IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OCEANIC EXPLORATION COMPANY and PETROTIMOR COMPANHIA DE PETROLEOS, S.A.R.L.,	)	
Plaintiffs,	)	
v.	)	**Case No. 1:04-cv-00332-EGS**
CONOCOPHILLIPS, INC., *et al.,*	)	
Defendants.	)	

REPLY BRIEF IN SUPPORT OF MOTION TO TRANSFER VENUE

Martin D. Beirne (D.D.C. Bar # TX0025)
Jeffrey T. Nobles (D.D.C. Bar # TX0039)
W. Bruce Stanfill (D.D.C. Bar # TX0026)
David A. Pluchinsky (D.D.C. Bar # TX0027)
BEIRNE, MAYNARD & PARSONS, LLP
1300 Post Oak Blvd., 25th Floor
Houston, TX 77056
(713) 623-0887
(713) 960-1527 (facsimile)

Thomas D. Yannucci, P.C. (D.C. Bar # 358989)
Michael D. Jones (D.C. Bar # 417681)
Christopher Landau (D.C. Bar # 425319)
Brant W. Bishop (D.C. Bar # 459255)
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 879-5000
(202) 879-5200 (facsimile)

Russell D. Howell (*Of Counsel*)
CONOCOPHILLIPS COMPANY
McLean Building
600 North Dairy Ashford Road
P.O. Box 4783
Houston, TX 77210

Counsel for Defendants ConocoPhillips and ConocoPhillips Company

December 1, 2006

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTRODUCTION

"If there's no basis for this Court to exercise jurisdiction over the foreign defendants, then what becomes of this lawsuit, which essentially then is a lawsuit between two American oil companies with no connection whatsoever to the District of Columbia, why then would this be the appropriate forum, the appropriate venue for this lawsuit?" 2/8/05 Mot. to Dismiss Hr'g Tr., at 7. This Court asked that fundamental question at the very outset of the case, and plaintiffs' opposition brief shows that they still have no good answer. Indeed, if anything, plaintiffs' efforts to justify venue in this forum are so far-fetched that they confirm the wisdom of this Court's initial skepticism on the venue issue. *See id.* at 5-6 ("You have one American based corporation and a foreign corporation suing an American corporation for absolutely no conduct whatsoever in this jurisdiction. … Why this court then?"); *id.* at 21 ("Why aren't you suing them in their principal place of business?"). Accordingly, under settled principles of law (not to mention common sense, fairness, and convenience), this Court should transfer this action to the Southern District of Texas pursuant to 28 U.S.C. § 1404(a).

ARGUMENT

As a threshold matter, plaintiffs exaggerate ConocoPhillips' burden in justifying a § 1404(a) transfer. According to plaintiffs, that burden is "***heavy***," and ConocoPhillips must show that the various public and private interest factors "weigh ***decisively*** in favor of the Southern District of Texas." Opp. 1, 3 (emphasis in original). Plaintiffs are mistaken. That burden derives from cases involving ***dismissal*** of lawsuits on *forum non conveniens* grounds. *See Pain v. United Techs. Corp.*, 637 F.2d 775, 784 (D.C. Cir. 1980) (party seeking dismissal on *forum non conveniens* grounds "bear[s] a heavy burden of establishing that plaintiffs' choice of forum is inappropriate") (quoted in *Thayer/Patricof Educ. Funding, LLC v. Pryor Res., Inc.*, 196 F. Supp. 2d 21, 31 (D.D.C. 2002)). But ConocoPhillips is not moving for ***dismissal*** here; it is

moving for ***transfer***. As both the Supreme Court and the D.C. Circuit have explained, courts have "more discretion to transfer under § 1404(a) than they ha[ve] to dismiss on grounds of *forum non conveniens*." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 253 (1981); *see also SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1154 (D.C. Cir. 1978) ("A transfer is available upon a lesser showing of inconvenience than that required for a [f]orum non conveniens dismissal.") (internal quotation omitted). That point makes sense: a transfer is far less drastic than a dismissal. Indeed, courts may—and often do—transfer cases *sua sponte*. *See, e.g., Schreiber v. Kohn*, 434 F. Supp. 2d 1, 2-3 (D.D.C. 2006).

Thus, what ConocoPhillips must show here to justify a § 1404(a) transfer is that (1) "the action could have been brought in [the proposed transferee forum]"; and (2) "the balance of convenience of the parties and witnesses and the interest of justice are in ... favor" of transfer. *Armco Steel Co. v. CSX Corp.*, 790 F. Supp. 311, 323 (D.D.C. 1991) (internal quotation omitted). That showing, as explained below, is not difficult to make here.

I. The Southern District of Texas Is An Appropriate Transferee Forum.

As an initial matter, plaintiffs try to create some uncertainty about whether the Southern District of Texas is an appropriate transferee forum. *See* Opp. 4-5. It is telling that they never actually argue that the Southern District of Texas is ***not*** an appropriate transferee forum; they simply assert that "it is ***not clear*** that the Southern District of Texas is … a permissible proposed transferee forum." Opp. 5 (emphasis added); *see also id.* at 4 (asserting that it is "far from clear" whether the Southern District of Texas is an appropriate transferee forum). Plaintiffs' reticence on this score is understandable, given the constraints of Rule 11, and their express (and unsurprising) ***concession*** that the Southern District of Texas provides an appropriate forum for

litigating this case. *See* 2/8/05 Mot. to Dismiss Hr'g Tr. at 8 (plaintiffs answer, in response to the question whether "these claims could be litigated [in] Houston," "That's correct, Your Honor.").[1]

According to plaintiffs, "[c]ourts in the District of Columbia … assess the viability of another district at the time the action was ***originally*** filed." Opp. 4 (emphasis in original). But none of the cases cited by plaintiffs in support of that alleged rule involve the situation here, where transfer is sought after certain original defendants are gone from the case, and there is no question that venue over the ***remaining*** defendants would be appropriate in the transferee district. *See* Opp. 4 (citing *Relf v. Gasch*, 511 F.2d 804, 806-07 (D.C. Cir. 1975); *FC Inv. Group v. Lichtenstein*, 441 F. Supp. 2d 3, 12 (D.D.C. 2006); *Green v. Footlocker Retail, Inc.*, No. Civ. A 04-1875, 2005 WL 1330686, at *1 (D.D.C. June 3, 2005); *Martin-Trigona v. Meister*, 668 F. Supp. 1, 4 (D.D.C. 1987);[2] *Lamont v. Haig*, 590 F.2d 1124, 1131 (D.C. Cir. 1978)).

The cases that ***have*** considered this precise issue, in contrast, have held that transfer is appropriate where (as here) venue would be appropriate over all defendants remaining in a lawsuit after some change in the identity of the defendants. *See, e.g., In re Fine Paper Antitrust Litig.*, 685 F.2d 810, 819 (3d Cir. 1982) (transferor court "not required to confine its venue

---

[1] Plaintiffs now try to disavow that concession by arguing that "a party cannot render an improper forum proper by consent." Opp. 5 n.4 (citing *Hoffman v. Blaski*, 363 U.S. 335, 342-43 (1960)). But *Hoffman* in no way renders plaintiffs' concession "wholly irrelevant to this analysis." *Id.* Rather, *Hoffman* merely holds that the power to transfer under § 1404(a) does not depend "upon the wish of the defendant" and that the phrase "'where it might have been brought'" cannot be interpreted to mean "where it may now be rebrought, with defendants' consent." 363 U.S. at 342 (quoting 28 U.S.C. § 1404(a)). This is not a case where the parties are purporting to agree to an improper forum; rather, this is a case where plaintiffs themselves have recognized that the alternative forum proposed by defendants is appropriate.

[2] Plaintiffs' reliance on *Martin-Trigona* is especially puzzling, because the court there ***granted*** a motion to transfer the defendants who remained in the case after the jury returned a verdict in favor of the only defendant whose presence in the case justified venue in the District of Columbia. 668 F. Supp. at 3-4. Transfer was warranted there ***precisely because*** a change in parties made a forum available that was not available when the lawsuit was originally filed. *Id.*

consideration to the facts as they existed at the time of the complaint"); *Chung v. Chrysler Corp.*, 903 F. Supp. 160, 163 (D.D.C. 1995) (transfer appropriate where "the defendants as to whom venue in the [transferee] district would have been improper [a]re no longer parties at the time of the transfer") (internal quotation omitted); *Piekarski v. Home Owners Savings Bank*, 743 F. Supp. 38, 43 (D.D.C. 1990) ("[Because] changes in the parties to a suit have been considered relevant in deciding a motion to transfer…. [t]he Court cannot blindly consider the case as it was at the time it was filed in reaching its decision, without considering the dismissal or substitution of parties."). Thus, the rule in this District (as elsewhere) is that a federal court may transfer a case to another district if the case "might have been brought" in the transferee forum against the defendants in the case ***at the time of transfer***. 28 U.S.C. § 1404(a); *see also Chung*, 903 F. Supp. at 163; *Piekarski*, 743 F. Supp. at 43.[3]

That rule makes sense: now that the foreign defendants are out of this lawsuit, it is immaterial whether they would have been amenable to suit in the Southern District of Texas in the first instance.[4] The question now is whether this litigation should proceed in the District of Columbia in light of the ***dismissal*** of the foreign defendants whose presence was plaintiffs' main

---

[3] Plaintiffs attempt to distinguish *Chung* and *Piekarski* "on their facts," Opp. 4 n.3, but the attempted distinctions are legally irrelevant. In *Chung*, a defendant originally named in the case was never served, and in *Piekarski*, a defendant was substituted into a case by operation of law. But the fact that "[n]either of these factual scenarios is present here," *id.*, does not alter the ***legal*** conclusion reached in both cases that "changes in the parties to a suit [are] relevant in deciding a motion to transfer," *Piekarski*, 743 F. Supp. at 43 (citing *Fine Paper*, 685 F.2d at 819), and a court need not and should not decide a transfer motion by reference to the parties originally named in the lawsuit where (as here) those parties have changed.

[4] Plaintiffs assert that ConocoPhillips "implicitly acknowledges" that the foreign defendants were not amenable to suit in the Southern District of Texas as an original matter. Opp. 5. ConocoPhillips "acknowledges" nothing of the sort, either "explicitly" or "implicitly." That point is now moot. Regardless of whether the foreign defendants were amenable to suit in the Southern District of Texas, they are now gone from this case, and all that matters is that the remaining defendants unquestionably are amenable to suit in the Southern District of Texas.

justification for suing here in the first place. *See* 2/8/05 Mot. to Dismiss Hr'g Tr. at 4, 21. The answer to that question, as discussed below, is clearly no.

II. The Balance of Private and Public Interests Favor Transfer.

Plaintiffs argue at great length that both the private and public interest factors weigh in favor of litigating this case in the District of Columbia rather than the Southern District of Texas. *See* Opp. 5-18. Again, they are wrong.

A. Private Interest Factors

1. Plaintiffs' choice of forum

Plaintiffs assert at the outset that their choice of a District of Columbia forum "is entitled to substantial weight." Opp. 6 (internal quotation omitted). Indeed, according to plaintiffs, their choice of forum is the "'paramount consideration' in any determination of a transfer request." *Id.* (quoting *Thayer/Patricof*, 196 F. Supp. 2d at 31). Plaintiffs, however, conveniently omit the very next sentence from the case they quote, which expressly qualifies the quoted sentence: "The choice of forum is ordinarily afforded great deference, ***except when the plaintiff is a foreigner in that forum***." 196 F. Supp. 2d at 31 (emphasis added; citing *Piper Aircraft*, 454 U.S. at 255-56). That, of course, is precisely the situation here, which is why plaintiffs' decision to bring "suit in a forum which is not [their] home turf" is entitled to diminished deference. *Armco Steel*, 790 F. Supp. at 323 n.11 (internal quotation omitted).

Plaintiffs insist, however, that there is a significant "nexus between this action and the District of Columbia." Opp. 7. "Most importantly," they assert, "ConocoPhillips has a corporate office in the District of Columbia, and does business here." *Id.* But that assertion fails even on its own terms, because it does not establish any nexus between "***this action***" and the District of Columbia. No such "nexus" exists as a matter of fact or law.

The fact that ConocoPhillips has an office in this forum, and does business here, in no way establishes that this is the most convenient forum to litigate this dispute. At most, the fact that ConocoPhillips has an office in this forum, and does business here, might relate to whether this Court could exercise personal jurisdiction over ConocoPhillips. *But see Atlantigas Corp. v. Nisource Inc.*, 290 F. Supp. 2d 34, 44-45 (D.D.C. 2003) (federal government relations office in the District of Columbia does not justify exercise of personal jurisdiction). But ConocoPhillips is not challenging the exercise of personal jurisdiction here. Rather, ConocoPhillips is challenging the relative convenience of this forum, as compared to the Southern District of Texas. The existence of a government affairs office here—which is no way connected to the underlying wrongdoing alleged by plaintiffs—is wholly irrelevant to the transfer inquiry. The fact that plaintiffs highlight this point as the "[m]ost important[]" factor in their favor, *see* Opp. 7, only underscores the weakness of their position.

Plaintiffs next try to bolster their alleged "nexus" by arguing that "James Godlove—a ConocoPhillips employee and significant participant in the events giving rise to this action—works in the District of Columbia and resides nearby." *Id.* Again, that argument fails on its own terms. The relevant question, when assessing the significance of an individual's presence in a venue analysis, is where that individual ***resides***. Because plaintiffs concede, as they must, that Godlove does not reside in this forum, the fact that he resides in a "nearby" forum is meaningless. *See, e.g., Koh v. Microtek Int'l, Inc.*, 250 F. Supp. 2d 627, 634 (E.D. Va. 2003) (transferring case from Eastern District of Virginia to Central District of California where plaintiffs worked in Virginia but resided in Maryland) ("[T]he Kohs's close geographic proximity and minimal ties to Virginia are not alone sufficient to render the Eastern District of Virginia their home forum because they are domiciled in Maryland."). Indeed, "judges of this

court have found transfer or dismissal appropriate despite the plaintiff's ***employment*** in the District." *Fitsock v. Kaiser Found. Health Plan of Mid-Atl. States*, 1990 WL 129445, at *2 (D.D.C. Feb. 6, 1990) (emphasis added) (citing cases). In any event, even if Godlove (a single witness, in a case where plaintiffs seek to depose at least 75 witnesses) did reside in the District, that point alone would in no way suffice to show that this forum is more convenient than the Southern District of Texas—especially given that Godlove had nothing to do with the District of Columbia at the time of the events in question. *See, e.g.*, *Smith v. Carl Zeiss SMT, Inc.*, No. 05 CV 570 WJG-JMR, 2006 WL 2465680, at *2 (S.D. Miss. Aug. 24, 2006) (transferring case to Southern District of New York even though plaintiff and witnesses resided in Southern District of Mississippi).

Finally, plaintiffs argue that their choice of forum is entitled to deference because "the District of Columbia is an appropriate forum when an action focuses on interpretation of federal statutes having some national significance." Opp. 7 (internal quotation omitted). Again, this argument is so far-fetched that it only underscores the weakness of plaintiffs' position. The argument proves far too much: it suggests that this Court is the most appropriate court to litigate ***any*** federal question. Congress, of course, established a federal court system all across the country to litigate federal questions. While some federal statutes specifically provide for exclusive venue in this District, *see, e.g.*, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1441a(a)(11), neither RICO nor the Robinson-Patman Act are among such statutes. Not surprisingly, therefore, federal courts routinely transfer cases involving RICO and Robinson-Patman Act claims to districts other than this one. *See, e.g.*, *Bolick Distribs. Corp. v. Armstrong Holdings, Inc.*, No. 02-5135, 2003 WL 21500558, at *9

(E.D. Pa. May 16, 2003); *Pep Boys, Manny, Moe, & Jack v. Am. Waste Oil Servs., Corp.*, No. 96-CV-7098, 1997 WL 367048, at *10 (E.D. Pa. June 25, 1997).

2. Where the claims arose

Plaintiffs next argue that "there is no concentration of acts underlying Oceanic's claims which occurred in Houston, Texas." Opp. 8. Given that ConocoPhillips is headquartered in Houston, that argument does not pass the straight-face test. As this Court observed at the hearing on the original motion to dismiss, "[i]f the bribes emanated, they emanated from [ConocoPhillips'] corporate headquarters and they certainly aren't in the District of Columbia. Why aren't you suing them in their principal place of business, ... Houston?" 2/8/05 Mot. to Dismiss Hr'g Tr. 21. Plaintiffs miss the point by noting that their complaint also alleges wrongdoing ***outside*** of Texas. *See* Opp. 8 (identifying Australia, Indonesia, East Timor, New York, California and Washington State as location of events or effects of alleged wrongdoing). But the key point here is that ***plaintiffs do not allege any wrongdoing in the District of Columbia***. At the end of the day, they cannot beat something with nothing.

Plaintiffs try to avoid this point by asserting that "several of the acts giving rise to Oceanic's claims undoubtedly ***impacted*** this forum, including [1] the tax scheme perpetrated by ConocoPhillips on the Internal Revenue Service and [2] acts undertaken by James Godlove, a ConocoPhillips employee who works in the District of Columbia …." Opp. 8 (emphasis added). Tellingly, they provide no legal authority for the use of an "impact" test in this context. In any event, the alleged "impacts" here are fanciful. The complaint alleges that ConocoPhillips filed fraudulent tax returns in ***Texas***, *see* SAC ¶ 69, and therefore any claims in connection with such alleged wrongdoing arose in ***Texas***, *see*, *e.g.*, *Travis v. United States*, 364 U.S. 631, 636-37 (1961). The fact that the IRS, like many other federal agencies, is headquartered in the District of Columbia is immaterial. *See*, *e.g.*, *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 25-26

(D.D.C. 2002) (granting transfer because "mere involvement on the part of federal agencies, or some federal officials who are located in Washington, D.C., is not determinative" as to venue in the District of Columbia). Similarly, it is a mystery how any acts allegedly committed by Godlove "impacted" the District of Columbia, given he did not even work in this forum at the relevant times, and does not reside in this forum even today. If plaintiffs' claims arise from any conduct in the United States, they arise from conduct in Texas, not in the District of Columbia.

3. Convenience of the parties

Plaintiffs next argue that "it would not be inconvenient … to litigate this action in this forum" because (1) "ConocoPhillips has a corporate office located at 1776 I Street, and it does business here," (2) "ConocoPhillips' lead counsel is located here," and (3) "ConocoPhillips has repeatedly been party to lawsuits in the District of Columbia." Opp. 9. Again, these facts are immaterial, or at best tangential, to the transfer analysis.

As noted above, the fact that ConocoPhillips (like many companies) has a government relations office in the District of Columbia does not make this a convenient forum to litigate this lawsuit. Plaintiffs do not contend that the office had anything to do with the wrongdoing alleged in this case. In contrast, plaintiffs cannot and do not deny that ConocoPhillips' corporate headquarters (from which the alleged wrongdoing emanated) are located in the Southern District of Texas.

Similarly, plaintiffs' reliance on the fact that ConocoPhillips retained counsel in the District of Columbia after being sued in this forum is misplaced. It is not surprising that ConocoPhillips retained counsel here after being sued here, and plaintiffs cannot rely on this fact to defeat transfer. "The location of counsel carries little, if any, weight in an analysis under § 1404(a)." *Armco Steel*, 790 F. Supp. at 324.

Finally, the fact that ConocoPhillips has previously been involved in litigation in this forum, *see* Opp. 9 & n.5, in no way establishes that this is the optimal forum for litigating ***this*** case. Most of the cases plaintiffs cite involved litigation against an agency of the Federal Government. It was obviously appropriate to bring such litigation in this District (where the federal defendants are based), but this litigation does not involve any federal defendant. Rather, the defendant here is located in the Southern District of Texas, which is why that is the natural forum for this case. The issue here, after all, is the relative convenience of the District of Columbia and the Southern District of Texas for litigating ***this*** case, and the existence of prior unrelated litigation involving other issues and parties is wholly immaterial to that issue. *See, e.g., O'Shea v. Int'l Bhd. of Teamsters, Local Union No. 639*, No. Civ.A. 04-0207(RBW), 2005 WL 486143, at *4 n.3 (D.D.C. Mar. 2, 2005) ("The plaintiff places significance on the fact that the same three parties—the plaintiff, the Union and UPS—previously litigated a similar suit in this Court. … However, this is a separate and unrelated matter and therefore the fact that the prior case was litigated in this Court has no bearing on where this case should be litigated.").

4. Convenience of witnesses

Plaintiffs next argue that ConocoPhillips "has failed to make the requisite showing that … witnesses [located in the Southern District of Texas] would be unwilling to testify at trial in the District of Columbia." Opp. 10. Again, that argument turns the relevant inquiry upside down. Plaintiffs fail to identify ***a single witness*** who resides in this forum. In contrast, many (if not most) of the witnesses located in the United States can be expected to reside in the Southern District of Texas, where ConocoPhillips is headquartered.

Plaintiffs argue, however, that "it would be absurd for ConocoPhillips to assert that 'key defense witnesses [located in Texas]' would not voluntarily appear for trial since these witnesses are obviously within ConocoPhillips' control and would undoubtedly travel to the District of

Columbia at its request." Opp. 11. But not all of the witnesses located in Texas remain in ConocoPhillips' employ. For example, neither Karen Brand nor William Parker (both named in the complaint, *see* SAC ¶ 69, 100-01) remain ConocoPhillips employees. Other unidentified witnesses currently in ConocoPhillips' employ could likewise cease to be in ConocoPhillips' employ as the litigation proceeds. *See, e.g., Schechter v. Tauck Tours, Inc.*, 17 F. Supp. 2d 255, 261 (S.D.N.Y. 1998).

5. Access to Documents

Finally, plaintiffs assert that, in the private interest analysis, "the location of documents and records … does not weigh in favor of transfer." Opp. 13. Notably, they make no effort whatsoever to argue that any relevant documents or records are located in the District of Columbia. Instead, they argue that "[t]he weight of authority indicates that the physical location of documents is rendered all but irrelevant in light of the modern trends in document production." *Id.* But plaintiffs distort the "weight of authority" on this score. Despite technological advances, the location of documents and records still remains highly relevant to the transfer analysis, particularly where the documents are located where the claim arose and where relevant witnesses are concentrated. *See, e.g.*, *ERBE USA, Inc. v. Canady*, No. 06-1504, 2006 WL 3377981 (D.D.C. Nov. 21, 2006) (Sullivan, J.) (granting transfer to the Western District of Pennsylvania because the documents are located in that jurisdiction); *Wedge v. Potter*, No. 06-0422, 2006 WL 3191232 (D.D.C. Nov. 1, 2006) (Sullivan, J.) (granting transfer to the District of Maryland because the documents are located in that jurisdiction).

B. Public Interest Factors

1. Local Interests

Because the central allegations in the complaint focus on alleged activities that necessarily would have occurred, had they occurred at all, at ConocoPhillips' corporate

headquarters in Houston, the interests of the Southern District of Texas are more strongly implicated here than any local interests of the District of Columbia. Indeed, when a complaint (like this one) is filed in a jurisdiction with no relationship to the conduct at issue, courts routinely transfer cases to the district where the defendant is headquartered. *See, e.g., Burns, Morris & Stewart Limited P'ship v. Menard, Inc.*, No. 3:05CV7112, 2006 WL 456497, at *1-2 (N.D. Ohio Feb. 23, 2006); *Original Creatine Patent Co. v. Met-Rx USA, Inc.* 387 F. Supp. 2d 564, 572 (E.D. Va. 2005); *Owner-Operator Indep. Drivers Ass'n, Inc. v. C.R. England, Inc*., No. 02-5664, 2002 WL 32831640, at *12 (E.D. Cal. Aug. 19, 2002).[5]

Here, plaintiffs argue that the case should not be transferred because "the issue of oil and natural gas supplies is a ***national issue***." Opp. 18 (emphasis added). Again, that argument misses the mark. This lawsuit is not about the nation's oil and gas supplies or the nation's energy policies. Nor does the fact that plaintiffs have asserted claims arising under federal statutes such as RICO and the Robinson-Patman Act, in and of itself, make the lawsuit uniquely national in scope. *See, e.g., Bolick*, 2003 WL 21500558, at *9; *Pep Boys*, 1997 WL 367048, at *10.

Plaintiffs should not be allowed to burden this Court and potential jurors in the District of Columbia with a lawsuit lacking any substantial connection to this already-overburdened forum by simply labeling something a "national issue." *See, e.g., Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947) ("Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to

[5] For this reason, plaintiffs' assertion that ConocoPhillips' transfer motion is based on "self-interest," Opp. 1, 7, misses the point. ConocoPhillips obviously has an interest in having this litigation decided in the most appropriate forum. As noted in the text, courts have long recognized that the defendant's principal place of business is one such place. Indeed, this Court made precisely this point at the first hearing in this case. "Why aren't you suing them in their principal place of business, ... Houston?" 2/8/05 Mot. to Dismiss Hr'g Tr. 21.

be imposed upon the people of a community which has no relation to the litigation."). Courts and citizens in Houston have a manifestly greater interest in regulating the conduct of one of their major corporations. *See, e.g.*, *Doage v. Board of Regents*, 950 F. Supp. 258, 262 (N.D. Ill. 1997).

2. Choice of Law

Plaintiffs next assert that "the choice of law issue [is] already settled," and that their common-law claims "are governed by District of Columbia law." Opp. 14-15. Again, that assertion is incorrect. This Court has not made any definitive ruling on choice-of-law. Rather, the Court has simply decided that not all of the common-law claims would be dismissed under the stringent standard of Rule 12(b)(6), which permits dismissal only when it is beyond question that a plaintiff may not prevail on a claim.

From the beginning, ConocoPhillips has emphasized that substantive District of Columbia law could not possibly govern plaintiffs' common-law claims. *See* Mem. in Support of Mot. to Dismiss SAC 32; Reply in Support of Mot. to Dismiss SAC 20. Although plaintiffs now assert that "ConocoPhillips … fails to show why the law of this forum would not apply," Opp. 2, they are wrong: the law of this forum would not apply for the simple reason that none of the relevant conduct involved this forum. To the extent that ***any*** American law could possibly govern these claims involving alleged wrongdoing in Australia and East Timor, it would be the law of Texas. Plaintiffs argue that Texas substantive law cannot govern these claims because "[t]he vast majority of relevant acts occurred outside Texas—in New York, Colorado, California, Australia, Indonesia, and East Timor." Opp. 15; *see also id.* at 8 ("***[V]ery few*** of the acts alleged in the Second Amended Complaint occurred in Houston, Texas. The gravamen of Oceanic's claims involves unlawful acts that occurred outside the United States, in Australia, Indonesia and

East Timor.") (emphasis added). But the key point here is that ***none of the relevant acts involve the District of Columbia***. Again, plaintiffs cannot beat something with nothing.

That is not to say, as plaintiffs insist, that "ConocoPhillips asserts … that Texas law ***would*** govern Oceanic's common law claims." Opp. 15 (emphasis added). ConocoPhillips has never said that; rather, ConocoPhillips has said only that "Texas law would govern plaintiffs' common-law claims ***to the extent that any American law does***." Mem. in Support of Transfer Mot. 13 (emphasis added). This Court, of course, need not now resolve the ultimate choice-of-law issue in this case, and decide whether the substantive law of Texas (as opposed to the substantive law of Australia or East Timor) should apply. It suffices for present purposes to determine that the substantive law of the ***District of Columbia*** does not, and could not constitutionally, govern these claims. *See, e.g.*, *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 310-11 (1981) (plurality); *id.* at 332 (Powell, J., dissenting); *see also John Hancock Mut. Life Ins. Co. v. Yates*, 299 U.S. 178, 182 (1936); *Home Ins. Co. v. Dick*, 281 U.S. 397, 410 (1930); *McCluney v. Jos. Schlitz Brewing Co*., 649 F.2d 578, 580 (8th Cir.), *aff'd mem*., 454 U.S. 1071 (1981).

3. Judicial Economy

Plaintiffs finally argue that judicial economy favors litigating this case here because (1) "the difference in disposition times for civil actions between this Court and the Southern District of Texas is negligible," and (2) "th[is] Court has invested substantial time and resources" in the litigation already. Opp. 16-17. They are wrong on both scores.

Plaintiffs cannot, and do not, dispute that the ***disposition*** time for civil actions is quicker in the Southern District of Texas. Accordingly, if anything, that yardstick favors transfer. Even more dramatic is the difference in time to ***trial***. Plaintiffs (without any justification) simply ask this Court to ignore that yardstick. *See* Opp. 16-17. But courts routinely rely on this yardstick. *See, e.g.*, *Fleming v. Ford Motor Co.*, No. Civ. A 05-1333RWR, 2006 WL 566109, at *3 (D.D.C.

Mar. 7, 2006); *Lighthouse Carwash Sys., LLC v. Illuminator Bldg. Co.*, No. 1:04-CV-0962-JDT-WTL, 2004 WL 2750251, at *5 (S.D. Ind. Sept. 28, 2004); *Gajeske v. Walmart Stores, Inc.*, No. 1:99-CV-7772000 WL 34401691, at *5 (E.D. Tex. June 26, 2000); *Law Bulletin Publ'g Co. v. LRP Publ'ns, Inc.*, 992 F. Supp. 1014, 1020 (N.D. Ill. 1998); *Olson v. Entre Computer Ctrs., Inc.*, No. C-87-20417-WAI, 1988 WL 216814 (N.D. Cal. Aug. 16, 1988). Plaintiffs, in contrast, cite no case relying on the yardstick they offer, average per-judge caseload.

Nor is it true that "[j]udicial economy would … be best served by keeping the action in this Court as opposed to starting over with a new judge in the Southern District of Texas." Opp. 17. This litigation is still in its preliminary stages. No discovery has been taken, and the Court has decided only motions to dismiss—decisions which did not require the Court to go beyond the allegations in the complaints. Therefore, this Court has not expended effort that would be wasted if the case is transferred; the work undertaken by this Court in deciding the motions to dismiss will travel with the case subject to the ordinary constraints of the "law of the case" doctrine. *See, e.g.*, *MacArthur v. San Juan County*, 391 F. Supp. 2d 895, 1034-35 (D. Utah 2005); *Dunbar v. County of Saratoga*, 358 F. Supp. 2d 115, 128 (N.D.N.Y. 2005); *NPR, Inc. v. American Int'l Ins. Co. of P.R.*, 242 F. Supp. 2d 121, 126 (D.P.R. 2003). Accordingly, judicial economy does not militate in favor of keeping this case in the District of Columbia. *See, e.g.*, *Martin-Trigona*, 668 F. Supp. at 3-4 (granting transfer even after a trial).

CONCLUSION

For the foregoing reasons, this Court should exercise its broad discretion under 28 U.S.C. § 1404(a) and transfer this case to the United States District Court for the Southern District of Texas.

Respectfully submitted,

/s/ Brant W. Bishop

Martin D. Beirne (D.D.C. Bar # TX0025)
Jeffrey T. Nobles (D.D.C. Bar # TX0039)
W. Bruce Stanfill (D.D.C. Bar # TX0026)
David A. Pluchinsky (D.D.C. Bar # TX0027)
BEIRNE, MAYNARD & PARSONS, LLP
1300 Post Oak Blvd., 25th Floor
Houston, TX 77056
(713) 623-0887
(713) 960-1527 (facsimile)

Thomas D. Yannucci, P.C. (D.C. Bar # 358989)
Michael D. Jones (D.C. Bar # 417681)
Christopher Landau (D.C. Bar # 425319)
Brant W. Bishop (D.C. Bar # 459255)
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 879-5000
(202) 879-5200 (facsimile)

Russell D. Howell (*Of Counsel*)
CONOCOPHILLIPS COMPANY
McLean Building
600 North Dairy Ashford Road
P.O. Box 4783
Houston, TX 77210

December 1, 2006

Counsel for Defendants ConocoPhillips and ConocoPhillips Company