STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: August 13, 2020]

STATE OF RHODE ISLAND	:	
	:	
vs.	:	**C.A. No. PC-2018-4716**
	:	
CHEVRON CORP.;	:	
CHEVRON U.S.A. INC.;	:	
EXXONMOBIL CORP.;	:	
BP P.L.C.; 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	:	

DECISION

VOGEL, J. Plaintiff, State of Rhode Island, has filed suit against multiple oil companies[1] alleging that they have contributed to climate change and that said contribution has damaged the State's

[1] The Complaint names the following parties as Defendants: Chevron Corp.; Chevron U.S.A. Inc.; ExxonMobil Corp.; BP P.L.C.; BP America, Inc.; BP Products North America, Inc.; Royal Dutch Shell P.L.C.; 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; and Getty Petroleum Marketing, Inc. On December 6,

infrastructure and coastal communities. The Defendants have filed two separate Joint Motions to Dismiss. Defendants first move to dismiss the action pursuant to Super. R. Civ. P. 12(b)(2), asserting lack of jurisdiction over the person.[2] Defendants also seek dismissal of the Complaint under Super. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.[3] Plaintiff objects to both motions.

For the reasons set forth herein, the Court will delay further proceedings on Defendants' Joint Motion to Dismiss under Super. R. Civ. P. 12(b)(2) and on Plaintiff's request for jurisdictional discovery pending decisions from both the United States Supreme Court in the consolidated cases of *Bandemer v. Ford Motor Company*, 931 N.W.2d 744 (Minn. 2019), *cert. granted, Ford Motor Company v. Bandemer,* 140 S. Ct. 916 (Mem), 205 L.Ed. 2d 519 (2020) and *Ford Motor Company v. Montana Eighth Judicial District Court,* 443 P.3d 407 (Mont. 2019), *cert. granted, Ford Motor Company v. Montana Eighth Judicial District Court,* 140 S. Ct. 917 (Mem), 205 L.Ed. 2d 519 (2020), and the Rhode Island Supreme Court Order in *Martins v. Bridgestone Americas Tire Operations, LLC,* No. 2018-143-Appeal (filed Jan. 23, 2020). The Court declines to consider Defendants' Joint Motion to Dismiss under Super. R. Civ. P. 12(b)(6) until it determines, pursuant to the Super. R. Civ. P. 12(b)(2) motion, whether one or more of the Defendants are properly before the Court.

2019, Plaintiff filed a Notice of Dismissal, without prejudice, as to Defendant LUKOIL Pan Americas, LLC.

[2] Nineteen Defendants filed the Joint Motion to Dismiss for Lack of Personal Jurisdiction, broadly contending that the case against them should be dismissed for lack of personal jurisdiction while setting forth grounds common to all twenty Defendants. Defendants Marathon Oil Corporation, Marathon Oil Company, ConocoPhillips and ConocoPhillips Company joined in the motion and also filed Supplemental Motions to Dismiss under Super. R. Civ. P. 12(b)(2).

[3] The same nineteen Defendants filed the Joint Motion to Dismiss under Super. R. Civ. P. 12(b)(6). In addition, with the Court's approval, the United States filed an Amicus Curiae Memorandum in Support of Defendants' Joint Motion to Dismiss, and Former U.S. Government Officials filed an Amicus Curiae Brief in Support of Plaintiff's Objection to the Motion to Dismiss.

I

Facts and Travel

Plaintiff filed this action on July 2, 2018. Defendants are multinational oil and gas companies and some of their subsidiaries, including "vertically integrated extractors, producers, refiners, manufacturers, distributors, promoters, marketers, and sellers of fossil fuel products." (Compl. ¶¶ 2, 21-28.) Plaintiff alleges that since the mid-20th century, the production and use of fossil fuel products has directly and substantially contributed to the dramatic rise in emissions of greenhouse gas pollution and increased carbon dioxide (CO_2) concentrations in the atmosphere. *Id.* According to Plaintiff, the increase in anthropogenic (human-caused) greenhouse gas pollution, primarily in the form of CO_2 emissions, constitutes the dominant cause of global climate change. *Id.* ¶¶ 2-3. Plaintiff contends that climate change results in severe damage to the globe, "including, but not limited to, sea level rise, disruption to the hydrologic cycle, more frequent and more intense drought, more frequent and more extreme precipitation, more frequent and more intense heatwaves, and associated consequences of those physical and environmental changes." *Id.* ¶ 3. Plaintiff claims that the main cause of greenhouse gas pollution is the extraction, production, and consumption of coal, oil and natural gas, commonly referred to as fossil fuels products. *Id.*

Plaintiff asserts that the yearly rate of CO_2 emissions from the extraction, production and consumption of fossil fuels has increased by more than 60% since 1990. *Id.* ¶ 4. Plaintiff additionally claims that, between 1965 and 2015, Defendants collectively were responsible for 182.9 gigatons of CO_2 emissions, thereby accounting for 14.81% of global emissions of dangerous greenhouse gas. *Id.* ¶ 7.

Plaintiff contends that Defendants have known for almost 50 years that the unrestricted production and use of their fossil fuel products create greenhouse gases. *Id.* ¶ 5. Pollution caused

by greenhouse gases warms the planet, changes its climate, and causes sea levels to rise. *Id.* Plaintiff maintains that Defendants, acting individually and together, "have substantially and measurably contributed to the State's climate change-related injuries" because of their

> "lead role in promoting, marketing, and selling their fossil fuel products between 1965 and 2015; their efforts to conceal the hazards of those products from consumers; their promotion of their fossil fuel products despite knowing the dangers associate[d] with those products; their dogged campaign against regulation of those products based on falsehoods, omissions, and deceptions; and their failure to pursue less hazardous alternatives available to them . . . ." *Id.* ¶ 105.

As a result of this alleged wrongful conduct, Plaintiff asserts that the Rhode Island coastline is suffering, and will continue to suffer, from increased sea levels, extreme heat days, flooding, extreme rain events, hurricanes, more frequent and severe drought, and that the ocean will warm and will become more acidic. *Id.* ¶ 8. Plaintiff further claims that, due to its extensive coastline, significant low-lying land areas, and considerable coastal development, Rhode Island is particularly vulnerable to the effects of sea level rise. *Id.* ¶ 203. It maintains that the impacts of climate change will "jeopardize State-owned or operated facilities critical for operations, utility services, and risk management, as well as real property and other assets that are essential to community health, safety, and well-being." *Id.* ¶ 8. Plaintiff contends that the risk of damage specifically jeopardizes Rhode Island's roads and bridges, railroad systems, energy infrastructure, dams, ports, beaches, water supply, wastewater management, storm water/flood management infrastructure, residential and commercial property, aquatic resources, marshes and coastal wetlands, and terrestrial natural resources. *Id.* ¶ 212 (a-m).

Thus, Plaintiff contends that the simultaneous production, promotion, and marketing of fossil fuel products, combined with the concealment of the known dangers of those products, as well as Defendants' promotion of anti-science campaigns, have actually and proximately caused

injury to Rhode Island. *Id.* ¶ 10. Plaintiff seeks recovery based upon several legal theories, namely, Public Nuisance; Strict Liability for Failure to Warn; Strict Liability for Design Defect; Negligent Design Defect; Negligent Failure to Warn; Trespass; Impairment of Public Trust Resources; and Violations of the State Environmental Rights Act. *Id.* ¶ 11.

Before this Court are Defendants' two joint motions to dismiss the action. First, Defendants seek to dismiss the Complaint pursuant to Super. R. Civ. P. 12(b)(2), alleging a lack of personal jurisdiction. In response, Plaintiff seeks to conduct jurisdictional discovery to obtain factual information to demonstrate that Defendants have the requisite minimum contacts to subject them to the jurisdiction of the Court. Defendants oppose Plaintiff's motion to compel jurisdictional discovery. Defendants maintain that such discovery is unwarranted and will not provide Plaintiff with sufficient facts to support a finding of jurisdiction.

Second, Defendants have filed a joint motion to dismiss the Complaint under Super. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

On June 24, 2020, at the request of this Court, the parties appeared for hearing[4] to respond to the following questions: (1) whether the Court should delay consideration of Defendants' Joint Motion to Dismiss under Super. R. Civ. P. 12(b)(2) until the United States Supreme Court and the Rhode Island Supreme Court respectively rule on similar questions of personal jurisdiction currently pending before them;[5] (2) if so, whether the Court also should delay its consideration of

[4] The Court conducted a remote public hearing via WebEx which was accessible to the public via YouTube.

[5] *See Bandemer*, 931 N.W.2d 744, *cert. granted, Ford Motor Company,* 140 S. Ct. 916 (Mem), 205 L.Ed. 2d 519; *Ford Motor Company,* 443 P.3d 407, *cert. granted, Ford Motor Company,* 140 S. Ct. 917 (Mem), 205 L.Ed. 2d 519; and *Martins*, No. 2018-143-Appeal.

Plaintiff's request for jurisdictional discovery; and (3) whether the Court must decide the jurisdictional issues raised by Defendants before considering Defendants' Joint Motion to Dismiss the Complaint under Super. R. Civ. P. 12(b)(6).

II

Standard of Review

The questions before the Court are within the discretionary authority of the hearing justice. Our Supreme Court has '"defined the exercise of judicial power as the control of a decision in a case or *the interference with its progress*, or the alteration of the decision once made."' *Quattrucci v. Lombardi*, No. 2017-248-Appeal, No. 2017-249-Appeal (KM 13-1127), 2020 WL 3525539, at *4 (R.I. June 30, 2020) (emphasis added) (quoting *Lemoine v. Martineau*, 115 R.I. 233, 238, 342 A.2d 616, 620 (1975)). Accordingly, it is well established that "[c]ontrol of judicial dockets rests in the court." *State v. Johnson*, 116 R.I. 449, 456, 358 A.2d 370, 374 (1976) (citing *Lemoine*, 115 R.I. at 239, 342 A.2d at 620).

The Court has discretion to issue a continuance, so long as it is with "sound discretion, exercised not arbitrarily or willfully, but with just regard to what is right and equitable under the circumstances and the law." *Strzebinska v. Jary*, 58 R.I. 496, 193 A. 747, 749 (1937); *see also State v. Allan*, 433 A.2d 222, 225 (R.I. 1981) (stating a decision to grant or deny a continuance "will not be disturbed on appeal in the absence of an abuse of discretion"). The term "discretion" signifies "an action taken by the trial justice in the light of reason. Due regard is given for what is right and equitable under all of the circumstances and the law." *Allan*, 433 A.2d at 225 (citing *Hartman v. Carter*, 121 R.I. 1, 4, 393 A.2d 1102, 1105 (1978); *Strzebinska*, 58 R.I. 496, 193 A. at 749).

Thus, "[d]iscretion is the option that a trial justice has in doing or not doing a thing that cannot be demanded by a litigant as an absolute right." *Allan*, 433 A.2d at 225. Furthermore, the Court '"has broad discretion"' to grant or deny a discovery motion. *Estate of Chen v. Lingting Ye*, 208 A.3d 1168, 1172 (R.I. 2019) (quoting *State v. Lead Industries Association, Inc.*, 64 A.3d 1183, 1191 (R.I. 2013)).

III

Personal Jurisdiction

This Court first turns to the question of whether to delay its consideration of Defendants' Joint Motion to Dismiss under Super. R. Civ. P. 12(b)(2) for lack of personal jurisdiction. The Due Process Clause of the Fourteenth Amendment to the United States Constitution "limits the exercise of personal jurisdiction over nonresident defendants to those who 'have certain minimum contacts with [the forum] such that maintenance of the suit does not offend traditional notions of fair play and substantial justice."' *Rose v. Firstar Bank*, 819 A.2d 1247, 1250 (R.I. 2003) (quoting *International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement*, 326 U.S. 310, 316 (1945)). Personal jurisdiction over a nonresident defendant may be general or specific. *Cassidy v. Lonquist Management Co., LLC*, 920 A.2d 228, 232 (R.I. 2007) (quoting *Cerberus Partners, L.P. v. Gadsby &. Hannah, LLP*, 836 A.2d 1113, 1118 (R.I. 2003)). When a nonresident defendant's contacts with a state are purposeful, continuous, and systematic, the "defendant will subject itself to the general jurisdiction of that forum's courts with respect to all claims, regardless of whether they relate to or arise out of the nonresident's contacts with the forum." *Rose*, 819 A.2d at 1250 (citing *International Shoe Co.*, 326 U.S. at 318).

General jurisdiction is appropriate when the defendants' "affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler*

AG v. Bauman, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). In the case of a corporate defendant, "the place of incorporation and principal place of business are paradig[m] . . . bases for general jurisdiction." *Daimler AG,* 571 U.S. at 137 (internal citations omitted). An exception to that rule may be available when "a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 139 n.19.

In the case at bar, Plaintiff does not allege that any Defendant is incorporated or headquartered in Rhode Island. Instead, at issue here is whether the Court has specific jurisdiction over Defendants.

In order "[f]or specific personal jurisdiction to exist . . . the defendant must have performed 'some act by which [it] purposefully [availed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.'" *Cerberus Partners*, 836 A.2d at 1119 (quoting *Rose*, 819 A.2d at 1251). In determining specific jurisdiction, the Court looks at various factors, including '"the relationship among the defendant, the forum, and the litigation."' *State of Maryland Central Collection Unit v. Board of Regents for Education of University of Rhode Island*, 529 A.2d 144, 151 (R.I. 1987) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). A showing of "specific jurisdiction is a far less onerous burden for the plaintiff to carry than that of general jurisdiction." *Cerberus Partners*, 836 A.2d at 1119 (citing *Ben's Marine Sales v. Sleek Craft Boats*, 502 A.2d 808, 812 (R.I. 1985). Thus, '"[w]hen a cause of action arises from the defendant's contacts with the forum, less is required to support jurisdiction than when the cause of action is unrelated to those contacts."' *Ben's Marine Sales*, 502 A.2d at 812 (quoting *Vencedor Manufacturing Co., Inc. v. Gougler Industries, Inc.*, 557 F.2d 886, 889 (1st Cir. 1977)).

Our Supreme Court also notes that "the 'cornerstones upon which the concept of purposeful availment rest are voluntariness and foreseeability.'" *Cerberus Partners*, 836 A.2d at 1121 (quoting *Sawtelle v. Farrell*, 70 F.3d 1381, 1391 (1st Cir. 1995)). A defendant's connection and conduct with the forum state is critical to a court's due process analysis; the issue is whether a defendant "should reasonably anticipate being haled into court there." *Cerberus Partners*, 836 A.2d at 1121 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Our Supreme Court has recognized "that when a defendant 'delivers its products into the stream of commerce' with the expectation that they will reach the forum state, the forum's court may assert jurisdiction." *Ben's Marine Sales*, 502 A.2d at 813 (quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 298). However,

> "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State." *Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 112 (1987).

Nevertheless, "courts have frequently held that the direct or indirect shipment of goods into the forum by a nonresident defendant with knowledge of their destination is sufficient contact upon which to base jurisdiction where the plaintiff was injured as the result of such shipment, even when that shipment constituted the defendant's only contact with the forum." *Ben's Marine Sales*, 502 A.2d at 813. However, '"[f]or specific jurisdiction, a defendant's general connections with the forum are not enough[;] [thus], [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 Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1781, 198 L.Ed. 2d 395 (2017) (quoting *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 927 (internal quotations omitted).

In the case at bar, Defendants contend that specific jurisdiction is lacking because Plaintiff is unable to demonstrate that the State's alleged injuries arise out of Defendants' limited contacts with Rhode Island. They further contend the exercise of specific jurisdiction over Defendants for global climate change-related claims would expand the sovereignty of this Court far beyond the limits of due process and, thus, interfere with the power of Defendants' home jurisdictions.

The issue of specific jurisdiction is a timely one in both the American and Rhode Island legal landscapes. The United States Supreme Court recently granted certiorari on two consolidated cases involving specific jurisdiction in cases respectively brought in Montana and Minnesota. *See Bandemer*, 931 N.W.2d 744, *cert. granted, Ford Motor Company,* 140 S. Ct. 916 (Mem), 205 L. Ed. 2d 519 and *Ford Motor Company*, 443 P.3d 407, *cert. granted, Ford Motor Company*, 140 S. Ct. 917, 205 L.Ed. 2d 519.[6] In both cases, the lower courts denied Ford Motor Company's motions to dismiss for lack of jurisdiction, finding that in each case the forum state had specific personal jurisdiction over the defendant. The United States Supreme Court has scheduled the consolidated cases for hearing in the upcoming term.

Ford Motor Company involves a wrongful death action in which a vehicle suffered a belt/tread separation in Montana. Ford argues that Montana lacks personal jurisdiction over it because Ford neither designed nor manufactured the vehicle in Montana; it assembled the vehicle

[6] As the appellant in both *Ford* cases are the same, for purposes of clarification, the Court will refer to the case from Minnesota as *Bandemer*, and the case from Montana as *Ford Motor Company.*

in Kentucky and originally sold it to a dealer in Washington. The Montana court disagreed, holding that due process does not require a direct connection with the forum state to find specific personal jurisdiction. Instead, the Montana court held due process only requires that a plaintiff's claims "arise out of" or relate to a defendant's forum-related activities. Accordingly, the court found personal jurisdiction under a stream of commerce theory. 443 P.3d at 415-16. *See Ben's Marine Sales,* 502 A.2d at 813 (observing "that when a defendant delivers its products into the stream of commerce with the expectation that they will reach the forum state, the forum's court may assert jurisdiction") (internal quotations omitted).

Bandemer also involves products liability claims. There, Ford contended that its contacts with Minnesota were not sufficiently connected to the litigation because the allegedly defective vehicle was designed, manufactured, and sold outside the forum state. Also applying a stream of commerce analysis, the Supreme Court of Minnesota held that Ford had sufficient contacts with Minnesota for purposes of finding specific personal jurisdiction. The Court reasoned that Ford purposefully had availed itself of the privileges, benefits, and protections of the forum state, and that Ford's contacts were substantially arising out of, or related to, the litigation such that it reasonably should have anticipated being haled into court in Minnesota.

A similar issue also is before the Rhode Island Supreme Court. Another Superior Court Justice recently granted a motion to dismiss under Super. R. Civ. P. 12(b)(2) in a different case filed by certain defendants in a product liability case. As to those defendants, he also denied plaintiff's request for jurisdictional discovery. Plaintiff's appeal from that decision currently is pending before our Supreme Court. *Martins,* No. 2018-143-Appeal.[7] In *Martins,* a Massachusetts resident

[7] The defendants in the operative complaint in the *Martins* case consist of Bridgestone Americas Tire Operations LLC; Bridgestone Americas, Inc.; Bridgestone Retail Operations, LLC (the so-

brought a wrongful death action, individually and as executrix of the decedent's estate, against multiple defendants, several of whom maintained their corporate headquarters outside Rhode Island. *See Martins v. Bridgestone Americas Tire Operations, LLC*, No. PC-2017-2420, 2018 WL 1341662 (R.I. Super. Mar. 08, 2018) (Stern, J.). The decedent was a Rhode Island resident.

In *Martins*, the tire belonging to decedent's rotator truck suffered a belt and/or tread separation while he was driving to Rhode Island from Connecticut. The Superior Court found no specific personal jurisdiction with respect to the Bridgestone defendants who designed and manufactured the truck and tire, because (a) the accident took place entirely within Connecticut; (b) the truck was manufactured and assembled entirely outside Rhode Island; (c) the decedent did not purchase the tire at issue in Rhode Island—instead, it was "original equipment" on the truck that was manufactured outside this state; and (d) the tire at issue was designed and manufactured entirely in Tennessee, installed in Tennessee, and purchased in Tennessee. In so ruling, Justice Stern, quoting case law, stated that:

> "plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him. [M]ere injury to a forum resident is not a sufficient connection to the forum." *Martins*, 2018 WL 1341662, at *9 (internal citations and quotations omitted).

The Court entered final judgment pursuant to Super. R. Civ. P. 54(b) and Super. R. Civ. P. 58(a)(2). Thereafter, the plaintiff filed an appeal to the Rhode Island Supreme Court seeking review of the decision granting the motions to dismiss and denying the plaintiff's request for jurisdictional discovery.

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called Bridgestone defendants); Peterbilt of Connecticut, Inc. d/b/a Peterbilt of Rhode Island, Inc.; Peterbilt Motors Co.; Paccar, Inc.; Patriot Sales and Service, Inc.; Miller Industries Towing Equipment, Inc.; and ABC Corporation. (*Martins*, PC-2017-2420). The appeal to the Supreme Court concerns only the Bridgestone defendants.

However, before our Supreme Court heard oral arguments in the *Martins* appeal, the United States Supreme Court granted certiorari in both *Ford* cases and consolidated them for hearing. The parties in the *Martins* case filed a joint motion to delay the hearing before our Supreme Court, pending an opinion in the consolidated cases before the United States Supreme Court. Our Supreme Court granted the motion, observing that the United States Supreme "Court is expected to determine whether the 'arise out of or relate to' requirement for specific jurisdiction is met when none of the nonresident defendant's contacts with the forum state caused the plaintiff's injuries." *Martins v. Bridgestone Americas Tire Operations, LLC*, No. 2018-0143-Appeal (Order, Jan. 23, 2020). Our Supreme Court then concluded that, "[b]ecause the [United States] Supreme Court's decision in *Ford Motor Company* could impact our decision in the case at bar, we conclude that postponing oral argument in this case is appropriate." *Id.*

In light of *Martins*, this Court asked the parties in the instant matter their positions as to whether it should delay ruling on the Joint Motion to Dismiss for Lack of Jurisdiction until our Supreme Court rules. As an initial matter, both sides concede that this Court has discretion to delay ruling on the current motions.

Plaintiff opposes delaying a ruling on the jurisdictional issues in this case pending opinions from the United States Supreme Court and our Supreme Court. It argues that the issue in those cases is whether the Court should adopt a more lenient test than applied by the First Circuit in the case of *Knox v. MetalForming, Inc.*, 914 F.3d 685 (1st Cir. 2019). In *Knox,* the First Circuit held that a plaintiff must demonstrate that its "cause of action either arises directly out of, or is related to, the defendant's forum-based contacts." *Id.* at 690-91. This standard is "flexible" and "relaxed[,]" requiring only that the claim have a "demonstrable nexus to the defendant's forum contacts." *Id.* at 691 (internal citation and quotations omitted).

Plaintiff argues that it meets the more stringent *Knox* standard because it alleges that its claims arise out of and are causally connected to Defendants' in-state conduct.[8] Thus, Plaintiff contends that the pending cases before the United States Supreme Court and our Supreme Court will have no effect on this case because Plaintiff satisfies the test regardless of how those Courts rule. Accordingly, Plaintiff argues that this Court need not delay consideration of the jurisdictional issues in this case.

Defendants counter that there is a dispute in the courts regarding the applicable legal standard in determining the specific jurisdiction test's relatedness requirement. They contend that the proper standard is proximate causation. They further maintain that both the upcoming *Ford* opinion, and the subsequent *Martins* opinion, likely will be decisive on the proper standard to apply, particularly because the *Ford* cases raise the issue of proximate causation. Plaintiff counters that Defendants confuse the causation standard for jurisdiction as opposed to the causation standard required on a Rule 12(b)(6) motion.

Defendants nonetheless contend that Plaintiff would not be able to satisfy either standard because its claim essentially is a worldwide tort—global emissions causing global climate change—and that Defendants' local activities in Rhode Island have no causal impact on, or connection to, Plaintiff's claims.

Plaintiff appears to be asking the Court to disregard the pending cases before the United States Supreme Court and before our Supreme Court and to decide the Rule 12(b)(2) motions in this case based upon the holding in *Knox* on the chance that the United States Supreme Court and

[8] The *Knox* Court observed that, to satisfy due process requirements for demonstrating the existence of specific personal jurisdiction, a plaintiff must satisfy three prongs—namely, "relatedness, purposeful availment, and reasonableness." 914 F.3d at 690. To satisfy the relatedness prong, a plaintiff must demonstrate that the "cause of action either arises directly out of, or is related to, the defendant's forum-based contacts." *Id*. at 690-91.

our Supreme Court either will adopt a standard similar to or less stringent than *Knox*. This Court declines to engage in such speculation. With the aforementioned Courts about to issue opinions defining a standard applicable to the jurisdictional issues in the instant case, this Court certainly shall apply a standard consistent with such opinions.

IV

Jurisdictional Discovery

Having decided to delay its consideration of the Rule 12(b)(2) motions, the Court now turns to the issue of jurisdictional discovery. Notwithstanding the parties' divergent positions on whether jurisdictional discovery is warranted, both parties agree that the Court should delay ruling on the Motion to Compel Jurisdictional Discovery if the Court delays ruling on the Joint Motion to Dismiss for Lack of Jurisdiction. It is traditional that the Court resolve such motions simultaneously. Furthermore, assuming the pending *Ford* and *Martins* cases resolve the dispute over the legal standard for determining relatedness, the parties acknowledge that such determination would aid the Court in addressing the necessity or relevancy of jurisdictional discovery. The parties also acknowledge that a decision in *Martins* likely will offer further guidance on when such discovery is permissible.

Accordingly, this Court shall delay ruling on Plaintiff's Motion to Compel Jurisdictional Discovery until after the *Martins* and *Ford* cases are decided.

V

Rule 12(b)(6) Motion to Dismiss

Having decided to delay consideration of Defendants' Rule 12(b)(2) motions and Plaintiff's Motion to Compel Jurisdictional Discovery, the Court now considers the fate of Defendants'

Rule 12(b)(6) motion. Both parties contend that the Court should rule on the Joint Motion to Dismiss for Failure to State a Claim under Super. R. Civ. P. 12(b)(6) even if it delays ruling on the personal jurisdictional issue. Citing *Feinstein v. Resolution Trust Corp.*, 942 F.2d 34 (1st Cir. 1991), both parties maintain that the Court is not required to resolve personal jurisdictional issues before ruling on a motion dismiss for failure to state a claim. They also maintain that, because the Rule 12(b)(6) motion is fully briefed and ready to be heard, and because it may take up to a year before our Supreme Court issues its decision in *Martins*, a ruling on the Rule 12(b)(6) motion would promote a just, speedy, efficient and wise use of judicial resources.

However, the parties' reliance on *Feinstein* is misplaced; they disregard the case's procedural history. In *Feinstein*, the plaintiff appealed a decision granting a Rule 12(b)(6) motion, arguing that the lower court committed reversable error by deciding a motion to dismiss on the merits of the case while a Rule 12(b)(2) motion remained pending. In rejecting that argument, the court noted that the plaintiff had chosen the forum and had not asked the lower court to rule on jurisdictional issues.

Feinstein offers no support for the parties' request that this Court should consider the Rule 12(b)(6) motion before deciding the jurisdictional issues. Instead, in *Feinstein*, the court noted that, "[t]o be sure, judgments of courts lacking in *personam* jurisdiction are judgments *coram non judice*[,]" and that a judgment that is "entered by a court which lacks personal jurisdiction over the defendant . . . is a nullity." *Feinstein* 942 F.2d at 40. Ultimately, the *Feinstein* Court opined that, "courts should ordinarily satisfy jurisdictional concerns before addressing the merits of a civil action." *Id.*

Generally, the determination of jurisdiction is a "court's first order of business[,] [because] '[w]ithout jurisdiction the court cannot proceed at all in any cause.'" *Forras v. Rauf*, 812 F.3d

1102, 1105 (D.C. Cir. 2016) (quoting *Ex parte McCardle*, 74 U.S. 506, 514 (1868)); *see also Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (recognizing personal jurisdiction as an "essential element" to a court's jurisdiction and "without which the court is powerless to proceed to an adjudication"); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110 (1969) ("The consistent constitutional rule has been that a court has no power to adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant"); *Logan Farms v. HBH, Inc. DE*, 282 F. Supp. 2d 776, 785 (S.D. Ohio 2003) ("The general rule is that [a] court should resolve jurisdictional issues before moving on to the merits."). The assessment of "jurisdiction is not a 'legal nicet[y]'; it is an 'essential ingredient' of [a court's] ability to hear a case." *Forras*, 812 F.3d at 1105 (citing *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101 (1998)).

The rationale underlying this approach is that "[a] defendant that is not subject to the jurisdiction of the court cannot be bound by its rulings." *Republic of Panama v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935, 940 (11th Cir. 1997) (citing *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990)). Accordingly,

> "as a preliminary matter, courts should determine if they have the power to bind a defendant with a ruling on the merits of the case. Moreover, the fact that a dismissal for failure to state a claim is with prejudice whereas a dismissal for lack of jurisdiction is without prejudice counsels against bypassing the jurisdictional issue." *Id.*

See also Arrowsmith v. United Press International, 320 F.2d 219, 221 (2d Cir. 1963) (stating that a court without jurisdiction over a defendant "lacks power to dismiss a complaint for failure to state a claim"); *Bruce v. Fairchild Industries, Inc.*, 413 F. Supp. 914, 916 (W.D. Okla. 1974), *on motion to dismiss* (Mar. 21, 1975) ("When a Motion to Dismiss is urged based on lack of personal jurisdiction, such Motion must be passed on by the Court prior to considering any Motions going to the merits of the case.").

Nevertheless, as an exception, a court may determine personal jurisdiction before ruling on a motion dismiss when "a decision on the merits would favor the party challenging jurisdiction and the jurisdictional issue is difficult." *Republic of Panama*, 119 F.3d at 941; *see also North American Catholic Educational Programming Foundation, Inc. v. Cardinale*, 567 F.3d 8, 12 (1st Cir. 2009) ("[W]here an appeal presents a difficult jurisdictional issue, yet the substantive merits underlying the issue are facilely resolved in favor of the party challenging jurisdiction, the jurisdictional inquiry may be avoided.").

This exception might apply if the jurisdictional issue was complicated and a decision on the merits was clear. This Court may consider "leapfrogging" over complex jurisdictional issues and decide a motion to dismiss under Super. R. Civ. P. 12(b)(6) if the merits of that motion were uncomplicated and clear. *See Kaplan v. Central Bank of the Islamic Republic of Iran*, 896 F.3d 501, 510 (D.C. Cir. 2018) (advising that courts should not leapfrog over serious jurisdictional concerns before addressing the merits of a claim). For example, in a product liability case involving similar jurisdictional issues as those raised by the defendants in *Martins* and *Ford*, a court may entertain a motion to dismiss pursuant to Super. R. Civ. P. 12(b)(6) if the motion were based on a clear violation of the applicable statute of limitations and the complaint set forth no basis for tolling it. By determining the statute of limitations issue in favor of the party challenging jurisdiction, the court never would have to reach the more complex, less clear jurisdictional question. *See, e.g.*, *McBurney v. Jeremiah*, 735 A.2d 212, 213 (Mem) (R.I. 1999) (upholding dismissal of a case under the judicial immunity doctrine without addressing the challenge to personal jurisdiction). Such is not the case here, where the Joint Motion to Dismiss for Lack of Personal Jurisdiction and the Joint Motion to Dismiss for Failure to State a Claim Upon which Relief can be Granted both involve complex issues of fact and law.

The consolidated *Ford* cases before the United States Supreme Court and *Martins* before our Supreme Court involve products liability allegations. The instant matter involves more complex issues as to the theories of liability, causal connection and damages. Plaintiff does not allege that Defendants' products are defective; rather, it alleges that combustion of those products, combined with Defendants' deliberate concealment of the dangers of emissions from those products, caused harm to the State. Nonetheless, the parties in this case raise the relatedness issue that is squarely before the United States Supreme Court in the *Ford* cases and our Supreme Court in *Martins*. Thus, like our Supreme Court, this Court will have to address "whether the 'arise out of or relate to' requirement for specific jurisdiction is met when none of the nonresident defendant's contacts with the forum state caused the plaintiff's injuries." *Martins*, No. 2018-143-Appeal (Order, Jan. 23, 2020). Accordingly, the rulings from those Courts necessarily would impact this Court's determination of Defendants' Joint Motion to Dismiss for Lack of Personal Jurisdiction.

Plaintiff maintains that it satisfies personal jurisdiction requirements but, in the event that the Court rules otherwise, Plaintiff has requested discovery to bolster its case before such ruling. However, questions about jurisdictional discovery are presently before our Supreme Court in *Martins*. Given that this Court will await a determination on the proper standard to apply for personal jurisdictional challenges, it would be premature even to consider Plaintiff's motion for jurisdictional discovery.

This Court rejects the parties' request for it to entertain the Joint Motion to Dismiss for Failure to State a Claim before ruling on the jurisdictional issues. The Court finds that this motion involves many complex issues that render it imprudent to rule on the Rule 12(b)(6) motion until deciding the jurisdictional questions. Indeed, the fact that Amicus Curiae have filed memoranda in support of, and in opposition to, the motion supports the finding that the substantive merits

underlying the motion would not be "facilely resolved in favor of the party challenging jurisdiction[,]" such that the jurisdictional question could be avoided. *Cardinale*, 567 F.3d at 12. Accordingly, the Court finds that it is most appropriate to postpone ruling on all motions presently before the Court until the United States Supreme Court and our Supreme Court issue their opinions in the *Ford* and *Martins* cases.

VI

Conclusion

In light of the foregoing, until the United States Supreme Court decides the consolidated cases of *Bandemer* and *Ford Motor Company*, and our Supreme Court issues an opinion in *Martins*, No. 2018-143-Appeal, this Court will delay considering Defendants' Joint Motion to Dismiss under Super. R. Civ. P. 12(b)(2) and Plaintiff's Motion to Compel Jurisdictional Discovery. This Court will not entertain Defendants' Joint Motion to Dismiss under Super. R. Civ. P. 12(b)(6) before first determining that the parties are properly before the Court. Accordingly, the Court will postpone considering that motion until deciding the jurisdictional issues raised by Defendants in their Super. R. Civ. P. 12(b)(2) motion. This matter is continued for further consideration until after the aforementioned opinions are issued by the United States Supreme Court and the Rhode Island Supreme Court.

Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	State of Rhode Island v. Chevron Corp., et al.
CASE NO:	PC-2018-4716
COURT:	Providence County Superior Court
DATE DECISION FILED:	August 13, 2020
JUSTICE/MAGISTRATE:	Vogel, J.
ATTORNEYS:	
For Plaintiff:	SEE ATTACHED LIST
For Defendant:	SEE ATTACHED LIST

State of Rhode Island v. Chevron Corp., et al.
C.A. No. PC-2018-4716

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