APPENDIX CONTENTS

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12-1199

ABRAHAMSEN, ET AL.; ANDREASSEN ET AL.;
ARNE AASEN ET AL.; AND AARSLAND ET AL.

Appellants

v.

CONOCOPHILLIPS, CO.

On Appeal from the United States District Court
for the District of Delaware
(D.C. No. 1-10-cv-00692)
District Judge: Honorable Gregory M. Sleet

Submitted Pursuant to Third Circuit LAR 34.1(a)
OCTOBER 31, 2012

Before: SLOVITER, AMBRO and BARRY,
Circuit Judges

(Filed: November 1, 2012)

OPINION

SLOVITER, Circuit Judge.

The Plaintiffs in four cases filed under Delaware state law, Abrahamsen et al., Andreassen et al., Arne Aasen et al., and Aarsland et al. ("Plaintiffs"), appeal from the District Court's dismissal on *forum non conveniens* grounds of their claims against ConocoPhillips Company ("Conoco"). Because we find that federal subject-matter jurisdiction does not exist in this case, we will vacate the order of the District Court and direct the District Court to remand the matters to state court.

Background

Plaintiffs are four groups of Norwegian citizens, totaling 123 persons, who brought four separate complaints against Conoco in Delaware state court for injuries sustained while working on rigs, platforms, and vessels in the North Sea for Conoco.[1] Conoco removed all four suits to the Delaware District Court based on the jurisdictional provision of the Class Action Fairness Act ("CAFA") and on federal question jurisdiction. *See* 28 U.S.C. §§ 1331, 1332(d), 1446, 1453. Conoco then moved for dismissal of the actions on *forum non conveniens* grounds.

Plaintiffs filed a motion pursuant to 28 U.S.C. §1447(c) to remand to state court for lack of subject-matter jurisdiction. Rather than decide the motion to remand, the District Court exercised its discretion under *Sinochem Int'l. Co. Ltd. v. Malaysia Int'l. Shipping Corp.*, 549 U.S. 422, 425 (2007), to bypass

[1] Most Plaintiffs are former employees or contractors; some are family members and estates of Conoco's former employees and contractors.

the jurisdictional inquiry in favor of a non-merits dismissal on *forum non conveniens* grounds. (1 App. 4-6)

In *Sinochem,* the Supreme Court stated:

> If ... a court can readily determine that it lacks jurisdiction over the cause or the defendant, the proper course would be to dismiss on that ground. In the mine run of cases, jurisdiction will involve no arduous inquiry and both judicial economy and the consideration ordinarily accorded the plaintiff's choice of forum should impel the federal court to dispose of [jurisdictional] issue[s] first. But where subject-matter ... jurisdiction is difficult to determine, and *forum non conveniens* considerations weigh heavily in favor of dismissal, the court properly takes the less burdensome course.

Id. at 436 (quotation marks and citations omitted).

On appeal, Plaintiffs argue that the dismissal of their claims was erroneous and that the District Court should have remanded the cases to state court for lack of subject- matter jurisdiction.

Introduction

We have an independent obligation to address our subject-matter jurisdiction. *See Nesbit v. Gears Unlimited, Inc.,* 347 F.3d 72, 76-77 (3d Cir. 2003) (holding that subject-matter jurisdiction is non-waivable and can be raised by the court *sua sponte*). That obligation here entails the authority to examine

jurisdictional issues that the District Court chose to bypass, relying on *Sinochem*.[2]

CAFA Jurisdiction

CAFA grants the federal courts removal jurisdiction in "class action[s]," 28 U.S.C. § 1453(b), which it defines to include "'mass action[s]' ... in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact." 28 U.S.C. § 1332(d)(11)(B)(i). The mass action provision specifically excludes jurisdiction over cases in which "claims are joined upon motion of a defendant." 28 U.S.C. § 1332(d)(11)(B)(ii)(II).

When a "statute's language is plain" we must "enforce it according to its terms" as long as the result "is not absurd." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.* 530 U.S. 1, 6 (2000) (quotation marks omitted). The plain text of CAFA clearly precludes jurisdiction in this case. Despite the similarities of their claims, Plaintiffs did not propose to try their claims jointly. Because each suit includes fewer than one hundred persons, none of Plaintiffs' four suits meets CAFA's definition of a "mass action" and therefore no suit qualifies for removal jurisdiction.[3] The clear lack of jurisdiction is underscored by CAFA's explicit exemption from jurisdiction of suits in which "the claims are joined

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[2] The Ninth Circuit has exercised this authority in a similar situation. *See Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009).

[3] The law explicitly denies jurisdiction for "claims [which] have been consolidated or coordinated solely for pretrial proceedings." 28 U.S.C. § 1332(d)(11)(B)(ii)(IV).

upon motion of a defendant." 28 U.S.C. § 1332(d)(11)(B)(ii)(II).[4]

This reading of CAFA is not "absurd." It is consistent with the well-established rule of deference to plaintiffs' choice of forum and the presumption against federal removal jurisdiction. *See Lacey v. Cessna Aircraft Co.*, 862 F.2d 38, 45-46 (3d Cir. 1988); *Steel Valley Auth. v. Union Switch & Signal Div.*, 809 F.2d 1006, 1010 (3d Cir. 1987).[5] We therefore conclude that CAFA does not provide removal jurisdiction in this case.

Federal Question Jurisdiction

This case also falls outside of our federal question jurisdiction. Conoco argues that the Plaintiffs' suits raise a federal question under 28 U.S.C. § 1331 because they "'implicat[e] ... our relations with foreign nations,'" and thus raise questions under

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[4] Other courts considering similar facts have also found no jurisdiction under CAFA's "mass action" provision. *See Anderson v. Bayer Corp.*, 610 F.3d 390, 392 (7th Cir. 2010) (holding that CAFA removal jurisdiction did not apply in a case involving 396 plaintiffs who filed four "mostly identical complaints in state court"); *Tanoh v. Dow Chem. Co.*, 561 F.3d 945, 950 (9th Cir. 2009) (finding no removal jurisdiction in case in which 664 West African foreign nationals filed seven suits, each with fewer than one hundred plaintiffs).

[5] Conoco argues that reading CAFA to deny jurisdiction in this case "elevate[s] form over substance" and encourages jurisdictional "gamesmanship." Appellee's Br. at 48, 49. Even if true, these concerns are insufficient to militate against a plain reading of CAFA. *See First Merchants Acceptance Corp. v. J.C. Bradford & Co.*, 198 F.3d 394, 403 (3d Cir. 1999) ("[O]nly absurd results and 'the most extraordinary showing of contrary intentions' justify a limitation on the 'plain meaning' of ... statutory language." (quoting *Garcia v. United States*, 469 U.S. 70, 75 (1984))).

federal common law. Appellee's Resp. Br. at 51 (quoting *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641 (1981)). Federal-common-law-of-foreign-relations jurisdiction is rarely recognized by federal courts, especially for private disputes between private citizens and entities. Even if we were to adopt the reasoning of the circuits with the broadest jurisdictional standards, we would not find jurisdiction in this case. Those circuits require intervention in the case by a foreign sovereign and proof that the lawsuit will significantly affect the foreign government's vitality. *See, e.g., Pacheco de Perez v. AT&T Co.*, 139 F.3d 1368, 1376-78 (11th Cir. 1998); *Torres v. S. Peru Copper Corp.*, 113 F.3d 540, 542-43 (5th Cir. 1997). Because Norway has not intervened here, the Norwegian government's "sovereignty over all petroleum-based activities in its territorial waters and on its Continental Shelf," Appellee's Resp. Br. at 51, is insufficient to generate federal question jurisdiction under 28 U.S.C. § 1331.

Conclusion

There is no federal subject-matter jurisdiction in this case. We will therefore vacate the *forum non conveniens* dismissal and remand to the District Court with instructions to remand to state court.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12-1199

ABRAHAMSEN, ET AL.; ANDREASSEN ET AL.;
ARNE AASEN ET AL.; AND AARSLAND ET AL.

Appellants

v.

CONOCOPHILLIPS, CO.

Before: MCKEE, CHIEF JUDGE, SLOVITER, SCIRICA, RENDELL, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, GREENAWAY, JR., VANASKIE, and BARRY*, Circuit Judges

ORDER

The petition for panel rehearing and rehearing en banc filed by the Appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

/s/ Dolores K. Sloviter
Circuit Judge

Dated: December 5, 2012
trg/cc: Brant W. Bishop, Esq.
John K. Crisham, Esq.
Kevin A. Guerke, Esq.
Edward J. Patterson III, Esq.
John M. Seaman, Esq.

* Judge Barry is limited to panel rehearing only.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JARL ABRAHAMSEN, et al.,

Plaintiffs,

v.

CONOCOPHILLIPS COMPANY,

Defendant.

C.A. No. 10-692 (GMS)

ORDER

WHEREAS the plaintiffs originally filed this case as a single putative class action in Cameron County, Texas (Case No. 2009-01-000506-D), and then voluntarily dismissed it after the defendant's removal;

WHEREAS the plaintiffs then re-filed this lawsuit in the Superior Court of the State of Delaware in and for New Castle County (C.A. No. N10C-04-278-BEN) and again voluntarily dismissed that action after the defendant's removal;

WHEREAS the plaintiffs have now filed this lawsuit for the third time[1], dividing their identically pleaded claims among four separates complaints;

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[1] The Complaint names 123 plaintiffs, each of whom is either a former employee or contractor of Phillips Petroleum Company Norway and/or ConocoPhillips Norway. (D.I. 4 at 4.) No plaintiff claims to have lived or worked in the United States. (ld.) All of the alleged exposure to toxic materials occurred in Ekofisk, off the coast of Norway. (ld. at 5.)

WHEREAS the defendant has filed a Motion to Dismiss (D.I. 3) for improper venue and for failure to state a claim upon which relief can be granted, and that motion has been fully-briefed;

WHEREAS the plaintiffs have filed a Motion to Remand (D.I. 13), and that motion has been fully-briefed;

WHEREAS the court has considered the parties' briefs as well as the applicable law; IT IS HEREBY ORDERED that:

1. The defendant's Motion to Dismiss is GRANTED[2]; and

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[2] The doctrine of *forum non conveniens* provides a district court with substantial discretion to "resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute." *Piper Aircraft Co. v. Reyno,* 454 U.S. 235, 257 (1981); *Windt v. Qwest Commc'ns Int'l, Inc.,* 529 F.3d 183, 189 (3d Cir. 2008) (citation omitted); *see also Pollux Holding Ltd v. Chase Manhattan Bank,* 329 F.3d 64, 67 (2d Cir. 2003) (courts can decline jurisdiction "whenever it appears that [a] case may be more appropriately tried in another forum, either for the convenience of the parties or to serve the ends of justice.").

In exercising that discretion, courts can and should "dismiss a case 'when an alternative forum has jurisdiction to hear the case, and when trial in the chosen forum would establish ... oppressiveness and vexation to a defendant ... out of all proportion to the plaintiff's convenience.'" *Lony v. E. I. DuPont de Nemours & Co.,* 886 F.2d 628, 632 (3d Cir. 1989) (quoting *Piper Aircraft,* 454 U.S. at 241). Four factors have been identified as relevant to a *forum non conveniens* dismissal motion: (1) the amount of deference to be afforded to the plaintiffs choice of forum; (2) the availability of an adequate alternative forum; (3) the balancing of the relevant "private interest" factors; and (4) the balancing of the relevant "public interest" factors. *Windt,* 529 F.3d at 189-90; *Lacey v. Cessna Aircraft Co.,* 862 F.2d 38, 46 (3d Cir. 1988).

Initially, in this instance, the plaintiff's for[u]m choice is not afforded deference. Generally, a foreign plaintiff's choice of a United States forum is entitled to less deference because the assumption that her choice of forum is convenient "is much less reasonable." *Id.* (quoting *Piper Aircraft,* 454 U.S. at 255-56). Precisely because the "central purpose of any *forum non conveniens* inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less deference." *Id.* Here, all 123 plaintiffs are Norwegian, and they aver that their injuries occurred in Norwegian territory. Thus, because the plaintiffs' choice of forum is inconvenient, it deserves less deference. Furthermore, forum choices showing indicia of improper forum shopping are also entitled to less deference. This is particularly true when a foreign plaintiff sues in an American court, and "a plausible likelihood exists that the selection was made for forum-shopping reasons, such as the perception that United States courts award higher damages than are common in other countries." *Iragorri v. United Techs. Corp.,* 274 F.3d 65, 71 (2d Cir. 2001) *(en banc); Geier v. Omniglow Corp.,* 357 Fed. App'x 377, 379-80 (2d Cir. 2009) (holding foreign plaintiffs' choice of an American forum was due little deference, in light of a "strong inference" that forum shopping motivated the choice). Here, that likelihood seems more than "plausible." Plaintiffs' counsel has made several statements that indicate that the choice to file in a U.S. jurisdiction was motivated by the perception that "the sky's the limit when it comes to legal actions in the United States." (*See* D.I. 4 at 9, Ex. 3.)

Second, the court finds that an adequate, alternative forum exists in which to litigate this case. An alternative forum exists where (1) defendants are amenable to process in the alternative jurisdiction, and (2) the subject matter of plaintiffs' lawsuit is "cognizable" in that alternative forum, and it can provide the plaintiffs with a remedy. *See Lacey v. Cessna Aircraft Co.,* 932 F.2d 170, 180 (3d Cir. 1991) (quoting *Piper Aircraft,* 454 U.S. at 254 n.22) *see also Windt v. Qwest Commc'ns Int'l, Inc.,* 544 F. Supp. 2d 409, 421 (D.N.J. 2008). Both requirements are satisfied here. Plaintiffs are Norwegian citizens who allege their injuries occurred in Norway. (D.I. 4 at 9.) Also, Norway's administrative and judicial systems are sophisticated, and can adjudicate negligence-based claims like those raised in this lawsuit. As for the defendant, ConocoPhillips has previously

submitted to Norwegian jurisdiction in connection with claims arising out of the activities of its subsidiaries operations in Norway. (Id. at 10-11.)

Finally, the court finds that the private and public interest factors weigh in favor of *forum non conveniens* dismissal. The facts and circumstances underlying this case demonstrate that, even though ConocoPhillips is incorporated in Delaware, Norway's interests are dominant. As noted above, all the plaintiffs are Norwegian. (D.I. 4 at 12.) In addition, neither the citizens of Delaware, nor of the United States, have any interest in a claim for personal injuries to Norwegians allegedly occurring off the coast of Norway. On the other hand, it is undisputed that all of the petroleum resources in Norway are government-owned and/or controlled, creating a strong interest for the peoples of Norway in the outcome of this litigation. (D.I. 4 at 5.) In fact, the Norwegian government has constructed a legislative, regulatory and adjudicatory scheme for handling claims for work-related injuries and illnesses such as those plaintiffs allege in this lawsuit. (D.1. 4 at 14.) Dismissal is also warranted because Norwegian law will almost certainly control this dispute. As this case was removed on the basis of CAFA's amendments to the diversity statute, Delaware choice of law rules apply. *David B. Lilly Co., Inc. v. Fisher,* 18 F.3d 1112, 1117 (3d Cir. 1994). Norway's legal system is better suited to interpret its own laws. *See In re Ski Train Fire,* 499 F. Supp. 2d at 451 (S.D.N.Y. 2007) (dismissing the case where "Austria's interest in all Kaprun-related litigation is far greater than New York's interest," and "it is a virtual certainty that Austrian law will govern most issues in these cases") (quotations omitted). Furthermore, the private interest factors also support dismissal. The overwhelming majority of evidence and proof necessary for resolving this case is located in Norway. (D.I. 4, Ex. 1.) All 123 plaintiffs, their family members, friends, co-workers and treating physicians are in Norway. Further, many witnesses will speak Norwegian, and business documents and medical records will be in Norwegian, both of which will require significant translation and other costs for depositions, motions practice and ultimately trial. (D.1. 4, Ex. 1 at 3.) For these reasons, the court finds that this matter should be dismissed under the doctrine of *forum non conveniens.*

2. The plaintiffs' Motion to Remand is DISMISSED as moot.

Dated: December 22, 2011.

/s/ *Gregory M. Sleet*

CHIEF, UNITED STATES DISTRICT JUDGE