



# JUSTICES SHOULD REVIEW LOWER COURT'S SNUB IN CLASS ACTION RULING

by  
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When the U.S. Supreme Court squarely decides and settles an issue, it is expected that the rest of the lower federal courts will follow. After all, the doctrine of *stare decisis* “represents an element of continuity in the law, and is rooted in the psychologic need to satisfy reasonable expectations.” *Helvering v. Hallock*, 309 U.S. 106, 119 (1940). Among other things, *stare decisis* helps to ensure that the law does not vary from one case to the next, and that legal issues are not re-litigated each time they arise in a new case. Such continuity provides integrity to the federal judiciary as an institution and bolsters its legitimacy to the public.

It is unusual, then, whenever a federal appeals court blithely ignores Supreme Court precedent. But that is exactly what the U.S. Court of Appeals for the Third Circuit appears to have done in *Abrahamsen v. ConocoPhillips Co.*, No. 12-1199, 2012 WL 5359530 (3d Cir. Nov. 1, 2012). In that case, Plaintiffs consisted of 123 Norwegians who claimed to have been injured by exposure to harmful chemicals while working for ConocoPhillips in Norway. After voluntarily dismissing two identical suits after they were successfully removed in both Texas and Delaware under the Class Action Fairness Act (CAFA), plaintiffs sought to avoid removal under CAFA by dividing their identical claims among four separate lawsuits in Delaware state court. Relying on both CAFA and federal-question jurisdiction, ConocoPhillips timely removed the four suits and moved to dismiss the combined action on a variety of grounds (including *forum non conveniens*). Plaintiffs moved to remand.

Rather than decide the motion to remand, the district court exercised its discretion under *Sinochem Int'l Co. Ltd. v. Malaysia Shipping Corp.*, 549 U.S. 422, 425 (2007), to bypass the jurisdictional inquiry in favor of a non-merits dismissal on *forum non conveniens* grounds.<sup>1</sup> In *Sinochem*, the Supreme Court unanimously held that a district court enjoys discretion to dismiss a case on the non-merits grounds of *forum non conveniens* without first addressing its own subject matter jurisdiction to decide the merits of the case.<sup>2</sup> 549 U.S. at 425. Indeed,

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<sup>1</sup> The district court's order also explained *why* the Norwegian plaintiffs sought to file their case in the United States. *Abrahamsen v. ConocoPhillips Co.*, No. 10-692 (GMS) (D. Del. Dec. 22, 2011), Slip Op. at 3 (“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.”)

<sup>2</sup> *Sinochem* was itself an extension of the rule announced in *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574 (1999), in which a unanimous court held that where “a district court has before it a straightforward personal

*Sinochem* clarified that “a court need not resolve whether it has authority to adjudicate the cause (subject matter jurisdiction) or personal jurisdiction over the defendant if it determines that, in any event, a foreign tribunal is plainly the more suitable arbiter of the merits of the case.” 549 U.S. at 431.

On appeal, the Third Circuit acknowledged that the district court had “exercised its discretion under *Sinochem* . . . to bypass the jurisdictional inquiry in favor of a non-merits jurisdictional inquiry in favor of a non-merits dismissal on *forum non conveniens* grounds,” *Abrahamsen*, 2012 5359530, at \*1. Nonetheless, the panel did *not* review the district court’s exercise of that discretion. Rather, the panel announced that “[w]e have an independent obligation to address our subject-matter jurisdiction . . . [which] entails the authority to examine jurisdictional issues that the District Court chose to bypass, relying on *Sinochem*.” *Id.* The Third Circuit then analyzed the jurisdictional issue, concluded that subject-matter jurisdiction was lacking, and vacated the dismissal order. *Id.* at \*2. The panel remanded the case to the district court, with instructions to send the four lawsuits back to the Delaware state court. *Id.*

Contrary to the Third Circuit’s holding, “there is no unyielding jurisdictional hierarchy.” *Ruhrgas*, 526 U.S. at 578. When a district court exercises its discretion to dismiss a case under *Sinochem*, the only question on appeal is whether the district court abused that discretion. But the Third Circuit never bothered to review the district court’s exercise of discretion.<sup>3</sup> By failing to do so, the appeals court essentially ignored the holding of *Sinochem*, which is rendered meaningless if an appeals court’s obligation to examine federal subject-matter jurisdiction is allowed to trump a district court’s discretion to dismiss the case on non-merits, *forum non conveniens* grounds in the first place.

If federal appeals courts are not obliged to review a discretionary dismissal under *Sinochem* for abuse of discretion, then any discretion said to be exercised by the district court is illusory. But *Sinochem* holds otherwise: “[A] district court has discretion to respond at once to a defendant’s *forum non conveniens* plea, and need not take up first any other threshold objection.” *Sinochem*, 549 U.S. at 425. Indeed, a district court “may dispose of an action by a *forum non conveniens* dismissal, bypassing questions of subject matter jurisdiction, when considerations of convenience, fairness, and judicial economy so warrant.” *Id.* at 432. And where, as here, “subject matter or personal 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 432. *Sinochem* controls this case.

ConocoPhillips has petitioned the Supreme Court for summary reversal. That petition should be granted. As the Supreme Court recognized in *Sinochem*, “[t]his is a textbook case for immediate *forum non conveniens* dismissal.” Given the complexity of the questions surrounding the defendant’s invocation of CAFA and federal-question jurisdiction on removal, the district judge was entirely within his authority to “take the less burdensome course.” Accordingly, the Third Circuit’s opinion here simply cannot be reconciled with the holding of *Sinochem*. An appeals court’s independent obligation to verify its own subject matter jurisdiction does not require it to establish that jurisdiction before reviewing a district court’s discretionary decision to dismiss a case on non-merits grounds. For that reason, the Supreme Court should grant review and summarily reverse the Third Circuit in light of *Sinochem*.

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jurisdiction issue presenting no complex question of state law, and the alleged defect in subject-matter jurisdiction raises a difficult and novel question, the court does not abuse its discretion by turning directly to personal jurisdiction.” 526 U.S. at 588.

<sup>3</sup>A judgment constitutes an abuse of discretion only if the district court has failed to exercise sound, reasonable, and legal decision-making skills.