

ORDER DENYING DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT
ON ALL CLAIMS IN PLAINTIFFS’
FIRST AMENDED COMPLAINT FILED
MARCH 22, 2021 (DKT. 45) TO THE
EXTENT THEY ARISE FROM OUT-OF-
STATE CONDUCT, FILED ON
APRIL 29, 2025 (DKT. 1722)

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The Court has reviewed and considered Defendants' Motion for Summary Judgment on All Claims in Plaintiffs' First Amended Complaint Filed March 22, 2021 (Dkt. 45) to the Extent They Arise from Out-of-State Conduct, filed on April 29, 2025, (Dkt. 1722) ("Motion"), related substantive filings (Dkt. Nos. 1992-1993, and 2091), and the arguments of counsel at the September 16, 2025, hearing. Being duly advised of the records and files herein and for good cause therefor, the Court DENIES the Motion.

Defendants characterize the issue raised in the Motion as "a purely legal question" that they claim the Supreme Court resolved in *City and County of Honolulu, et al. v. Sunoco LP, et al.*, 153 Hawaii 326 (2023) ("Decision")—specifically, whether Defendants are entitled to judgment as a matter of law that the permissible scope of this lawsuit is geographically limited to Defendants' allegedly tortious conduct *in* Hawaii. Dkt. 1722 at 12-13. In support, Defendants rely on the Supreme Court's language used in the Decision:

- "This case concerns torts *committed in Hawai'i* that caused alleged injuries in Hawai'i." *Id.* at 334 (emphasis added).
- "Defendants are alleged to have engaged in tortious acts *in Hawai'i*." *Id.* at 340–41 (emphasis added).
- "[T]he at-issue litigation alleges tortious acts and damages *in Hawai'i*." *Id.* at 344 (emphasis added).
- "Plaintiffs also allege that Defendants failed to warn consumers *in Hawai'i* about the dangers of using the oil and gas Defendants sold *in the state*." *Id.* (emphases added).

- “Plaintiffs seek monetary damages for injuries allegedly suffered *in Hawai‘i* as a result of Defendants’ alleged *tortious conduct in Hawai‘i*.” *Id.* at 347 (emphases added).

Dkt. 1722 at 4-5.

The Court disagrees with a fundamental premise of the Motion—that the Supreme Court “expressly limited Plaintiffs’ claims to conduct that occurred in, or that targeted, the State of Hawai‘i.” Dkt. 2091 at 2. While the Court acknowledges the language in the Decision cited by Defendants, based on the oral arguments, which made clear the scope of conduct at issue in Plaintiffs’ claims, and in footnote 6 in the Decision, this Court concludes that the Supreme Court did not geographically limit Plaintiffs’ claims.

Defense counsel’s arguments to the Supreme Court included the following statements regarding the scope of Plaintiffs’ claims: “they go on for probably 60 pages talking about alleged misrepresentations and concealment *around the United States . . .*” (Dkt. 1722, Ex. 2 at 10-11); “state tort law cannot be applied in this context because *it intrudes on other states* and on the federal government” (*id.* at 20); “they’re going to put all the consequences of that (i.e., the actions of ‘millions and billions of people around the world where they engaged in everyday activity, powered the world, powered modern life’) on these companies without any basis way for them to avoid liability and that’s just not constitutionally permissible[]” (*id.* at 21); “what’s not allowed . . . is a claim in Hawaii *based on worldwide activity* projecting Hawaii law[]” (*id.* at 55) (all italics added). When the Chief Justice asked whether “the analysis of causation address some of the concerns you just expressed or is there a substantial cause of the harm in Hawaii or do you believe that that wouldn’t be a meaningful

guardrail,” defense counsel stated: “[i]t wouldn’t Your Honor . . . What their argument is that if there’s some activity in Hawaii and some emissions in Hawaii and those emissions mixed in with the greenhouse gases around the world, that tags the defendants for all the consequences of all the global emissions; that’s their theory”). *Id.* at 21-22.

Plaintiffs’ counsel repeatedly made the scope of the claims explicit during his argument: “the defendants’ failure to warn, combined with their decades of disinformation and dissembling, were substantial factors both in Hawaii *and elsewhere* in causing the injuries that these plaintiffs complain of[]” (*id.* at 26); “[t]he tortious failures to warn and the campaign of deception in connection with the very products they produce, market, and sell in Hawaii *and elsewhere*” (*id.* at 43); “[t]he products were rendered defective under the theory of our Complaint by their failure to warn and that failure to warn occurred in Hawaii and that conduct occurred in Hawaii *in connection with their wrongful promotion and marketing here, as elsewhere, and the claims asserted by the plaintiffs here turn on the same products and conduct in Hawaii as elsewhere* (*id.* at 44) (all italics added).

The Justices asked several questions about the scope of the conduct at issue, and Plaintiffs’ counsel responded consistently. For example, when asked if Hawai’i “would, in essence, be imposing its view of what truthful marketing is *on jurisdictions around the country and, indeed, around the globe*,” Plaintiff counsel said: “Our federal system contemplates *both that out of state and even international actors can cause harm within individual states and be held accountable under that state’s tort law*.” *Id.* at 28 (emphasis added). The Chief Justice also asked whether “the Complaint’s theory

relate only to misrepresentations made in Hawaii *or misrepresentations more broadly across the country or around the world?* In other words, once we get past the pleadings stage, is it envisioned that there *would be liability for representations made throughout the United States* or it would be just the effect of misrepresentations made herein Hawaii?” Plaintiffs’ counsel answered: “It’s both, Your Honor. And the reason is that the tortious conduct *wherever it occurred* has caused the injury in this state” *Id.* at 29-30 (all italics added).¹ Plaintiffs’ counsel further explained:

Our case is not based on lawful commercial conduct. It’s based on tortious commercial conduct; it’s based on wrongdoing. *And the causation analysis* will look at what Hawaii would have been like without the failure to warn and the campaign of deception that’s laid out in the lawsuit in the Complaint, and what the world does look like with those.

So it’s our burden as we move forward towards trial to prove, to meet our burden of showing that the defendants’ tortious conduct was a substantial cause of the injuries that we’ve suffered.

Id. at 36 (italics added). Similarly, in discussing compensation if Plaintiffs prevail, counsel stated: “It’s payments for the injuries suffered by these public entities in Hawaii as a result of the defendants’ tortious conduct in state *and elsewhere.*”

HON. TODD EDDINS: But doesn’t that necessarily and almost explicitly arise from interstate emissions?

¹ See also *id.* at 45 (after confirming that Plaintiffs’ claims “at trial will relate to marketing activities worldwide,” Chief Justice Recktenwald asked: “[s]o what if, under the law of other jurisdictions, the marketing was not found to be problematic or deceptive another state, another nation. Is that nation then or state will be carved out of the damages calculation; how does that work? Because, you know, it seemed initially like this was a very narrow action that was focusing on marketing here, but now if it’s marketing everywhere, how is that supposed to work in terms of different standards that might exist in all those other states?”). Plaintiffs’ counsel responded in part: “*And any limits that are put on their ability to formulate and prove their claim will be things to work out as a matter of causation and other defenses*” *Id.* at 47.

MR. SHER: *That'll be a question of fact on causation at trial.* But even if you grant the premise that most of the conduct that caused the harm took place outside of Hawaii, that's not a bar to recovery here. Young v. Massey, the BMW v. Gore case, most recently the case cited by the attorney general, Pork Producers; those cases all say that a state has a strong interest in protecting its citizens and its resources and out-of-state defendants who cause harm in the state can be haled here, as a matter of personal jurisdiction, and they can face liability if the plaintiffs meet their burden.

HON. TODD EDDINS: *So the causation is really just a matter for litigation at trial, that the City must prove the causation.*

Id. at 39-40 (emphasis added).

Reflecting the arguments and responses by Plaintiff's counsel, the Court stated in footnote 6 of its Decision: "Defendants' causation arguments are better saved for the merits stage of this litigation where Plaintiffs must prove causation with respect to all of its tort claims. Of course, we express no opinion as to the validity of those arguments." City & Cnty. of Honolulu v. Sunoco LP, 153 Hawai'i 326, 343, 537 P.3d 1173, 1190 (2023), cert. denied sub nom. Shell PLC v. City & Cnty. of Honolulu, Hawaii, 145 S. Ct. 1111, 220 L. Ed. 2d 413 (2025), and cert. denied sub nom. Sunoco LP v. City & Cnty. of Honolulu, Hawaii, 145 S. Ct. 1111, 220 L. Ed. 2d 413 (2025).

To this Court, the transcript of the oral argument and footnote 6 reflects that the Supreme Court (1) understood the scope of Plaintiffs' claims; (2) did not geographically limit those claims to conduct that occurred in or targeted Hawai'i; and (3) left Plaintiffs to their proof at trial on causation. Relatedly, the oral arguments and footnote 6, as well as Plaintiffs arguments and authorities in their Opposition (Dkt. 1992) convince the Court that the case authority permits the claims to move forward.

DATED: Honolulu, Hawai'i, January 2, 2026.

/s/ Lisa W. Cataldo



JUDGE OF THE ABOVE-ENTITLED COURT