

No. 12-997

In the Supreme Court of the United States

CONOCOPHILLIPS COMPANY,

Petitioner,

v.

JARL ABRAHAMSEN, ET AL.,

Respondents.

*On Petition for Writ of Certiorari to the United
States Court of Appeals for the Third Circuit*

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Circuit Court's well-reasoned decision to examine its own subject-matter jurisdiction conflicts with the discretionary authority to bypass its jurisdictional inquiry in favor of a non-merit based dismissal under the limited circumstances articulated by this Court in *Sinochem Int'l. Co. Ltd. v. Malaysia Int'l. Shipping Corp.* 549 U.S. 422 (2007).

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Respondents provide that they each are individuals or representatives of the estates of deceased individuals.

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INTRODUCTION

“Review of a writ of certiorari is not a matter of right, but judicial discretion.” RULES OF THE SUPREME COURT OF THE UNITED STATES, Rule 10 (Feb. 16, 2010). Respondents respectfully request that the Court deny the petition for a writ of certiorari for two basic and fundamental reasons. First, the decision below does not conflict with this Court’s precedent nor does it present a conflict amongst the circuits. Second, the Circuit Court’s election to undertake its own jurisdictional analysis and its subsequent determination that federal subject-matter jurisdiction was lacking was both proper and in line with this Court’s prior decisions and their relevant progeny.

OPINIONS BELOW

1. The Third Circuit’s November 1, 2012 opinion is provided in provided in Petitioner’s Appendix at App. 1a.
2. The District Court’s December 22, 2011 opinion is provided in provided in Petitioner’s Appendix at App. 9a.

STATEMENT OF THE CASE

On April 30, 2010, Respondents filed four separate lawsuits in Delaware state court against Petitioner for its negligence and gross negligence in creating and perpetuating a dangerous work environment that caused Respondents’ serious injuries. Respondents’ injuries include organic brain injuries, terminal cancer, non-fatal cancer, and other diseases and ailments

resulting from exposure to benzene, asbestos, and other toxic chemicals and dangerous conditions. Respondents worked as diesel mechanics, turbine mechanics, production operators, process technicians, roustabouts, and related positions on rigs, platforms, and vessels owned, operated, and controlled by Petitioner and its predecessor Phillips Petroleum Company in the North Sea. Respondents suffered varying exposures, worked on different rigs, platforms, and vessels at different times, and the serious injuries they suffered fall into four distinct categories. Accordingly, Respondents' claims were divided into four separate complaints based on the type of injuries they suffered in order to facilitate cases with common facts that would be efficient to manage throughout the pre-trial stages of litigation. Also notable is that fact that Respondents' claims focus exclusively on Petitioner's negligence and gross negligence committed in the United States, the country in which Petitioner's decisions that gave rise to the dangerous working conditions were made.

On August 17, 2010, Petitioner filed its Notice of Removal based on 28 U.S.C. § 1332(d) (Class Action Fairness Act) and 28 U.S.C. § 1331 in which Petitioner unilaterally aggregated the four state court complaints into a single federal court proceeding in an effort to satisfy the Class Action Fairness Act's numerosity requirement. Days after removing the case to federal court, Petitioner filed a motion to dismiss on the grounds of *forum non conveniens* and several other bases. Respondents filed a simple and straightforward motion to remand explaining that the district court lacked subject-matter jurisdiction over the case. However, the district court refused to make the decision to remand the case for lack of subject-matter

jurisdiction. Instead, the district court delayed ruling on the remand motion for fourteen months while the parties conducted extensive discovery and submitted comprehensive briefing on Petitioner's motion to dismiss.

Rather than decide the motion to remand, the district court improperly bypassed the simple jurisdictional inquiry in favor of a much more complicated non-merits dismissal on *forum non conveniens* grounds. See Petitioner's App. 9-13a; *Sinochem Int'l. Co. Ltd. v. Malaysia Int'l. Shipping Corp.*, 549 U.S. 422, 425 (2007). Respondents filed their Notice of Appeal on January 19, 2012.

On appeal, Respondents argued 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. On November 11, 2012, the Circuit Court issued its opinion in which it determined that "there is no federal subject-matter jurisdiction in this case," vacated the *forum non conveniens* dismissal, and remanded to the district court with instructions to remand to state court. See Petitioner's App. 1-6a. Petitioner moved for rehearing and its request was subsequently denied. Petitioner has now petitioned this Court for a writ of certiorari. Respondents respectfully request that the petition for writ be denied.

REASONS FOR DENYING THE WRIT

- I. The decision below was proper, does not conflict with this Court's decision in *Sinochem*, and appropriately considered the Circuit Court's independent obligation to evaluate its own subject-matter jurisdiction over this case.**

None of the criteria which traditionally justify a writ of certiorari are present in this case. The Circuit Court's decision does not give rise to a conflict in the circuits on a significant question of law. The decision below does not depart from the accepted and normal course of judicial proceedings nor is it inconsistent with this Court's relevant precedent or its related progeny. The Circuit Court undertook its independent obligation to assess subject-matter jurisdiction and found it to be lacking. *See* Petitioner's App. 1-6a. The Circuit Court, having received briefs from all parties, carefully considered the case law and evidence presented in the appellate record, including this Court's decision in *Sinochem*, prior to issuing its well-reasoned opinion that it and the district court lacked subject-matter jurisdiction. *See* Petitioner's App. 1-6a; *Sinochem*, 549 U.S. 422.

Contrary to Petitioner's position that the Circuit Court's interpretation of *Sinochem* was misplaced, the Circuit Court correctly determined that it has "an independent obligation to address [...] subject-matter jurisdiction" and that where, as here, "a court can readily determine that it lacks jurisdiction over the cause or the defendant, the proper course would be to dismiss [or remand] on that ground." *See* Petitioner's

App. 2-3a (citing *Nesbit v. Gears Unlimited, Inc.*, 347 F.3d 72, 76-77 (3d Cir. 2003); *Sinochem*, 549 U.S. at 436. As this Court explained:

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.

Sinochem, 549 U.S. at 436.

A district court *may* bypass a jurisdictional ruling in favor of a non-merits dismissal *only* when the jurisdictional analysis is complex and “arduous,” and the non-merits issue is less burdensome. *Sinochem*, 549 U.S. at 432, 436. While there certainly are cases that qualify for a non-merit based dismissal prior to a jurisdictional determination, this case does not satisfy the requisite criteria. In fact, this case presents quite the opposite.

First, as this case originated in state court, the sequencing of the district court's decision with respect to the motion to remand and a motion to dismiss had dispositive consequences which were not present in *Sinochem*, a case originally filed in federal court. Second, just over two months after Petitioner removed this case; the parties had completed briefing on the straightforward jurisdictional issues raised in Respondents' Motion to Remand. The issue was ripe for

consideration. Instead of ruling on the remand when it was ripe, the district court directed the parties to conduct extensive discovery pertaining to Petitioner's motion to dismiss. This undertaking involved extensive written discovery, the exchange of hundreds of thousands of documents, and multiple depositions. The district court then dismissed on *forum non conveniens* grounds, while deeming the simple, year-old jurisdictional issue moot. *See* Petitioner's App. 9-13a. This Court's holding in *Sinochem* dictates that the district court should have remanded the case instead of embarking on a long and arduous *forum non conveniens* analysis. *Sinochem*, 549 U.S. at 431-33, 436; *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 588 (2007).

Here, the jurisdictional analysis was simple and straightforward. As the Circuit Court properly determined, Respondents' claims do not fall within the auspices of Class Action Fairness Act, nor do they invoke federal question jurisdiction. *See* Petitioner's App. 1-6a. Respondents remand and appeal presented readily determinable jurisdictional issues which did not involve an "arduous inquiry" to resolve. The jurisdictional determination should have been analyzed by the district court, when first raised by Respondents, prior to its consideration of the Petitioner's *forum non conveniens* motion to dismiss. *See Id.* The Circuit Court properly vacated the district court's dismissal based upon the clear lack of federal subject-matter jurisdiction. *See* Petitioner's App. 3a.

Petitioner does not contend that the Circuit Court or the district court had subject-matter jurisdiction. Instead, Petitioner argues that a Circuit Court cannot

examine its own jurisdiction, if by doing so it would disturb a district court's prior discretionary decision to avoid the jurisdictional analysis altogether. Contrary to Petitioner's arguments, the Circuit Court opinion demonstrates that it properly considered the discretion afforded to it and the district court under *Sinochem* prior to issuing its order and mandate. *See* Petitioner's App. 1-6a.

Petitioner cites two circuit court decisions that upheld dismissals made pursuant to the discretionary authority provided by *Sinochem*, yet neither case stands for the proposition that *Sinochem* restricts an appellate court's ability to review subject-matter jurisdiction following such a decision.¹ Rather, these cases simply provide examples of appellate courts which approved of a lower court's exercise of discretion under their respective and distinguishable factual scenarios. Neither *Ibarra* nor *Bierman* present a conflict with the Circuit Court's decision here because *Sinochem* does not stand for the proposition that a district court's limited discretion over the order of certain proceedings completely eviscerates the traditional federal jurisdictional theory: no jurisdiction, no power to act. To the contrary, all federal courts have an independent obligation to determine whether subject-matter jurisdiction exists. In doing so, an appellate court may agree with a district court's determination that a non-merit based dismissal should

¹ Petitioner references *Ibarra v. Orica U.S. of AM. Inc.*, No.11-51094, 2012 WL 4353436, at *2 (5th Cir. Sept. 24, 2012 and *Bierman v. Toshiba Corp.*, 473 F. App'x 756, 757 & n.1 (9th Cir. 2012).

be considered prior to the jurisdictional analysis; or it may disagree and find that because subject-matter jurisdiction is so plainly lacking, remand provides the only appropriate disposition.

While a district court's refusal to address the issue of subject-matter jurisdiction before ordering a non-merits dismissal may *also* be reviewed for abuse of discretion, subject-matter jurisdiction remains non-waivable and can be raised *sua sponte* by a reviewing court. As this Court has explained, federal courts are obligated to examine jurisdictional issues, even on their "own motion if a question thereto exists." *Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 740 (1976); *see also Nesbit v. Gears Unlimited, Inc.*, 347 F.3d 72, 76-77 (3d Cir. 2003); *Provincial Gov't of Marinduque v. Placer Dome, Inc.* 582 F.3d 1083 (2009) ("We question whether *Sinochem* restricts our ability to address an issue of subject-matter jurisdiction...' [W]e have an independent obligation to examine our own and the district court's jurisdiction." (internal citations omitted)). Whether the district court elects to bypass this analysis or determines that it has subject-matter jurisdiction, a jurisdictional analysis is always permissible by a reviewing court. Petitioner has cited no authority to the contrary.

The Circuit Court's opinion does not present any important issues that have not already been resolved by this Court, nor does it conflict with this Court's decision in *Sinochem*. Rather, it turns on the application of the well-established principle that federal courts must have subject-matter jurisdiction over a case and cannot issue outcome determinative rulings without such jurisdiction, except in the very

limited circumstances identified in *Sinochem*. In light of the nature of this case, the absence of any material conflict within or amongst the circuit courts, and the correctness of the Circuit Court's decision below, the petition for writ of certiorari presents no basis for review. Accordingly, the petition for a writ of certiorari should be denied.

II. Summary reversal is unwarranted because the decision below was proper and such a remedy is inappropriate considering the Circuit Court's well-reasoned opinion and Petitioner's failure to identify any clear error.

Summary reversal is a "bitter medicine" which must be cautiously applied. *Spears v. United States*, 129 S. Ct. 840, 845 (2009) (Roberts, C.J., *dissenting*); see *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., *dissenting*). This Court is "not a forum for the correction of errors" and thus summary reversal is not warranted absent a clearly erroneous decision. *Boag v. MacDougall*, 454 U.S. 364, 368 (1982) (Rehnquist, J., *dissenting*).

Petitioner's argument that the Circuit Court erred by examining its own subject-matter jurisdiction should fail for the reasons set forth above. However, if the Court finds that Petitioner has identified an issue that warrants review, its requested remedy of summary reversal remains inappropriate as the decision below does not squarely conflict with any decision from this Court or that of another circuit. Further, summary reversal would circumvent the review of the district court's prior dismissal and the propriety of the district court's decision to exercise its

Sinochem discretion in their entirety. As such, summary reversal is unwarranted.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully Submitted,

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