

motion and propounded a request to grant a Motion to Compel Jurisdictional Discovery against Defendants to determine the level of contacts Defendants have had with Rhode Island. Pl.’s Mem. Supp. of Mot. to Compel (Pl.’s Mem.). Defendants filed an opposition arguing that there is no basis to grant such discovery request because there is no jurisdictional fact in dispute. Plaintiff concedes that this Court has no general personal jurisdiction over Defendants but argues that Defendants had sufficient minimum contacts with Rhode Island to establish specific personal jurisdiction. For the reasons stated herein, the Court is prepared to accept Plaintiff’s request with specific discovery parameters and will defer a ruling on Defendants’ motion to dismiss predicated on lack of personal jurisdiction until said discovery is completed.

I

Facts and Travel

In this climate change related action, Plaintiff has brought several legal and equitable causes of actions on behalf of the State of Rhode Island, including 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.

Plaintiff filed this action on July 2, 2018 and alleged that Defendants, multinational oil and gas companies and some of their subsidiaries, have contributed to climate change, and their pollution has damaged the State’s infrastructure and coastal communities. *See generally* Compl. Plaintiff asserts that climate change has significantly contributed 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 further asserts that Defendants have known

about the effects of production and that use of their fossil fuel create greenhouse gas emissions. *Id.* ¶ 5. In addition, Plaintiff claims that the pollution from greenhouse gases warms the planet, changes the climate, and causes sea level rise. *Id.* Since the “Great Acceleration” of the 1950s, where greenhouse gas emissions soared in history and have only continued to rise through the use of Defendants’ fossil fuel products, Plaintiff argues that Rhode Island, its coastline, and infrastructure are suffering from sea level rise, storms, droughts, and other severe weather patterns. *Id.* ¶¶ 4; 8; 212. As such, Plaintiff contends that the production, promotion, and marketing of fossil fuel products and the concealment of its known dangers by Defendants have actually and proximately caused injury to Rhode Island. *Id.* ¶ 10.

Plaintiff alleges Defendants, respectively, engaged in different activities in Rhode Island throughout the years. *Id.* ¶¶ 21-30. These Rhode Island activities include owning and operating petroleum and fossil fuel product terminals and name-branded petroleum service stations. *Id.* Defendants vehemently deny causation between their activities and any alleged harm to this State. In addition, they argue that none of these facts, as to jurisdiction, are in dispute. Mem. in Supp. Of Obj. to Pl.’s Motion to Compel (Defs.’ Mem.) at 5-6. As such, they argue, no jurisdictional discovery needs to be granted. However, during oral arguments, Plaintiff urged the Court to see through the Defendants’ defenses for this current discovery motion because Defendants’ Motion to Dismiss for lack of personal jurisdiction includes factual arguments that pertain to jurisdiction. Plaintiff writes that Defendants seemingly argue there are no issues of jurisdiction at this instance yet argue the exact opposite in their motion to dismiss for lack of personal jurisdiction. For the reasons stated herein, this Court agrees with Plaintiff.

In August 2020, this Court issued a decision² delaying further proceedings on Defendants' Motion to Dismiss for lack of personal jurisdiction and on Plaintiff's request for jurisdictional discovery pending determinative 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) (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) (2020). Around the same time, the Rhode Island Supreme Court was determining personal jurisdiction issues in *Martins v. Bridgestone Americas Tire Operations, LLC*, No. 2018-143-Appeal (filed Jan. 23, 2020). After decisions were reached on those cases, Defendants renewed their Motion to Dismiss asserting lack of personal jurisdiction. In response, Plaintiff has now renewed their motion to compel jurisdictional discovery against Defendants because it alleges it is necessary to further determine jurisdictional facts. Defendants have objected to Plaintiff's Motion to Compel and urge this Court to deny Plaintiff's request citing insufficient contacts with Rhode Island to establish jurisdiction over them.

Plaintiff's Motion seeks discovery on Defendants' fossil-fuel business activity in Rhode Island, their marketing and promotion of fossil fuel products to Rhode Island consumers, and their historical knowledge of climate change impacts in the State." *See* Pl.'s Reply Mem. Supp. of Mot. to Compel. (Pl.'s Reply Mem.).

² The August 2020 decision was issued by a different Justice of the Superior Court.

II

Standard of Review

When faced with a motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2), the Court must “examine the pleadings, accept the facts alleged by the plaintiff as true, and view disputed facts in the light most favorable to the plaintiff.” *Cassidy v. Lonquist Management Co., LLC*, 920 A.2d 228, 232 (R.I. 2007). The Court may examine “affidavits and discovery to establish the jurisdictional facts[.]” *Ben’s Marine Sales v. Sleek Craft Boats*, 502 A.2d 808, 810 (R.I. 1985).

This Court has been requested to delay ruling on the motion to dismiss for lack of personal jurisdiction to conduct jurisdictional discovery. As such, the Court will examine whether Plaintiff has met their burden.

III

Analysis³

Jurisdictional Discovery

When additional time to conduct jurisdictional discovery has been sought by a plaintiff, the Court must consider whether denial of such request would substantially prejudice the litigant and whether defendant has retained exclusive control of information that would be determinative on the question of jurisdiction. *Smith v. Johns-Manville Corp.*, 489 A.2d 336, 339 (R.I. 1985).

Allowing jurisdictional fact discovery “is acceptable in certain limited circumstances.” *Martins v. Bridgestone Americas Tire Operations, LLC*, 266 A.3d 753, 761 (R.I. 2022). However,

³ As stated, this Court will defer a ruling on Defendants’ Rule 12(b)(2) motion until jurisdictional discovery has completed. This analysis will only pertain to Plaintiff’s Motion for Jurisdictional Discovery.

discovery ““should be granted where pertinent facts bearing on the question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary.”” *Smith*, 489 A.2d at 339 (quoting *Cheng v. Boeing Company*, 708 F.2d 1406,1412 (9th Cir. 1983)) (emphasis added). However, the granting of discovery will not allow the plaintiff to engage in a “fishing expedition.” *Coia v. Stephano*, 511 A.2d 980, 984 (R.I. 1986). Further, jurisdictional discovery should not be granted when the plaintiff’s allegations of minimum contacts, even if true, would be insufficient or when the defendant has satisfactorily disproven the plaintiff’s allegations of minimum contacts. *Id.*

In this case, Plaintiff has provided the Court with sufficient “pertinent facts” to determine whether specific personal jurisdiction is in question. *Smith*, 489 A.2d at 340. Defendants argue that there is no factual dispute over jurisdictional allegations. Defs.’ Mem. at 5. However, Plaintiff argues that this case currently requires a more satisfactory showing of the facts and that a factual dispute is not a prerequisite to personal jurisdictional discovery. Pl.’s Reply Mem. at 4. Plaintiff cites to *Coia* where the Court found discovery was not required because defendants did not “purposefully avail” themselves, there was no relation to plaintiff’s injuries and defendants’ contacts in the state, and that defendants there did not exclusively control the information sought. *Coia*, 511 A.2d at 983-84; Pl.’s Reply Mem. at 4. However, in the present case, Defendants have conceded they purposefully availed themselves of Rhode Island. Further, the parties cite to *Beddoe-Greene v. Basic, Inc.* No. PC-2011-4617, 2012 WL 1440600 (R.I. Super. Apr. 20, 2012). Defendants argue there was a factual dispute in that asbestosis case that triggered jurisdictional discovery. The Court has a different reading of the case, which is in line with Plaintiff’s position that there was no factual dispute whether Yale University had a relationship with plaintiff’s decedent who was exposed to asbestosis while working on a campus construction project. *Id.*

However, the court granted jurisdictional discovery because the “extent of [the parties’] relationship” was unclear, and “a more satisfactory showing of the facts [wa]s necessary,” which would require jurisdictional discovery. *Id.*, at *4. Therefore, even if there was no factual dispute over jurisdiction as Defendants argue, this Court can and will authorize jurisdictional discovery.

Plaintiffs are required to provide a “colorable” showing of personal jurisdiction before the grant of jurisdictional discovery. *Sunview Condominium Association v. Flexel International, Ltd.*, 116 F.3d 962, 964 (1st Cir. 1997). It must also “present facts to the court which show why jurisdiction would be found if discovery were permitted.” *United States v. Swiss American Bank*, 274 F.3d 610, 626 (1st Cir. 2001). Further, specific personal jurisdiction requires only “a ‘connection’ between a plaintiff’s suit and a defendant’s activities.” *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1026 (2021).

Plaintiff’s Complaint here alleges a connection through Defendants’ fossil-fuel related business in Rhode Island over the years, their targeting of Rhode Island consumers, and their knowledge that greenhouse gas emissions would injure the State, and their resulting injuries within Rhode Island. Pl.’s Reply Mem. at 10. This Court finds a sufficient alleged connection between Defendants’ activities and the injuries alleged therefrom in Rhode Island.

Given that our Supreme Court has noted that “any records containing information that might provide an answer remain in the exclusive control of defendant, it seems particularly important that jurisdictional fact discovery be allowed.” *Smith*, 489 A.2d at 339. As the *Smith* Court decided that questions regarding minimum contacts must be answered before a motion to dismiss for lack of personal jurisdiction be granted, this Court decides similarly. Plaintiff urges the Court to grant jurisdictional discovery because certain information regarding and related to Defendants’ in-state activities is not publicly available. Pl.’s Mem. Without jurisdictional

discovery, Plaintiff argues they have only limited information about the production, promotion, profits, and knowledge of climate-related injuries of fossil-fuel activity in Rhode Island. *Id.* While Defendants argue that engaging in limited jurisdictional discovery would be burdensome, this Court is not persuaded by that contention being that many of the Defendants are multi-billion dollar companies with the resources to defend this lawsuit.

The Rhode Island Supreme Court has stated, “Jurisdictional fact discovery is a practice well established under the Federal Rules of Civil Procedure and the case law interpreting those rules.” *Smith*, 489 A.2d at 338. *See* 8 Wright and Miller, *Federal Practice and Procedure: Civil* § 2009 at 52 (1970) (“Although there was once doubt on the point, it is now clear that discovery on jurisdictional issues is proper.”).

The law also requires that when granting a motion to compel jurisdictional discovery, the Court must ensure that the grant does not evolve into a “fishing expedition” by plaintiffs. *Coia*, 511 A.2d at 984. While mindful of the case law’s warning, as well as Defendants’ fears of an unreasonable spiral, this Court is confident the discovery parameters it will be granting will be limited in scope and that Defendants will not be unfairly harmed.

Finally, this Court is compelled by the fact that climate change was recently on the world stage at the recent United Nations Climate Change Conference, where country leaders and advocates met to discuss damages caused by industrial greenhouse gas emissions to countries around the entire planet. Frank Jordans and Wanjohi Kabukuru, *Treaty Against Fossil Fuels Floated at UN Climate Summit*, Associated Press (Nov. 8, 2022), <https://apnews.com/article/united-nations-antonio-guterres-climate-and-environment-ea4c22fa9ab87d11cc23ff4ad0bb087f>. The path forward for addressing compensation for the “loss and damage” that countries have experienced from record-breaking floods, heat waves, and storms

was notably uncertain during the conference. *Id.* Small countries in other parts of world, like Kenya, Tanzania, and the Seychelles, presented that oil companies have benefitted billions in corporate profits at the expense of their climate-related disasters that have caused severe destruction. Seth Borenstein, *UN Chief, Gore, Others Give Heated Warnings in Climate Talks*, Associated Press (Nov. 7, 2022), <https://apnews.com/article/king-charles-iii-british-politics-europe-africa-asia-1f5ac31ef2a343b323f78fe7e3c4a9a1> .

Rhode Island, the smallest state in the country, is similarly situated to these small countries in the above context. While the Defendants' contribution(s) to pollution and its effect on global warming might later be found to be small compared to larger states, as Defendants pointed to in their briefs and during oral argument, the consequences Rhode Island has borne have been significant especially as said consequences relate to sea-level rise, rising temperatures, and severe storms.

Defendants here argue any injury to Rhode Island, if any, is incidental and unsubstantial. Plaintiff argued during oral argument that they are seeking limited jurisdictional discovery to rebut this. The United Nations Conference attendees were left with a similar question this Court might ultimately have to oversee: who pays for the damage and loss this State has had to incur from climate change effects? This Court sees no compelling argument that would prevent Plaintiff from engaging in limited jurisdictional discovery, which, if fruitful, could help address the very question those small nations in the United Nations Conference faced.

IV

Conclusion

Accordingly, for the reasons stated herein, the Court finds that a more satisfactory showing of the facts is necessary, quoting *Smith*, 489 A.2d at 339, and the Court further concludes that it

is necessary for Plaintiff to conduct limited jurisdictional discovery into Defendants' contacts with Rhode Island. Jurisdictional discovery will be limited to:

1. Defendants' fossil-fuel business activity in Rhode Island during the times set forth in Plaintiff's Complaint;
2. Defendants' marketing and promotion of fossil-fuel products to Rhode Island consumers during the same time period; and
3. Defendants' historical knowledge of climate change impacts in the State of Rhode Island during that time period. *See* Pl.'s Reply Mem. at 2.

For the foregoing reasons, this Court grants Plaintiff's Motion to Compel Jurisdictional Discovery on such limited terms and denies Defendants' Objection. Counsel from both parties shall confer and prepare an appropriate order.



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: April 28, 2023

JUSTICE/MAGISTRATE: Carnes, J.

ATTORNEYS:

For Plaintiff: Alison B. Hoffman, Esq.; Sarah Rice, Esq.

For Defendant: John A. Tarantino, Esq.; Gerald Petros, Esq.;
John E. Bulman, Esq.; Paul Kessimian, Esq.;
Matthew T. Oliverio, Esq.; Jason C. Preciphs, Esq.;
Stephen M. Prignano, Esq.; Jeffrey B. Pine, Esq.;
Robert G. Flanders, Jr., Esq.; Jeffrey S. Brenner, Esq.

For Interested Party: Seth H. Handy, Esq.