

Client Bulletin

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Another *Forum Non Conveniens* Victory for Defendants from California District Court

Forum non conveniens is a common law doctrine under which a court dismisses a case, despite proper jurisdiction and venue, because a more convenient forum exists where the case should be litigated in the interests of justice. Although each motion to dismiss *forum non conveniens* is based on the same set of factors for the court to consider, the outcome is difficult to predict because the analysis is heavily fact-intensive.

The factors courts consider are whether an adequate alternative forum exists, whether the balance of public and private interest factors favors dismissal and whether the plaintiff's choice of forum, which is given great deference, should nonetheless be disturbed. See *In re Air Crash Over the Mid-Atlantic on June 1, 2009*, 2010 WL 3910354, *4 (N.D. Cal. Oct. 4, 2010).¹

Most recently, the Central District of California applied these factors to litigation arising out of the August 20, 2008 crash of a McDonnell Douglas MD-82 aircraft operated by Spanair, which crashed during takeoff in Madrid, Spain, and dismissed the actions based on *forum non conveniens*. See *In re Air Crash at Madrid, Spain, on August 20, 2008*, 2011 WL 1058452 (C.D. Cal. March 22, 2011). Of the 172 people on board, only 18 survived, none were American citizens. Over two hundred plaintiffs brought products liability actions in several U.S. district courts alleging that the takeoff warning system did not alert the pilots that the wings' slats and flaps were not positioned for takeoff. The litigation centered on the responsibility for the improper positioning of the slats and flaps during takeoff.

Plaintiffs argued that the critical issue arising out of the Madrid crash was a design defect which

defendants (McDonnell Douglas Corporation and other component part manufacturers) knew about from prior investigations of the NTSB but did not correct. Defendants agreed to the usual stipulations on a motion to dismiss based on *forum non conveniens*: (1) to submit to jurisdiction in Spain; (2) toll any Spanish applicable statutes of limitation; (3) make all witnesses and evidence deemed relevant by the Spanish court available in Spain; and (4) satisfy any Spanish judgment.

First, the court found that Spain is an adequate alternative forum, and neither the potential delay in litigation of approximately ten years² nor the availability of fee-shifting in a Spanish court renders it an inadequate forum.

The court then focused on the private and public interest factors. As to the private interest factors, plaintiffs pointed to witnesses located in the U.S. relevant to establishing a design defect. Defendants, naturally, pointed to witnesses located outside of the U.S. who would establish other causes of the crash, such as the mechanics; additionally, nearly all damage witnesses reside in Spain. The court found the location of witnesses and the location of physical evidence to be in "equipoise," but noted that the travel expense to the parties of litigating in the U.S. would be substantially more than that in Spain. Further, defendants would not be able to implead Spanair in a U.S. court for lack of personal jurisdiction. Therefore, the court concluded that the private interest factors weighed in favor of dismissal.

As to the public interest factors, the court determined Spain's interest in the litigation indisputably apparent and significant. Although there were U.S. ties to some of the manufactured parts that allegedly caused the crash, such an interest rarely trumps the interest of a foreign state with ties to the crash and, more importantly, to the victims: the site of the accident, the home of most decedents and the home of most plaintiffs. Because Spain's

interest in the litigation dwarfs any U.S. interest, the burden and costs on a U.S. court could not be justified. Further, the issues presented would require a comparative law analysis that the doctrine of *forum non conveniens* aims to avoid, and Spanish law would appear to apply to the vast majority of plaintiffs' claims. The court thus concluded that the public interest factors strongly weighed in favor of dismissal and, thus, dismissed the action.

Although "*forum non conveniens* [is] 'an exceptional tool to be employed sparingly,'" it appears that federal courts are more and more willingly to dismiss foreign air crash cases brought in the U.S. based upon the doctrine.



If you would like more information regarding *forum non conveniens* or other topics discussed in this Client Bulletin, please contact:

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¹ A copy of the Condon & Forsyth October 2010 Client Alert discussing *In re Air Crash Over the Mid-Atlantic on June 1, 2009*, 2010 WL 3910354 (N.D. Cal. Oct. 4, 2010) can be found at: <http://www.condonlaw.com/newsletters/cAoct2010.pdf>

² Plaintiffs argued that pending criminal proceedings in Spain against the Spanair mechanics would indefinitely stay a civil proceeding against the airline. The court found, however, that this did not accurately reflect the current state of Spanish law.