLC*, 266 A.3d 753, 761 (R.I. 2022).

Similarly, in *Yamashita*, which Plaintiff fails to address in its Opposition, the Ninth Circuit explained that, "absent causation," a claim relates to a defendant's forum contacts only when "'a company . . . serves a market for a product in the forum State *and the product malfunctions there*.'" *Yamashita v. LG Chem., Ltd.*, 62 F.4th 496, 502 (9th Cir. 2023) (emphasis added) (quoting *Ford Motor*, 141 S. Ct. at 1026–27). And in *Cappello*, another case that Plaintiff neglects to confront, the court explained that "a central limitation to the Supreme Court's holding in *Ford*" is "the fact that the plaintiffs' claims brought in Montana and Minnesota courts arose because the defendant's vehicles 'malfunctioned and injured them in those States.'"

Cappello v. Restaurant Depot, LLC, 2023 WL 2588110, at *4 (D.N.H. Mar. 21, 2023).

Plaintiff concedes that, under *Ford Motor*, there must be a "strong relationship among the defendant, the forum, and litigation." Opp. at 11 (quoting *Ford Motor*, 141 S. Ct. at 1028 (quotation omitted in original)). In fact, the Supreme Court held that is "the '*essential foundation*' of specific jurisdiction." *Ford Motor*, 141 S. Ct. at 1028 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). But Plaintiff sidesteps *Ford Motor*'s central holding that this "strong relationship" existed there only because the "plaintiffs allege[d] the [vehicles at issue] malfunctioned and injured them in" the forum States. *Id.* at 1029. Plaintiff does not, and cannot, make that showing here.

2. Plaintiff's Claims Do Not Have a Strong Relationship to Defendants' In-State Activities.

As explained in Defendants' Joint Motion, neither the alleged events giving rise to Plaintiff's claims nor its alleged injuries resulted from the use of any of Defendants' products *in Delaware*, nor does Plaintiff allege any kind of malfunction of those products *in Delaware*. J. Br. at 21. In fact, Plaintiff fails to allege that Defendants' alleged contacts with Delaware have *any* meaningful connection to claims relating to global greenhouse gas pollution and global climate change. Plaintiff thus cannot establish that its claims "arise out of or relate to" Defendants'

alleged forum contacts. *Ford Motor*, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780).

In an effort to make its claims seem connected to Defendants' forum contacts, Plaintiff betrays the true nature of its claims. Plaintiff implies that Defendants characterize the Complaint as attempting to hold Defendants "strictly liable for all harms flowing from all greenhouse gas emissions anywhere, ever." Opp. at 9. But Defendants make no such assertion, and, in addressing this strict liability "argument," Plaintiff misses Defendants' point: Plaintiff *does* seek to hold Defendants liable for all injuries it allegedly suffered in Delaware "flowing from all greenhouse gas emissions anywhere, ever," *see* Compl. ¶¶ 2, 47–49, all but a *de minimis* fraction of which were released outside of Delaware and a substantial portion of which were released outside of the United States.

Plaintiff does not and cannot assert that its claims are limited to injuries flowing from conduct in Delaware. Plaintiff even acknowledges this is so, explaining that "[t]he theory actually animating the State's causes of action is that Defendants are liable for injuries in Delaware attributable to their unlawful and deceptive conduct . . . in Delaware *as elsewhere.*" Opp. at 9. The Complaint makes that abundantly clear by alleging that Plaintiff's injuries are "***all due*** to anthropogenic ***global*** warming," Compl. ¶ 10 (emphases added), caused by the "increase in atmospheric CO_2 and other greenhouse gases" from *worldwide*

combustion of oil and gas over the past century, *id.* ¶ 4. Without emissions in countries such as China and Russia, for example, climate change might not occur or would at least be less severe—and Plaintiff would have no alleged injury on which to sue. And Plaintiff does not, and cannot, attempt to tie its injuries to emissions from any specific location—most importantly not from Delaware. *Id.* ¶¶ 47–48. On the contrary, Plaintiff asserts that "it is not possible to determine the source of any particular individual molecule of CO_2 in the atmosphere attributable to anthropogenic sources because such greenhouse gas molecules do not bear markers that permit tracing them to their source, and because green-house gasses [sic] quickly diffuse and comingle in the atmosphere." *See, e.g.*, Compl. ¶ 245; *see also Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009) ("the pleadings make clear that there is no realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, group at any particular point in time"), *aff'd*, 696 F.3d 849 (9th Cir. 2012); *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021) ("Since greenhouse gases once emitted become well mixed in the atmosphere, emissions in New York or New Jersey may contribute no more to flooding in New York than emissions in China.") (quoting *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 422 (2011)) (cleaned up).

As pleaded in the Complaint, Plaintiff seeks damages from the cumulative impact of greenhouse gas emissions around the world, including those from products that were used and sold in countries like China and Russia. What is more, Plaintiff does not dispute, and therefore concedes, that greenhouse gas emissions in Delaware represent a *de minimis* percentage of energy consumption in the United States and around the world. J. Br. at 23. It is untenable to suggest that specific personal jurisdiction exists in Delaware for claims based on activities occurring almost entirely outside of Delaware, including in foreign countries. Given that Plaintiff's claims are based on cumulative, worldwide emissions, of which a minuscule portion resulted from conduct or activities in Delaware by Defendants or others, Plaintiff plainly fails to show the "strong relationship" required for personal jurisdiction. *Ford Motor*, 141 S. Ct. at 1028. Indeed, it indisputable that use and malfunction of Defendants' products in Delaware did not result in the complained of injuries.[3] As such, Plaintiff's claims cannot be said to "relate to" Defendants' contacts with Delaware.

3. Plaintiff Seeks to Impermissibly Expand the Bounds of Personal Jurisdiction.

Plaintiff's theory of jurisdiction is, at bottom, premised on the unsupportable proposition that Plaintiff's purported injuries from the "cumulative nature of the

[3] Indeed, Defendants' products do not malfunction at all. The release of carbon emissions upon combustion is an inherent physical property of oil and gas products.

greenhouse effect" that has resulted from decades of production, promotion, and use of fossil fuels around the world are somehow sufficiently associated with Defendants' general promotion and sales activity in Delaware. But the Supreme Court has rejected this argument, holding that, "[f]or specific jurisdiction, a defendant's general connections with the forum are not enough." *Bristol-Myers Squibb*, 137 S. Ct. at 1781. Plaintiff's theory would expand the bounds of specific jurisdiction to the point where it would impermissibly "resemble[] a loose and spurious form of general jurisdiction." *Id.* Such a result would fly in the face of the Supreme Court's decision in *Ford Motor*, which states that the "arise out of or relate to" requirement has "real limits" and "does not mean anything goes." *Ford Motor*, 141 S. Ct. at 1026 (internal quotation marks omitted).

As the Supreme Court has explained, "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 931 n.6 (2011); *see also Bristol-Myers Squibb*, 137 S. Ct. at 1781 (rejecting a "sliding scale approach" similar to the one Plaintiff appears to assert here, in which "the strength of the requisite connection . . . is relaxed if the defendant has extensive forum contacts that are unrelated to those claims"). "A corporation's continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Bristol-Myers Squibb*,

137 S. Ct. at 1781 (quoting *Goodyear Dunlop Tires Ops.*, 564 U.S. 927) (alteration omitted). Plaintiff's expansive approach is at odds with settled precedent, and is not supported by logic or common sense, because it would subject any corporation doing business in Delaware to personal jurisdiction in Delaware for virtually any claims relating generally to its business. But "[f]or specific jurisdiction, a defendant's general connections with the forum are not enough." *Id.*

Both the Supreme Court and Delaware courts acknowledge an important distinction between general and specific jurisdiction: While claims based on general jurisdiction "may concern events and conduct anywhere in the world," "[s]pecific jurisdiction is different: It covers defendants less intimately connected with a State, but only as to a *narrower class of claims*." *Ford Motor*, 141 S. Ct. at 1024 (emphasis added); *see also Ross*, 288 A.3d at 294. Plaintiff's theory would erase this distinction, allowing claims against corporate defendants in any State in which they conducted business at any time. It would also collapse the Supreme Court's three-part test for specific personal jurisdiction into a single inquiry: whether the defendant "purposefully availed itself" of the market in the forum State. If so, plaintiffs in the forum State could sue those defendants on virtually any claim at all, because anything can be "related to" anything else at some level. *Ford Motor*, 141 S. Ct. at 1033 (Alito, J., concurring) ("Applying that phrase [*i.e.*, 'related to'] 'according to its terms [is] a project doomed to failure, since, as many a curbstone

philosopher has observed, everything is related to everything else.'" (quoting *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring)) (alteration in original)). That is why the Supreme Court was clear that there are "real limits."

Plaintiff's theory would erase the distinction between specific and general jurisdiction. It would subject defendants to litigation on virtually any claim in any State in which they operate, no matter how tenuously the claim relates to the defendant's operations in the State. The law requires a stronger connection between the claims and the defendant's contacts with the forum State. *See id.* at 1028 (reiterating that there must be a "strong relationship among the defendant, the forum, and litigation" (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984))). Plaintiff bears the burden to show that connection, *see Schweitzer v. LCR Capital Partners, LLC*, 2020 WL 1131716, at *5 (Del. Super. Ct. Mar. 9, 2020), and it has failed to meet it here.

B. Defendants Did Not Have "Clear Notice" That Personal Jurisdiction Would Exist in Delaware for Suits Based on Global Climate Change.

Plaintiff does not dispute that *Ford Motor* requires a defendant to have "clear notice" that it may be subject to jurisdiction in a forum; in fact, Plaintiff concedes that the Supreme Court referred to "clear notice" three separate times. Opp. at 23. Rather, Plaintiff disputes whether "clear notice" is a separate requirement or a

requirement of the reasonableness prong of the personal jurisdiction test. *Id.* at 23–25. Either way, it is a requirement as a matter of due process that Plaintiff fails to satisfy.

In *Ford Motor*, the Supreme Court held that Ford had clear notice of potential lawsuits for injuries caused when a "product malfunctions" in a State whose market Ford actively served for that very product. 141 S. Ct. at 1027. The same is not true here. Plaintiff does not allege injury from a product malfunctioning in the forum State. As explained above, Plaintiff does not allege—nor could it—that the use of Defendants' products in Delaware, or Defendants' promotion of those products in Delaware, gave rise to global climate change and thus to Plaintiff's alleged injuries. Rather, Plaintiff's alleged injury, as set forth in the Complaint, arises from and relates to extra-forum, worldwide conduct by Defendants and countless others. Even accepting all of Plaintiff's allegations as true, Defendants did not have "clear notice" that they would become subject to jurisdiction in Delaware courts for the alleged local effects of decades-long global climate change—a complex worldwide phenomenon resulting from the cumulative effects of global greenhouse gas emissions by countless individuals and entities (including Plaintiff itself).

To be sure, the Supreme Court in *Ford Motor* found no unfairness to Ford in exercising jurisdiction despite Ford's argument that "plaintiffs' claims would be precisely the same if Ford had never done anything in [the forum States]." *Id.* at

1029. But that argument "merely restate[d] Ford's demand for an exclusively causal test of connection." *Id.* The Court explained that even though the vehicles were designed, manufactured, and sold outside of the forum State, "Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs alleged *malfunctioned and injured* them *in those States*." *Id.* at 1028 (emphases added).

Here, by contrast, Plaintiff is not suing for injuries from products that malfunctioned in Delaware. Unlike in *Ford Motor*, Plaintiff's claims would be precisely the same even if Defendants' *products* had *never entered Delaware*. Plaintiff's argument therefore requires an enormous leap not present in *Ford Motor*. Plaintiff cannot reasonably contend that Defendants had fair warning that, by allegedly producing, marketing, and/or selling fossil fuel products in Delaware, they could be subject to jurisdiction based on the undifferentiated conduct of countless individuals and entities who consumed fossil fuel products *around the world* and *for over a century*, which allegedly resulted in local climate-related injuries. Exercising personal jurisdiction over Defendants in this case would violate the requirement that Defendants have "fair warning" that "a particular activity may subject [them] to the jurisdiction of a foreign sovereign." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (internal quotation marks omitted) (alteration in original). Such an unbounded exercise of jurisdiction exceeds the limits of due process.

C. Exercising Specific Jurisdiction over Defendants Would Be Unreasonable and Conflict with Federalism Principles.

Exercising jurisdiction here would also be unreasonable for three fundamental reasons that Plaintiff cannot rebut: (1) Plaintiff seeks to expand the bounds of personal jurisdiction to allow jurisdiction to be exercised over Defendants for claims related to *global* climate change in any State where Defendants conduct even the smallest amount of fossil fuel-related business; (2) Plaintiff seeks to regulate nationwide (indeed, worldwide) activities; and (3) Plaintiff seeks to enforce local "substantive social policies" against Defendants' nationwide activities that are not shared across all States and nations. *See* J. Br. at 26–30.

First, while Plaintiff notes that relevant considerations in evaluating reasonableness include, among others, "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," Opp. at 26, Plaintiff seemingly implies that the only factor worth this Court's consideration is the burden to Defendants, *id.* But as Plaintiff rightly notes, the "burden on the defendant . . . will in an appropriate case be considered in light of other relevant factors." Opp. at 26 (quoting *Word-Wide Volkswagen*, 444 U.S. at 292) (quotation marks omitted). Given the significant implications of asserting personal jurisdiction in this case, not only as to the boundaries between specific and general jurisdiction, but also to the interstate judicial system, these significant factors should be given considerable weight.

Second, despite its protests to the contrary, Plaintiff seeks to regulate nationwide and even worldwide activities. Opp. at 27. While Plaintiff claims to "seek . . . to protect Delaware and its citizens," it has pointed to nothing in the Complaint that would limit its claims to "torts committed in or aimed at Delaware." *Id.* In fact, Plaintiff states that its claims involve conduct taking place "around the world." *Id*. Plaintiff seeks to base liability on Defendants' out-of-state conduct, not Defendants' fossil fuel activities in Delaware.

Third, Plaintiff's assertion that Defendants' "theory, if accepted, would conveniently ensure no jurisdiction could redress the harms caused by Defendants' conduct" is a red herring. Opp. at 27. Defendants are, of course, subject to general jurisdiction in their respective home jurisdictions, and Plaintiff could bring its claims (to the extent they are otherwise cognizable) against Defendants in the appropriate courts.[4] Simply because it is more convenient for Plaintiff to do so in a single action in Delaware is not reason for this Court to overlook well-settled constitutional principles.

Finally, Plaintiff fails to address Defendants' argument that "the 'substantive social policies' Plaintiff seeks to advance . . . are not shared uniformly across all the various States and nations." J. Br. at 29. As the Second Circuit recognized, "this is

[4] Indeed, other defendants in this case are "at home" in Delaware and do not challenge the exercise of general personal jurisdiction over them here.

an interstate matter raising significant federalism concerns." *City of New York*, 993 F.3d at 93. In fact, the Biden Administration announced that it is "engaging with relevant OPEC+ members" to encourage "*production increases*" of crude oil in hopes of lowering "high[] gasoline costs," because "reliable and stable energy supplies" are essential to the "ongoing global recovery" from the pandemic.[5] "Any actions the [Defendants] take to mitigate their liability, then, must undoubtedly take effect across every state (and country). And all without asking what the laws of those other states (or countries) require." *City of New York*, 993 F.3d at 92. Here, the "substantive interests of other nations" and States compared with the relatively "slight interests of the plaintiff[s] and the forum State," render the exercise of personal jurisdiction "unreasonable and unfair." *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cnty.*, 480 U.S. 102, 115–16 (1987).

CONCLUSION

This Court lacks personal jurisdiction over Defendants, and Plaintiff's Complaint should be dismissed.

DATED: AUGUST 17, 2023

Respectfully submitted,

By: */s/ David E. Wilks*
David E. Wilks (Del. Bar I.D. 2793)

WILKS LAW, LLC

[5] The White House, *Statement by National Security Advisor Jake Sullivan on the Need for Reliable and Stable Global Energy Markets*, Aug. 11, 2021, https://bit.ly/3yXWVFO.

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