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FOREIGN SEAMAN'S CLAIMS
CHOICE OF LAW – *FORUM NON CONVENIENS*

In the decades following World War II, an increasing number of claims were filed in U.S. Courts by foreign maritime workers. Many of these claimants were injured on foreign vessels in U.S. waters. In addition, the acceleration offshore oil exploration and production in the latter part of the 20th Century increased the number of claims by foreign workers injured in foreign waters on rigs either registered in the U.S. or ultimately owned by American corporations. The judicial process in meeting these demands on the judicial system and the marine industry is an example of legal expansion and contraction not only involving the legal resources of the courts but the philosophical questions regarding the export of American standards of living to other nations. The initial approach was for the courts to retain jurisdiction of the claims filed by foreign maritime workers; however, the trend of the courts and Congress has been to limit the access to United States courts.

Injury/death occurring in U.S. waters

In 1953 the U.S. Supreme Court employed seven factors to determine the validity of a foreign seaman's claim under the Jones Act. *Lauritzen v. Larsen,* 345 U.S. 571, 73 S.Ct. 921, 97 L. Ed. 1254 (1953). These factors were: the law of the flag, the allegiance of the injured party, allegiance of the defendant shipowner, place of the contract, accessibility of the alternative forums, the law of the forum, and the place of the tort. The Second Circuit, in *Bartholomew v. Universe Tankships, Inc.,* 263 F.2d 437 (2d Cir. 1959), *cert. denied,* 359 U.S. 1000, held American law, specifically the Jones Act, to be applicable to a citizen of the British West Indies injured aboard a Liberian tanker in U.S. waters. The Court looked beyond the flag of convenience and discovered the foreign vessel's owners were ultimately Americans. Such beneficial ownership, the Court held, was alone sufficient to warrant the application of U.S. law.

In *Hellenic Lines v. Rhoditis,* 398 U.S. 306 (1970), the *Lauritzen* factors were expanded to include the vessel owner's base of operations, allowing a foreign corporation's nexus with the U.S. to become more accentuated. The Second Circuit further widened the scope of Jones Act jurisdiction by considering the nationality of corporate officers and the percentage of voyages beginning or ending in U.S. waters. *Moncada v. Lemuria Shipping Corp.,* 491 F.2d 470 (2d Cir. 1974). In *Antypas v. Compania Maritima San Basilio, S.A.,* 541 F.2d 307 (2d Cir. 1976), the Second Circuit held that any U.S. beneficial ownership, including the existence of American shareholders, was sufficient for application of the Jones Act. The Fifth circuit utilized the choice

of law analysis set forth in the *Lauritzen* formula to determine if the U.S. maritime personal injury principles would apply to a worker not classified as a seaman; he was injured in foreign waters aboard a U.S. flag drilling rig. *Coats v. Penrod Drilling Corp.*, 61 F.3d 1113, 1118-21 (5th Cir. 1995) concluded that the maritime principles of this country would apply even if the worker was not a seaman.

The most expansive application of Jones Act jurisdiction to date is *Fisher v. AGIOS NICOLAOS V*, 528 F.2d 308 (5th Cir. 1980), *cert. denied*, 454 U.S. 816, 102 S.Ct. 1714 (1981). In that case the Fifth Circuit allowed recovery for the death of a Greek seaman who was killed only nine days after joining the Greek vessel in this country. The vessel's "substantial use" of a U.S. base of operations (although it was the vessel's maiden voyage), in addition to other U.S. contacts, were used by the Court to justify Jones Act coverage. A year late, the Fifth Circuit restricted the application of this country's law in a similar case. In *Volyrakis v. M/V ISABELLE*, 669 F.2d 863 (5th Cir. 1982), the court used the *Lauritzen* factors and determined that the sole connection with the U.S. was the location of the injury; further, this one factor was insufficient to apply U.S. law.

Foreign Workers Injured on Vessels

Our courts will generally dismiss litigation by a foreign seaman who is injured in international waters aboard an oceangoing vessel flagged and owned in another country. *Bhatnagar v. Surrendra Overseas Ltd.*, 52 F.3d 1220 (3d Cir. 1995). In fact, an injury in a U.S. port will not prevent dismissal if all other factors point to another country having a more significant interest in the claim. *Haruma v. M/V STAR B*, 80 F. Supp. 569 (D.S.C. 1998). Another problem is encountered if a special-purpose vessel such as an oil rig is owned by a U.S. corporation. Although choice of law analysis applies to claims of non-bluewater seaman, a different perspective is required. The very nature of the vessels involved in these claims is clearly different from traditional bluewater ships. A movable rig is often in one location for years at a time, and frequently employs labor from the adjoining countries. In many instances the vessels are operated by foreign subsidiaries of American corporations. The opportunity to find sufficient contacts in support of the application of foreign law is greater. In *Phillips v. Amono Trinidad Oil Co.*, 632 F.2d 82 (9th Cir. 1980), *cert. denied*, 451 U.S. 920 (1981), Trinidadian workers injured on a U.S. owned rig off the coast of Trinidad brought suit in California. The court considered the allegiance of the workers and their

employment in foreign waters, the place of the contract, and the base of drilling operations, all of which were in Trinidad; the result was that the Ninth Circuit affirmed the lower court's choice of foreign law as opposed to the Jones Act and remanded the case for further consideration. The case was later dismissed by the trial court on a *forum non conveniens* theory. *Neely v. Club Med Management Services, Inc.*, 63 F.3d 166 (3d Cir. 1995) holds that *Lauritzen* goes to choice of law and not *forum non conveniens*; it also sets forth the analysis to be used in the event the injured person is an American citizen.

Chiazor v. Transworld Drilling Co., 648 F.2d 1015 (5th Cir. 1981), *cert. denied*, 455 U.S. 1019 (1982), involves another instance of a foreign oil worker being relegated to a foreign forum when his ultimate employer was an American corporation. The district court held that Nigerian law applied to a death action arising off the coast of Nigeria on a movable rig owned by a Nigerian subsidiary of U.S. corporation. In affirming the lower court's decision, the Fifth Circuit held that in determining dismissal for *forum non conveniens* the factors listed in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), should be considered. In *DeOliveira v. Delta Marine Drilling*, 707 F.2d 843 (5th Cir. 1983), the Fifth Circuit reversed the lower court's application of the Jones Act, and found insufficient contacts with the U.S. to warrant the application of U.S. law. The litigation was dismissed on the basis of *forum non conveniens*. Of particular interest in this case is the fact that the district court did not consider the *forum non conveniens* issue, yet the Court of Appeals ordered a dismissal of the litigation. The United States Supreme Court expanded the trial court's discretion to dismiss foreign litigation even if a greater burden of prevailing is placed on the plaintiff by the foreign forum. The exception to the principle is if the law of the foreign forum is so inadequate as to provide no remedy at all. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981). Dismissals on the basis of *forum non conveniens* are often conditioned upon the moving party waiving any statute of limitation defense, measured by the pendency of the litigation in the United States, submitting to the jurisdiction of the foreign court, not contesting the use of material obtained in the U.S. litigation by way of discovery and agreeing to satisfy the judgment, *Piper, supra; Caesar, supra.* Query whether such conditional dismissal can be considered appealable "final orders" before all the conditions have been met. *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824 (5th Cir.), *cert. denied*, 509 U.S.973, 113 S. Ct. 2693, 125 L. Ed. 2d 663 (1993), stresses the threshold question for the trial court is the "availability" of a foreign forum and the "adequacy" of a remedy. The Fifth Circuit cited *Piper* for the proposition that a difference in the substantive law between the competing forums "should not be given conclusive or even substantial weight in the *forum non conveniens* inquiry." *Syndicate 420 at Lloyd's London v. Early American Insurance Co.*, 796 F.2d 821 (5th Cir. 1986).

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Similarly, the question of whether federal *forum non conveniens* principles can be applied to a state court in Texas was raised in *Dow Chemical Co. v. Castro Alfaro*, 786 S.W.2d, 675 (Tex. 1990). *Alfaro* held that the doctrine of *forum non conveniens* was statutorily abolished in foreign wrongful death/personal injury actions under the Texas Constitution, Art. I, § 13 as reflected in Texas Wrongful Death Statues, V.T.C.A., Civil Practice & Remedies Code, §§ 71,301, *et seq.* Critics of the decision conclude that it is tantamount to constituting Texas as "the world's forum of final resort." The Texas Legislature subsequently changed this judicial interpretation by passing a statute giving the trial court some discretion to dismiss a personal injury action or one for wrongful death on the basis of *forum non conveniens*; however, the amendment in 2003 makes a distinction between legal residents and plaintiffs who are not. Tex. Civ. Prac. & Rem. Code § 71.051 (1993), amendment effective August 30, 1993.

The Texas open door policy, whether real or imagined, was quickly tested by means of the federal Anti-Injunction Act, 28 U.S.C. 62283, in *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988). In that case, the Federal District Court decided that the law of Singapore governed the controversy and subsequently dismissed the action on *forum non conveniens* principles. The litigation was re-filed in the state court. The procedure followed by Exxon was to seek federal intervention by means of the Federal Anti-Injunction statute. The Supreme Court held that the district court's choice of law determination precluded the application of state law, and that "an injunction preventing relitigation of that [the controlling choice-of-law] in the state court is within the scope of the relitigation exception to the Anti-Injunction Act." *Id.* at 150. The Court concluded by holding that the injunction was permissible for the purpose of preventing the application of the substantive law of Texas, but was overly broad in denying Texas courts the opportunity to consider the petitioner's Singapore law claims. The Texas Supreme Court initially concluded that federal *forum non conveniens* principles preclude state law on the theory of preemption; however, on rehearing, the initial conclusion was rejected based upon the intervening United States Supreme Court decison in *Miller v. American Dredging*.

On the issue of whether state or federal *forum non conveniens* principles apply to actions in federal court with jurisdiction based on diversity, the Fifth Circuit takes the position that federal and not state *forum non conveniens* rules are followed. This is true even if a case is removed from the state court to the federal court. *DeAguilar v. Boeing Co.*, 11 F.3d 55 (5th Cir. 1993) and 47 F.3d 1404 (5th Cir. 1995). Note also *Esfeld v. Costa Crociere, S.P.A.*, 289 F.3d 1300 (11th Cir. 2003),

a decision that held *forum non conveniens* to be issue determinative, but federal and not state principles are followed in diversity cases due to the objective of having "an internally consistent, national set of venue rules."

Foreign Workers and Forum Selection Clauses

Forum and law selection clauses in a foreign seaman's employment contract or release are enforced, even where the injury occurs in the United States. *Calix-Chacon v. Golbal Intern. Marine Inc* 493 F. 3d 507 (5th Cir. 2007); The Fifth Circuit previously recognized a forum selection clause in the context of an injury to a foreign crewmember occurring aboard a foreign flag vessel in the Mississippi River. *Marinechance Shipping, Ltd. v. Sebastian*, 143 F.3d 216 (5th Cir. 1998). The same result was reached in the context of U.S. litigation commenced by Peruvian survivors of a security worker who died as a consequence of fumigation activities aboard a vessel at Callao. A release containing a forum selection/law selection clause was signed by the survivors at Callao; they subsequently filed a claim in a U.S. limitation of liability proceeding. The claim was dismissed due to the forum selection clause in the release. *Afram Carriers, Inc. v. Moeykens*, 145 F.3d 298 (5th Cir. 1998). Consistent with the holding of *Afram Carriers* is *MacPhail v. Oceaneering International, Inc.*, 302 F.3d 274 (5th Cir. 2002). Also, arbitration clauses contained in employment contracts between a foreign seaman and his non-U.S. employer are enforceable even if the injury occurred in a port of this country. *Francisco v. M/T STOLT ACHIEVEMENT*, 293 F.3d 270 (5th Cir. 2002).

THE AMMENDMENT TO THE JONES ACT

In 1982, Congress passed an amendment to the Jones Act that severely limits the Act's application to foreign oil field workers.

WHEN A FORUM NON CONVENIENS RULING CAN BE MADE

In *Sinochem International Co. Ltd. v. Malaysia International Shipping Corp.*, 549 U.S. 422 (2007), the Supreme Court held that when a defendant has moved for dismissal on forum non conveniens grounds but either personal jurisdiction or subject matter jurisdiction is in question, a court need not determine whether it has personal or subject matter jurisdiction before deciding the forum non conveniens issue.

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*J. LAURITZEN, Petitioner,

v.

EVALD JOHANN LARSEN

(345 US 571, 97 L ed 1254, 73 S Ct 921)

SUMMARY OF DECISION

A Danish seaman, while temporarily in New York, joined the crew of a ship of Danish flag and registry, owned by a Danish citizen, and signed ship's articles, written in Danish, providing that the rights of crew members would be governed by Danish law and by the employer's contract with a Danish union, of which the seaman was a member. He was negligently injured aboard the ship in the course of employment, while in Havana harbor. In his suit under the Jones Act the courts below rendered judgment in his favor, proceeding on the theory that American rather than Danish law applied.

Respondent brought suit under the Jones Act on the law side of the District Court for the Southern District of New York and demanded a jury. Petitioner contended that Danish law was applicable and that, under it, respondent had received all of the compensation to which he was entitled. He also contested the court's jurisdiction. Entertaining the cause, the court ruled that American rather than Danish law applied, and the jury rendered a verdict of $4,267.50. The Court of Appeals, Second Circuit, affirmed. Its decision, at least superficially, is at variance with its own earlier ones *[574] and *conflicts with one by the New York Court of Appeals. We granted certiorari.

Denmark has enacted a comprehensive code to govern the relations of her shipowners to her seagoing labor which by its terms and intentions controls this claim. Though it is not for us to decide, it is plausibly contended that all obligations of the owner growing out of Danish law have been performed or tendered to this seaman. The shipowner, supported here by the Danish Government, asserts that the Danish law supplies the full measure of his obligation and that maritime usage and international law as accepted by the United States exclude the application of our incompatible statute.

That allowance of an additional remedy under our Jones Act would sharply conflict with the policy and letter of Danish law is plain from a general comparison of the two systems of dealing with shipboard accidents. Both assure the ill or injured seafaring worker the conventional maintenance and cure at the shipowner's cost, regardless of fault or negligence on the part of anyone. But, while we limit this to the period within which maximum possible cure can be effected, Farrell v. United States, 336 US 511, 93 L ed 850, 69 S Ct 707, the Danish law limits it to a fixed period of twelve weeks, and the monetary measurement is different. The two systems are in sharpest conflict as to treatment of claims for disability, partial or complete, which are permanent, or which outlast the liability for maintenance and cure, to which class this claim belongs. Such injuries Danish law relieves under a state-operated plan similar to our workmen's *[576] compensation *systems. Claims for such disability are not made against the owner but against the state's Directorate of Insurance Against the Consequences of Accidents. They may be presented directly or through any Danish Consulate. They are allowed by administrative action, not by litigation, and depend not upon fault or negligence but only on the fact of injury and the extent of disability. Our own law, apart from indemnity for injury caused by the ship's unseaworthiness, makes no such compensation for such disability in the absence of fault or negligence. But, when such fault or negligence is established by litigation, it allows recovery for elements such as pain and suffering not compensated under Danish law and lets the damages be fixed by jury. In this case, since negligence was found, United States law permits a larger recovery than Danish law. If the same injury were sustained but negligence was absent or not provable, the Danish law would appear to provide compensation where ours would not.

Respondent does not deny that Danish law is applicable to his case. The contention as stated in his brief is rather that "A claimant may select whatever forum he desires and receive the benefits resulting from such choice" and "A ship owner is liable under the laws of the forum where he does business as well as in his own country." This contention that the Jones Act provides an optional cumulative remedy is not based on any explicit terms of the Act, which makes no provision for cases in which remedies have been obtained or are obtainable under foreign law. Rather he relies upon the literal catholicity of its terminology. If read literally, Congress has conferred an American right of action which requires nothing more than that plaintiff be "any seaman who shall suffer personal injury in the course of his employment." It makes no explicit

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requirement that either *the seaman, the employment or the injury have the slightest connection with the United States. Unless some relationship of one or more of these to our national interest is implied, Congress has extended our law and opened our courts to all alien seafaring men injured anywhere in the world in service of watercraft of every foreign nation—a hand on a Chinese junk, never outside Chinese waters, would not be beyond its literal wording.

But Congress in 1920 wrote these all-comprehending words, not on a clean slate, but as a postscript to a long series of enactments governing shipping. All were enacted with regard to a seasoned body of maritime law developed by the experience of American courts long accustomed to dealing with admiralty problems in reconciling our own with foreign interests and in accommodating the reach of our own laws to those of other maritime nations.

The shipping laws of the United States, set forth in Title 46 of the United States Code, comprise a patchwork of separate enactments, some tracing far back in our history and many designed for particular emergencies. While some have been specific in application to foreign shipping and others in being confined to American shipping, many give no evidence that Congress addressed itself to their foreign application and are in gen-

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eral terms which leave their application to be judicially determined from context and circumstance. By usage as old as the Nation, such statutes have been construed to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law. Thus, in United States v. Palmer (US) 3 Wheat. 610, 4 L ed 471, this Court was called upon to interpret a statute of 1790 (1 Stat 115) punishing certain acts when committed on the high seas by "any person or persons," terms which, as Mr. Chief Justice Marshall observed, are

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*"broad enough to comprehend every human being." But the Court determined that the literal universality of the prohibition "must not only be limited to cases within the jurisdiction of the state, but also to those objects to which the legislature intended to apply them" (p 631) and therefore would not reach a person performing the proscribed acts aboard the ship of a foreign state on the high seas.

Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ships. But the virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of

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this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality. It

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has the force of law, not *from extra-territorial reach of national laws, nor from abdication of its sovereign powers by any nation, but from acceptance by common consent of civilized communities of rules designed to foster amicable and workable commercial relations.

International or maritime law in such matters as this does not seek uniformity and does not purport to restrict any nation from making and altering its laws to govern its own shipping and territory. However, it aims at stability and order through usages which considerations of comity, reciprocity and long-range interest have developed

to define the domain which each nation will claim as its own. Maritime law, like our municipal law, has attempted to avoid or resolve conflicts between competing laws by ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved. The criteria, in general, appear to be arrived at from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority. It would not be candid to claim that our courts have arrived at satisfactory standards or apply those that they profess with perfect consistency. But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction.

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In the case before us, two foreign nations can claim some connecting factor with this tort—Denmark, because, among other reasons, the ship and the seaman were Danish nationals; Cuba, because the tortious conduct occurred and caused injury in Cuban waters. The United States may also claim contacts because the

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seaman had *been hired in and was returned to the United States, which also is the state of the forum. We therefore review the several factors which, alone or in combination, are generally conceded to influence choice of law to govern a tort claim, particularly a maritime tort claim, and the weight and significance accorded them.

1. *Place of the Wrongful Act.*—The solution most commonly accepted as to torts in our municipal and in international law is to apply the law of the place where the acts giving rise to the liability occurred, the lex loci delicti commissi. This rule of locality, often applied to maritime torts, would indicate application of the law of Cuba, in whose domain the actionable wrong took place. The test of location of the wrongful act or omission, however sufficient for torts ashore, is of limited application to shipboard torts, because of the varieties of legal authority over waters she may navigate. These range from ports, harbors, roadsteads, straits, rivers and canals which form part of the domain of various states, through bays and gulfs, and that band of the littoral sea known as territorial waters, over which control in a large, but not unlimited, degree is conceded to the adjacent state. It includes, of course, the high seas as to which the law was probably settled and old when Grotius wrote that it cannot be anyone's property and cannot be monopolized by virtue of discovery, occupation, papal grant, prescription or custom.

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*We have sometimes uncompromisingly asserted territorial rights, as when we held that foreign ships voluntarily entering our waters become subject to our prohibition laws and other laws as well, except as we may in pursuance of our own policy forego or limit exertion of our power. Cunard S.S. Co. v. Mellon, 262 US 100, 124, 67 L ed 894, 902, 43 S Ct 504, 27 LRA 1306. This doctrine would seem to indicate Cuban law for this case. But the territorial standard is so unfitted to an enterprise conducted under many territorial rules and under none that it usually is modified by the more constant law of the flag. This would appear to be consistent with the practice of Cuba, which applies a workmen's compensation system in principle not unlike that of Denmark to all accidents occurring aboard ships of Cuban registry.[16] The locality test, for what it is worth, affords no support for the application of American law in this case and probably refers us to Danish in preference to Cuban law, though this point we need not decide, for neither party urges Cuban law as controlling.

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2. *Law of the Flag.*—Perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag. Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag. The United States has firmly and suc-

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cessfully maintained that the regularity and validity of a registration can be questioned only by the registering state.

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*This Court has said that the law of the flag supersedes the territorial principle, even for purposes of criminal jurisdiction of personnel of a merchant ship, because it "is deemed to be a part of the territory of that sovereignty [whose flag it flies], and not to lose that character when in navigable waters within the territorial limits of another sovereignty." On this principle, we concede a territorial government involved only concurrent jurisdiction of offenses aboard our ships. United States v. Flores, 289 US 137, 155–159, 77 L ed 1086, 1093–1095, 53 S Ct 580, and cases cited. Some authorities reject, as a rather mischievous fiction, the doctrine that a ship is constructively a floating part of the flag-state, but apply the law of the flag on the pragmatic basis that there must be some law on shipboard, that it cannot change at every change of waters, and no experience shows a better rule than that of the state that owns her.

It is significant to us here that the weight given to the ensign overbears most other connecting events in determining applicable law. As this Court held in United States v. Flores, supra (289 US at 158), and iterated in Cunard S. S. Co. v. Mellon, supra (262 US at 123):

"And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things

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done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the

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country, or the *tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. . . ."

This was but a repetition of settled American doctrine.

These considerations are of such weight in favor of Danish and against American law in this case that it must prevail unless some heavy counterweight appears.

3. *Allegiance or Domicile of the Injured.*—Until recent times there was little occasion for conflict beteen the law of the flag and the law of the state of which the seafarer was a subject, for the long-standing rule, as pronounced by this Court after exhaustive review of authority, was that the nationality of the vessel for jurisdictional purposes was attributed to all her crew. Re Ross, 140 US 453, 472, 35 L ed 581, 588, 11 S Ct 897. Surely during service under a foreign flag some duty of allegiance is due. But, also, each nation has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self-support. In some later American cases, courts have been prompted to apply the Jones Act by the fact that the wrongful act or omission alleged caused injury to an American citizen or domiciliary. We need not, however, weigh the seaman's nationality against that of the ship, for here the two coincide without resort to

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fiction. Admittedly, *respondent is neither citizen nor resident of the United States. While on direct examination he answered leading questions that he was living in New York when he joined the Randa, the articles which he signed recited, and on cross-examination he

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admitted that his home was Silkeburg, Denmark. His presence in New York was transitory and created no such national interest in, or duty toward, him as to justify intervention of the law of one state on the shipboard of another.

4. *Allegiance of the Defendant Shipowner.*—A state "is not debarred by any rule of

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international law from governing the conduct of its own citizens upon the high seas or even in foreign countries when the rights of other nations or their nationals are not infringed." Skiriotes v. Florida, 313 US 69, 73, 85 L ed 1193, 1198, 61 S Ct 924; Steele v. Bulova Watch Co. 344 US 280, 282, ante, 319, 322, 73 S Ct 252. Until recent times this factor was not a frequent occasion of conflict, for the nationality of the ship was that of its owners. But it is com-

mon knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them. But here again the

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*utmost liberality in disregard of formality does not support the application of American law in this case, for it appears beyond doubt that this owner is a Dane by nationality and domicile.

5. *Place of Contract.*—Place of contract, which was New York, is the factor on which respondent chiefly relies to invoke American law. It is one which often has significance in choice of law in a contract action. But a Jones Act suit is for tort, in which respect it differs from one to enforce liability for maintenance and cure. As we have said of the latter, "In the United States this obligation has been recognized consistently as an implied provision in contracts of marine employment. Created thus with the contract of employment, the liability, unlike that for indemnity or that later created by the Jones Act, in no sense is pedicated on the fault or negligence of the shipowner." Aguilar v. Standard Oil Co. 318 US 724, 730, 87 L ed 1107, 1112, 63 S Ct 930; De Zon v. American President Lines, 318 US 660, 667, 87 L ed 1065, 1071, 63 S Ct 814; Calmar S. S. Corp. v. Taylor, 303 US 525, 527, 82 L ed 993, 996, 58 S Ct 651. But this action does not seek to recover anything due under the contract or damages for its breach.

The place of contracting in this instance, as is usual to such contracts, was fortuitous. A seaman takes his employment, like his fun, where he finds it; a ship takes on crew in any port where it needs them. The practical effect of making the lex loci contractus govern all tort claims during the service would be to subject a ship to a multitude of systems of law, to put some of the crew in a more advantageous position than others, and not unlikely in the long run to diminish hirings in ports of countries that take best care of their seamen.

But if contract law is nonetheless to be considered, we face the fact that this contract was explicit that the Danish law and the contract with the Danish union were to control. Except as forbid-

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den by some public policy, *the tendency of the law is to apply in contract matters the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so settling upon the law of the flag-state as their governing code. This arrangement is so natural and compatible with the policy of the law that even in the absence of an express provision it would probably have been implied. The Belgenland, 114 US 355, 367, 29 L ed 152, 156, 5 S Ct 860; The Hanna Nielson (DC NY) 273 F 171. We think a quite different result would follow if the contract attempted to avoid applicable law, for example, so as to apply foreign law to an American ship.

However, at the same time that he is relying on the place of the contract, respondent attacks the whole contract as void because

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the articles do not describe the voyage with sufficient definiteness within the rule applied in The Quoque (DC Va) 261 F 414, aff'd United States v. Westwood (CA4th) 266 F 696. This case dealt with an American ship and its holding was founded upon a statute originally enacted in 1873 and held by those courts that have dealt with the problem applicable only to American ships. The Montapedia (DC) 14 F 427; The Elswick Tower (DC Ga) 241 F 706. The contention is without merit.

We do not think the place of contract is a substantial influence in the

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choice between competing laws to govern a maritime tort.

6. *Inaccessibility of Foreign Forum.*—It is argued, and particularly stressed by an amicus brief, that justice requires adjudication under

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American law to save seamen expense and loss of time in returning to a foreign forum. This might be a persuasive argument for exercising

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a discretionary *jurisdiction to adjudge a controversy; but it is not persuasive as to the law by which it shall be judged. It is pointed out, however, that the statutes of at least one maritime country (Panama) allow suit under its law by injured seamen only in its own courts. The effect of such a provision is doubtful in view of our holding that such venue restrictions by one of the states of the Union will not preclude action in a sister state, Tennessee Coal, Iron & R. Co. v. George, 233 US 354, 58 L ed 997, 34 S Ct 587, LRA1916D 685.

Confining ourselves to the case in hand, we do not find this seaman disadvantaged in obtaining his remedy under Danish law from being in New York instead of Denmark. The Danish compensation system does not necessitate delayed, prolonged, expensive and uncertain litigation. It is stipulated in this case that claims may be made through the Danish Consulate. There is not the slightest showing that to obtain any relief to which he is entitled under Danish law would require his presence in Denmark or necessitate his leaving New York. And, even if it were so, the record indicates that he was offered and declined free transportation to Denmark by petitioner.

7. The Law of the Forum.—It is urged that, since an American forum has perfected its jurisdiction over the parties and defendant does more or less frequent and regular business within the forum state, it should apply its own law to the controversy between them. The "doing business'" which is enough to warrant service of process may fall quite short of the considerations necessary to bring extraterritorial torts to judgment under our law. Under respondent's contention, all that is necessary to bring a foreign transaction between foreigners in foreign ports under American law is to be able to serve American process on the defendant. We have held it a denial of due process of law when a state of the Union attempts to draw into control of its law otherwise foreign controversies, on slight connec-
*[591]
tions, because it is a forum *state. Hartford Acci. & Indem. Co. v. Delta & Pine Land Co. 292 US 143, 78 L ed 1178, 54 S Ct 634, 92 ALR 928; Home Ins. Co. v. Dick, 281 US 397, 74 L ed 926, 50 S Ct 338, 74 ALR 701. The purpose of a

Headnote 24 conflict-of-laws doctrine is to assure that a case will be treated in the same way under the appropriate law regardless of the fortuitous circumstances which often determine the forum. Jurisdiction of maritime cases in all countries is so wide and
Headnote 25 the nature of its subject matter so far-flung that there would be no justification for altering the law of a controversy just because local jurisdiction of the parties is obtainable.

It is pointed out that our statute on limitation of shipowner's liability which formerly applied in terms to "any vessel" was applied by our courts to foreign causes. Hence, it is argued by analogy that "any seaman" should be construed so to apply. But the situation is inverted. The limitation-of-liability statute was construed to thus apply only against those who had chosen to sue in our courts on foreign transac-
*[592]
tions. Because a *law of the forum is applied to plaintiffs who voluntarily submit themselves to it is no argument for imposing the law of the forum upon those who do not. Furthermore, this application of the limitation on liability brought our practice into harmony with that of all other maritime nations, while the application of the Jones Act here advocated would bring us into conflict with the maritime world.

This review of the connecting factors which either maritime law or our municipal law of conflicts regards as significant in determining the law applicable to a claim of actionable wrong shows an overwhelming preponderance in favor of Danish law. The parties are both Danish subjects, the events took place on a Danish ship, not within our territorial waters. Against these considerations is only the fact that the defendant was served here with process and that the plaintiff signed on in New York, where the defendant was engaged in our foreign commerce. The latter event is offset by provision of his contract that the law of Denmark should gov-
ern. We do not question
Headnote 26 the power of Congress to condition access to our ports by foreign-owned vessels upon submission to any liabilities it

may consider good American policy
*[592]
to *exact. But we can
Headnote 27 find no justification for interpreting the Jones Act to intervene between foreigners and their own law because of acts on a foreign ship not in our waters.

In apparent recognition of the weakness of the legal argument, a candid and brash appeal is made by respondent and by amicus briefs to extend the law to this situation as a means of benefiting seamen and enhancing the costs of foreign ship operation for the competitive advantage of our own. We are not sure that the interest of this foreign seaman, who is able to prove negligence, is the interest of all seamen or that his interest is that of the United States. Nor do we stop to inquire which law does whom the greater or the lesser good. The argument is misaddressed.
Headnote 28 It would be within the proprieties if addressed to Congress. Counsel familiar with the traditional attitude of this Court in maritime matters could not have intended it for us.

The judgment below is reversed and the cause remanded to District Court for proceedings consistent herewith.

Reversed and remanded.

PIPER AIRCRAFT COMPANY, Petitioner,

v

GAYNELL REYNO, Personal Representative of the Estate of William Fehilly, et al. (No. 80-848)

HARTZELL PROPELLER, INC., Petitioner,

v

GAYNELL REYNO, Personal Representative of the Estate of William Fehilly, et al. (No. 80-883)

— US —, 70 L Ed 2d 419, 102 S Ct —

[Nos. 80-848 and 80-883]

Argued October 14, 1981. Decided December 8, 1981.

OPINION OF THE COURT

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Justice Marshall delivered the opinion of the Court.

[1a, 2a] These cases arise out of an air crash that took place in Scotland. Respondent, acting as representative of the estates of several Scottish citizens killed in the accident, brought wrongful-death actions against petitioners that were ultimately transferred to the United States District Court for the Middle District of Pennsylvania. Petitioners moved to dismiss on the ground of forum non conveniens. After noting that an alternative forum existed in Scotland, the District Court granted their motions. 479 F Supp 727 (1979). The United States Court of Appeals for the Third Circuit reversed. 630 F2d 149 (1980). The Court of Appeals based its decision, at least in part, on the ground that dismissal is automatically barred where the law of the alternative forum is less favorable to the plaintiff than the law of the forum chosen by the plaintiff. Because we conclude that the possibility of an unfavorable change in law should not, by itself, bar dismissal, and because we conclude that the District Court did not otherwise abuse its discretion, we reverse.

I

A

In July 1976, a small commercial aircraft crashed in the Scottish highlands during the course of a charter flight from

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Blackpool to Perth. The pilot and five passengers were killed instantly. The decedents were all Scottish subjects and residents, as are their heirs and next of kin. There were no eyewitnesses to the accident. At the time of the crash the plane was subject to Scottish air traffic control.

The aircraft, a twin-engine Piper Aztec, was manufactured in Pennsylvania by petitioner Piper Aircraft Co. (Piper). The propellers were manufactured in Ohio by petitioner Hartzell Propeller, Inc. (Hartzell). At the time of the crash the aircraft was registered in Great Britain and was owned and maintained by Air Navigation and Trading Co., Ltd. (Air Navigation). It was operated by McDonald Aviation, Ltd. (McDonald), a Scottish air taxi service. Both Air Navigation and McDonald were organized in the United Kingdom. The wreckage of the plane is now in a hangar in Farnsborough, England.

The British Department of Trade investigated the accident several months after it occurred. A preliminary report found that the plane crashed after developing a spin, and suggested that mechanical failure in the plane or the propeller was responsible. At Hartzell's request, this report was reviewed by a three-member Review Board, which held a 9-day adversary hearing attended by all interested parties. The Review Board found no evidence of defective equipment and indicated that pilot error may have contributed to the accident. The pilot, who had obtained his commercial pilot's license only three months earlier, was flying over high ground at an altitude considerably lower than the minimum height required by his company's operations manual.

In July 1977, a California probate court appointed respondent Gaynell Reyno administratrix of the estates of the five passengers. Reyno is not related to and does not know any of the decedents or their survivors; she was a legal secretary to the attorney who filed this lawsuit. Several days after her appointment, Reyno commenced separate wrongful-

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death actions against Piper and Hartzell in the Superior Court of California, claiming negligence and strict liability.[1] Air Navigation, McDonald, and the estate of the pilot are not parties to this litigation. The survivors of the five passengers whose estates are represented by Reyno filed a separate action in the United Kingdom against Air Navigation, McDonald, and the pilot's estate.[2] Reyno candidly admits that the action against Piper and Hartzell was filed in the United States because its laws regarding liability, capacity to sue, and damages are more favorable to her position than are those of Scotland. Scottish law does not recognize strict liability in tort. Moreover, it permits wrongful-death actions only when brought by a decedent's relatives. The relatives may sue only for "loss of support and society."[3]

On petitioners' motion, the suit was removed to the United States District Court for the Central District of California. Piper then moved for transfer to the United States District Court for the Middle District of Pennsylvania, pursuant to 28 USC § 1404(a) [28 USCS § 1404(a)].[4] Hartzell moved to dismiss for lack of personal jurisdiction, or in the alternative, to transfer.[5] In December 1977, the District Court quashed service on

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Hartzell and transferred the case to the Middle District of Pennsylvania. Respondent then properly served process on Hartzell.

1. Avco-Lycoming, Inc., the manufacturer of the plane's engines, was also named as a defendant. It was subsequently dismissed from the suit by stipulation.

2. The pilot's estate has also filed suit in the United Kingdom against Air Navigation, McDonald, Piper, and Hartzell.

3. See Affidavit of Donald Ian Kerr MacLeod, App A19 (affidavit submitted to District Court by petitioners describing Scottish law). Suits for damages are governed by The Damages (Scotland) Act 1976.

4. Section 1404(a) provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

5. The District Court concluded that it could not assert personal jurisdiction over Hartzell consistent with due process. However, it decided not to dismiss Hartzell because the corporation would be amenable to process in Pennsylvania.

B

In May 1978, after the suit had been transferred, both Hartzell and Piper moved to dismiss the action on the ground of forum non conveniens. The District Court granted these motions in October 1979. It relied on the balancing test set forth by this Court in Gulf Oil Corp. v Gilbert, 330 US 501, 91 L Ed 2d 1055, 67 S Ct 839 (1947), and its companion case, Koster v Lumbermens Mut. Cas. Co., 330 US 518, 91 L Ed 1067, 67 S Ct 828 (1947). In those decisions, the Court stated that a plaintiff's choice of forum should rarely be disturbed. However, when an alternative forum has jurisdiction to hear the case, and when trial in the chosen forum would "establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience," or when the "chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems," the court may, in the exercise of its sound discretion, dismiss the case. Koster, supra, at 524, 91 L Ed 1067, 67 S Ct 828. To guide trial court discretion, the Court provided a list of "private interest factors" affecting the convenience of the litigants, and a list of "public interest factors" affecting the convenience of the forum. Gilbert, supra, at 508-509, 91 L Ed 1055, 67 S Ct 839.[6]

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After describing our decisions in Gilbert and Koster, the District Court analyzed the facts of these cases. It began by observing that an alternative forum existed in Scotland; Piper and Hartzell had agreed to submit to the jurisdiction of the Scottish courts and to waive any statute of limitations defense that might be available. It then stated that plaintiff's choice of forum was entitled to little weight. The court recognized that a plaintiff's choice ordinarily deserves substantial deference. It noted, however, that Reyno "is a representative of foreign citizens and residents seeking a forum in the United States because of the more liberal rules concerning products liability law," and that "the courts have been less solicitous when the plaintiff is not an American citizen or resident, and particularly when the foreign citizens seek to benefit from the more liberal tort rules provided for the protection of citizens and residents of the United States." 479 F Supp, at 731.

The District Court next examined several factors relating to the private interests of the litigants, and determined that these factors strongly pointed towards Scotland as the appropriate forum. Although evidence concerning the design, manu-

6. The factors pertaining to the private interests of the litigants included the "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." Gilbert, 330 US, at 508, 91 L Ed 1055, 67 S Ct 839. The public factors bearing on the question included the administrative difficulties flowing from court congestion; the "local interest in having localized controversies decided at home"; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty. Id., at 509, 91 L Ed 1055, 67 S Ct 839.

facture, and testing of the plane and propeller is located in the United States, the connections with Scotland are otherwise "overwhelming." Id., at 732. The real parties in interest are citizens of Scotland, as were all the decedents. Witnesses who could testify regarding the maintenance of the aircraft, the training of the pilot, and the investigation of the accident—all essential to the defense—are in Great Britain. Moreover, all witnesses to damages are located in Scotland. Trial would be aided by familiarity with Scottish topography, and by easy access to the wreckage.

The District Court reasoned that because crucial witnesses and evidence were beyond the reach of compulsory process, and because the defendants would not be able to implead potential Scottish third-party defendants, it would be "unfair to make Piper and Hartzell proceed to trial in this forum." Id.,

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at 733. The survivors had brought separate actions in Scotland against the pilot, McDonald, and Air Navigation. "[I]t would be fairer to all parties and less costly if the entire case was presented to one jury with available testimony from all relevant witnesses." Ibid. Although the court recognized that if trial were held in the United States, Piper and Hartzell could file indemnity or contribution actions against the Scottish defendants, it believed that there was a significant risk of inconsistent verdicts.[7]

The District Court concluded that the relevant public interests also pointed strongly towards dismissal. The court determined that Pennsylvania law would apply to Piper and Scottish law to Hartzell if the case were tried in the Middle District of Pennsylvania.[8] As a result, "trial in this forum would be hopelessly complex and confusing for a jury." Id., at 734. In addition, the court noted that it was unfamiliar with Scottish law and thus would have to rely upon experts from that country. The court also found that the trial would be enormously costly and time-consuming; that it would be unfair to burden citizens with jury duty when the Middle District

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of Pennsylvania has little connection with the controversy; and that Scotland has a substantial interest in the outcome of the litigation.

In opposing the motions to dismiss, respondent contended that dismissal would be unfair because Scottish law was less favorable. The Dis-

7. The District Court explained that inconsistent verdicts might result if petitioners were held liable on the basis of strict liability here, and then required to prove negligence in an indemnity action in Scotland. Moreover, even if the same standard of liability applied, there was a danger that different juries would find different facts and produce inconsistent results.

8. Under Klaxon v Stentor Electric Mfg. Co. 313 US 487, 85 L Ed 1477, 61 S Ct 1020 (1941), a court ordinarily must apply the choice-of-law rules of the State in which it sits. However, where a case is transferred pursuant to 28 USC § 1404(a) [28 USCS § 1404(a)], it must apply the choice-of-law rules of the State from which the case was transferred. Van Dusen v Barrack, 376 US 612, 11 L Ed 2d 945, 84 S Ct 805 (1946). Relying on these two cases, the District Court concluded that California choice-of-law rules would apply to Piper, and Pennsylvania choice-of-law rules would apply to Hartzell. It further concluded that California applied a "governmental interests" analysis in resolving choice-of-law problems, and that Pennsylvania employed a "significant contracts" analysis. The court used the "governmental interests" analysis to determine that Pennsylvania liability rules would apply to Piper, and the "significant contacts" analysis to determine that Scottish liability rules would apply to Hartzell.

trict Court explicitly rejected this claim. It reasoned that the possibility that dismissal might lead to an unfavorable change in the law did not deserve significant weight; any deficiency in the foreign law was a "matter to be dealt with in the foreign forum." Id., at 738.

C

On appeal, the United States Court of Appeals for the Third Circuit reversed and remanded for trial. The decision to reverse appears to be based on two alternative grounds. First, the Court held that the District Court abused its discretion in conducting the Gilbert analysis. Second, the Court held that dismissal is never appropriate where the law of the alternative forum is less favorable to the plaintiff.

The Court of Appeals began its review of the District Court's Gilbert analysis by noting that the plaintiff's choice of forum deserved substantial weight, even though the real parties in interest are nonresidents. It then rejected the District Court's balancing of the private interests. It found that Piper and Hartzell had failed adequately to support their claim that key witnesses would be unavailable if trial were held in the United States: they had never specified the witnesses they would call and the testimony these witnesses would provide. The Court of Appeals gave little weight to the fact that Piper and Hartzell would not be able to implead potential Scottish third-party defendants, reasoning that this difficulty would be "burdensome" but not "unfair," 630 F2d, at 162.[9] Finally, the court stated that resolution of the suit

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would not be significantly aided by familiarity with Scottish topography, or by viewing the wreckage.

The Court of Appeals also rejected the District Court's analysis of the public interest factors. It found that the District Court gave undue emphasis to the application of Scottish law: " 'the mere fact that the court is called upon to determine and apply foreign law does not present a legal problem of the sort which would justify the dismissal of a case otherwise properly before the court.' " Id., at 163 (quoting Hoffman v Gobberman, 420 F2d 423, 427 (CA3 1970)). In any event, it believed that Scottish law need not be applied. After conducting its own choice-of-law analysis, the Court of Appeals determined that American law would govern the actions against both Piper and Hartzell.[10] The same choice-of-law analysis apparently led it to conclude that Pennsylvania and Ohio, rather than Scotland, are the jurisdictions with the greatest policy interests in the dispute, and that all other public interest factors favored trial in the United States.[11]

9. The court claimed that the risk of inconsistent verdicts was slight because Pennsylvania and Scotland both adhere to principles of res judicata.

10. The Court of Appeals agreed with the District Court that California choice-of-law rules applied to Piper, and that Pennsylvania choice-of-law rules applied to Hartzell, see n 8, supra. It did not agree, however, that California used a "governmental interests" analysis and that Pennsylvania used a "significant contacts" analysis. Rather, it believed that both jurisdictions employed the "false conflicts" test. Applying this test, it concluded that Ohio and Pennsylvania had a greater policy interest in the dispute than Scotland, and that American law would apply to both Piper and Hartzell.

11. The court's reasoning on this point is somewhat unclear. It states:

"We have held that under the applicable choice of law rules Pennsylvania and Ohio are the jurisdictions with the greatest policy interest in this dispute. It follows that the other public interest factors that should be considered under the Supreme Court cases of Gilbert and Koster favor trial in this country rather than Scotland." 630 F2d, at 171.

The Court of Appeals concluded as part of its choice-of-law analysis that the United States had the greatest policy interest in the dispute. See n 10, supra. It apparently believed that this conclusion necessarily implied that the forum non conveniens public interest factors pointed towards trial in the United States.

In any event, it appears that the Court of Appeals would have reversed even if the District Court had properly balanced the public and private interests. The court stated:

"[I]t is apparent that the dismissal would work a change in the applicable law so that the plaintiff's strict liability claim would be eliminated from the case. But . . . a dismissal for forum non conveniens, like a statutory transfer, 'should not, despite its convenience, result in a change in the applicable law.' Only when American law is not applicable, or when the foreign jurisdiction would, as a matter of its own choice of law, give the plaintiff the benefit of the claim to which she is entitled here, would dismissal be justified." 630 F2d, at 163–164 (footnote omitted) (quoting DeMateos v Texaco, Inc., 562 F2d 895, 899 (CA3 1977), cert denied, 435 US 904, 55 L Ed 2d 494, 98 S Ct 1449 (1978)).

In other words, the court decided that dismissal is automatically barred if it would lead to a change in the applicable law unfavorable to the plaintiff.

[3a] We granted certiorari in these cases to consider the questions they raise concerning the proper application of the doctrine of forum non conveniens. 450 US 909, 67 L Ed 333, 101 S Ct 1346 (1981).[12]

II

[1b] The Court of Appeals erred in holding that plaintiffs may defeat a motion to dismiss on the ground of forum non conveniens merely by showing that the substantive law that would be applied in the alternative forum is less favorable to the plaintiffs than that of the present forum. The possibility of a change in substantive law should ordinarily not be given conclusive or even substantial weight in the forum non conveniens inquiry.

We expressly rejected the position adopted by the Court of Appeals in our decision in Canada Malting Co., v Paterson Steamships, Ltd., 285 US 413, 76 L Ed 837, 52 S Ct 413 (1932). That case arose out of a collision between two vessels in American waters. The Canadian owners of cargo lost in the accident sued the Canadian owners of one of the vessels in Federal District Court. The cargo owners chose an American court in large part because the relevant American liability rules were more favorable than the Canadian rules. The District Court dismissed on grounds of forum non conveniens. The plaintiffs argued that dismissal was inappropriate because Canadian laws were less favorable to them. This Court nonetheless affirmed:

12. We granted certiorari in No. 80-848 to consider the question "[w]hether, in an action in federal district court brought by foreign plaintiffs against American defendants, the plaintiffs may defeat a motion to dismiss on the ground of forum non conveniens merely by showing that the substantive law that would be applied if the case were litigated in the district court is more favorable to them than the law that would be applied by the courts of their own nation." We granted certiorari in No. 80-883 to consider the question whether "a motion to dismiss on grounds of forum non conveniens [should] be denied whenever the law of the alternate forum is less favorable to recovery than that which would be applied by the district court."

In this opinion, we begin by considering whether the Court of Appeals properly held that the possibility of an unfavorable change in law automatically bars dismissal. Part II, infra. Since we conclude that the Court of Appeals erred, we then consider its review of the District Court's Gilbert analysis to determine whether dismissal was otherwise appropriate. Part III, infra. We believe that it is necessary to discuss the Gilbert analysis in order to properly dispose of the cases.

[3b] The questions on which certiorari was granted are sufficiently broad to justify our discussion of the District Court's Gilbert analysis. However, even if the issues we discuss in Part III are not within the bounds of the questions with respect to which certiorari was granted, our consideration of these issues is not inappropriate. An order limiting the grant of certiorari does not operate as a jurisdictional bar. We may consider questions outside the scope of the limited order when resolution of those questions is necessary for the proper disposition of the case. See Olmstead v United States, 277 US 438, 72 L Ed 944, 48 S Ct 564, 66 ALR 376 (1928); McCandless v Furland, 293 US 67, 79 L Ed 202, 55 S Ct 42 (1934); Redrup v New York, 386 US 767, 18 L Ed 2d 515, 87 S Ct 1414 (1967).

"We have no occasion to enquire by what law the rights of the parties are governed, as we are of the opinion

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that, under any view of that question, it lay within the discretion of the District Court to decline to assume jurisdiction over the controversy. . . . '[T]he court will not take cognizance of the case if justice would be as well done by remitting the parties to their home forum.'" Id., at 419–420, 76 L Ed 837, 52 S Ct 413 (quoting Charter Shipping Co. v Bowring, Jones & Tidy, Ltd., 281 US 515, 517, 74 L Ed 1008, 50 S Ct 400 (1930).

The Court further stated that "[t]here was no basis for the contention that the District Court abused its discretion." 285 US, at 423, 76 L Ed 837, 52 S Ct 413.

[4] It is true that Canada Malting was decided before Gilbert, and that the doctrine of forum non conveniens was not fully crystallized until our decision in that case.[13] However, Gilbert in no way affects the validity of Canada Malting. Indeed,

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by holding that the central focus of the forum non conveniens inquiry is convenience, Gilbert implicitly recognized that dismissal may not be barred solely because of the possibility of an unfavorable change in law.[14] Under Gilbert, dismissal will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice.[15] If substantial weight were given to the possibility of an unfavorable change in law, however, dismissal might be barred even where trial in the chosen forum was plainly inconvenient.

The Court of Appeals' decision is inconsistent with this Court's earlier forum non conveniens decisions in another respect. Those decisions have repeatedly emphasized the need to retain flexibility. In Gilbert,

13. The doctrine of forum non conveniens has a long history. It originated in Scotland, see Braucher, The Inconvenient Federal Forum, 60 Harv L Rev 908, 909–911 (1947), and became part of the common law of many States, see id., at 911–912; Blair, The Doctrine of Forum Non Conveniens in Anglo-American Law, 29 Colum L Rev 1 (1929). The doctrine was also frequently applied in federal admiralty actions. See, e.g., Canada Malting Co. v Paterson Steamships, Ltd.; see also Bickel, The Doctrine of Forum Non Conveniens As Applied in the Federal Courts in Matters of Admiralty, 35 Cornell LQ 12 (1949). In Williams v Green Bay & Western R. Co., 326 US 549, 90 L Ed 311, 66 S Ct 284 (1946), the Court first indicated that motions to dismiss on grounds of forum non conveniens could be made in federal diversity actions. The doctrine became firmly established when Gilbert and Koster were decided one year later.

In previous forum non conveniens decisions, the Court has left unresolved the question whether under Erie R. Co. v Tompkins, 304 US 64, 82 L Ed 1188, 58 S Ct 817, 11 Ohio Ops 246, 114 ALR 1487 (1938), state or federal law of forum non conveniens applies in a diversity case. Gilbert, 330 US, at 509, 91 L Ed 1055, 67 S Ct 839; Koster, 330 US, at 529, 91 L Ed 1067, 67 S Ct 828; Williams v Green Bay & Western R. Co., supra, at 551, 558–559, 90 L Ed 311, 66 S Ct 284. The Court did not decide this issue because the same result would have been reached in each case under federal or state law. The lower courts in these cases reached the same conclusion: Pennsylvania and California law on forum non conveniens dismissals are virtually identical to federal law. See 630 F2d, at 158. Thus, here also, we need not resolve the Erie question.

14. See also Williams v Green Bay & Western R. Co., supra, at 555, n 4, 90 L Ed 311, 66 S Ct 284 (citing with approval a Scottish case that dismissed an action on the ground of forum non conveniens despite the possibility of an unfavorable change in law).

15. In other words, Gilbert held that dismissal may be warranted where a plaintiff chooses a particular forum, not because it is convenient, but solely in order to harass the defendant or take advantage of favorable law. This is precisely the situation in which the Court of Appeals' rule would bar dismissal.

the Court refused to identify specific circumstances "which will justify or require either grant or denial of remedy." 330 US, at 508, 91 L Ed 1055, 67 S Ct 839. Similarly, in Koster, the Court rejected the contention that where a trial would involve inquiry into the internal affairs of a foreign corporation, dismissal was always appropriate. "That is one, but only one, factor which may show convenience." 330 US, at 527, 91 L Ed 1067, 67 S Ct 828. And in Williams v Green Bay & Western R. Co., 326 US 549, 557, 90 L Ed 311, 66 S Ct 284 (1946), we stated that we would not lay down a rigid rule to govern discretion, and that "[e]ach case turns on its facts." If central emphasis were

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placed on any one factor, the forum non conveniens doctrine would lose much of the very flexibility that makes it so valuable.

In fact, if conclusive or substantial weight were given to the possibility of a change in law, the forum non conveniens doctrine would become virtually useless. Jurisdiction and venue requirements are often easily satisfied. As a result, many plaintiffs are able to choose from among several forums. Ordinarily, these plaintiffs will select that forum whose choice-of-law rules are most advantageous. Thus, if the possibility of an unfavorable change in substantive law is given substantial weight in the forum non conveniens inquiry, dismissal would rarely be proper.

Except for the court below, every Federal Court of Appeals that has considered this question after Gilbert has held that dismissal on grounds of forum non conveniens may be granted even though the law applicable in the alternative forum is less favorable to the plaintiff's chance of recovery. See, e.g., Pain v United Technologies Corp., 205 US App DC 229, 248–249, 637 F2d 775, 794–795 (1980); Fitzgerald v Texaco, Inc., 521 F2d 448, 453 (CA2 1975), cert denied, 423 US 1052, 46 L Ed 2d 641, 96 S Ct 781 (1976); Anastasiadis v S.S. Little John, 346 F2d 281, 283 (CA5 1965), cert denied, 384 US 920, 16 L Ed 2d 440, 86 S Ct 1368 (1966).[16] Several courts have relied expressly on Canada Malting to hold that the possibility of an unfavorable change of law should not, by itself, bar dismissal. See Fitzgerald

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v Texaco, Inc., supra; Anglo-American Grain Co. v The S/T Mina D'Amico, 169 F Supp 908 (ED Va 1959).

The Court of Appeals' approach is not only inconsistent with the purpose of the forum non conveniens doctrine, but also poses substantial practical problems. If the possibility of a change in law were given substantial weight, deciding motions to dismiss on the ground of forum non conveniens would become quite difficult. Choice-of-law analysis would become extremely important, and the courts would frequently be required to interpret the law of foreign juris-

16. Cf. Dahl v United Technologies Corp. 632 F2d 1027, 1032 (CA3 1980) (dismissal affirmed where "Norwegian substantive law will predominate the trial of this case and the mere presence of a count pleaded under Connecticut law but which may have little chance of success does not warrant a different conclusion"). But see DeMateos v Texaco, Inc. 562 F2d 895, 899 (CA3 1977) (dictum) (principle that § 1404(a) transfer should not result in change in law is no less applicable to dismissal on grounds of forum non conveniens), cert denied, 435 US 904, 55 L Ed 2d 494, 98 S Ct 1449 (1978). The court below relied on the dictum in DeMateos in reaching its decision. See infra, at 253–254, 70 L Ed 2d, at 434.

dictions. First, the trial court would have to determine what law would apply if the case were tried in the chosen forum, and what law would apply if the case were tried in the alternative forum. It would then have to compare the rights, remedies, and procedures available under the law that would be applied in each forum. Dismissal would be appropriate only if the court concluded that the law applied by the alternative forum is as favorable to the plaintiff as that of the chosen forum. The doctrine of forum non conveniens, however, is designed in part to help courts avoid conducting complex exercises in comparative law. As we stated in Gilbert, the public interest factors point towards dismissal where the court would be required to "untangle problems in conflict of laws, and in law foreign to itself." 330 US, at 509, 91 L Ed 1055, 67 S Ct 839.

[5a] Upholding the decision of the Court of Appeals would result in other practical problems. At least where the foreign plaintiff named an American manufacturer as defendant,[17] a court could not dismiss the case on grounds of forum non

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conveniens where dismissal might lead to an unfavorable change in law. The American courts, which are already extremely attractive to foreign plaintiffs,[18] would become even more attractive. The flow of litigation into the United States would increase and further congest already crowded courts.[19]

17. In fact, the defendant might not even have to be American. A foreign plaintiff seeking damages for an accident that occurred abroad might be able to obtain service of process on a foreign defendant who does business in the United States. Under the Court of Appeals' holding, dismissal would be barred if the law in the alternative forum were less favorable to the plaintiff—even though none of the parties are American, and even though there is absolutely no nexus between the subject matter of the litigation and the United States.

18. First, all but 6 of the 50 American States—Delaware, Massachusetts, Michigan, North Carolina, Virginia, and Wyoming—offer strict liability. 1 CCH Prod Liability Rep § 4016 (1981). Rules roughly equivalent to American strict liability are effective in France, Belgium, and Luxembourg. West Germany and Japan have a strict liability statute for pharmaceuticals. However, strict liability remains primarily an American innovation. Second, the tort plaintiff may choose, at least potentially, from among 50 jurisdictions if he decides to file suit in the United States. Each of these jurisdictions applies its own set of malleable choice-of-law rules. Third, jury trials are almost always available in the United States, while they are never provided in civil law jurisdictions. G. Gloss, Comparative Law 12 (1979); J. Merryman, The Civil Law Tradition 121 (1969). Even in the United Kingdom, most civil actions are not tried before a jury. 1 G. Keeton, The United Kingdom: The Development of its Laws and Constitutions 309 (1955). Fourth, unlike most foreign jurisdictions, American courts allow contingent attorney's fees, and do not tax losing parties with their opponents' attorney's fees. R. Schlesinger, Comparative Law: Cases, Text, Materials 275–277 (3d ed 1970); Orban, Product Liability: A Comparative Legal Restatement—Foreign National Law and the EEC Directive, 8 Ga J Int'l & Comp L 342, 393 (1978). Fifth, discovery is more extensive in American than in foreign courts. R. Schlesinger, supra, at 307, 310, and n 33.

19. [5b] In holding that the possibility of a change in law unfavorable to the plaintiff should not be given substantial weight, we also necessarily hold that the possibility of a change in law favorable to defendant should not be considered. Respondent suggests that Piper and Hartzell filed the motion to dismiss, not simply because trial in the United States would be inconvenient, but also because they believe the laws of Scotland are more favorable. She argues that this should be taken into account in the analysis of the private interests. We recognize, of course, that Piper and Hartzell may be engaged in reverse forum-shopping. However, this possibility ordinarily should not enter into a trial court's analysis of the private interests. If the defendant is able to overcome the presumption in favor of plaintiff by showing that trial in the chosen forum would be unnecessarily burdensome, dismissal is appropriate—regardless of the fact that defendant may also be motivated by a desire to obtain a more favorable forum. Cf. Kloeckner Reederei und Kohlenhandel v A/S Hakedal, 210 F2d 754, 757 (CA2), cert dism'd by stipulation, 348 US 801, 99 L Ed 633, 75 S Ct 17 (1954) (defendant not entitled to dismissal on grounds of forum non conveniens solely because the law of the original forum is less favorable to him than the law of the alternative forum).

D-00041

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The Court of Appeals based its decision, at least in part, on an analogy between dismissals on grounds of forum non conveniens and transfers between federal courts pursuant to § 1404(a). In Van Dusen v Barrack, 376 US 612, 11 L Ed 2d 945, 84 S Ct 805 (1964), this Court ruled that a § 1404(a) transfer should not result in a change in the applicable law. Relying on dictum in an earlier Third Circuit opinion interpreting Van Dusen, the court below held that that principle is also applicable to a dismissal on forum non conveniens grounds. 630 F2d, at 164, and n 51 (citing DeMateos v Texaco, Inc., 562 F2d, at 899). However, § 1404(a) transfers are different than dismissals on the ground of forum non conveniens.

Congress enacted § 1404(a) to permit change of venue between federal courts. Although the statute was drafted in accordance with the doctrine of forum non conveniens, see Revisor's Note, HR Rep No. 308, 80th Cong, 1st Sess, A132 (1947); HR Rep No. 2646, 79th Cong, 2d Sess, A127 (1946), it was intended to be a revision rather than a codification of the common law. Norwood v Kirkpatrick, 349 US 29, 99 L Ed 789, 75 S Ct 544 (1955). District courts were given more discretion to transfer under § 1404(a) than they had to dismiss on grounds of forum non conveniens. Id., at 31–32, 99 L Ed 789, 75 S Ct 544.

The reasoning employed in Van Dusen v Barrack is simply inapplicable to dismissals on grounds of forum non conveniens. That case did not discuss the common-law doctrine. Rather, it focused on "the construction and application" of § 1404(a). 376 US, at 613, 11 L Ed 2d 945, 84 S Ct 805.[20] Emphasizing the remedial

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purpose of the statute, Barrack concluded that Congress could not have intended a transfer to be accompanied by a change in law. Id., at 622, 11 L Ed 2d 945, 84 S Ct 805. The statute was designed as a "federal housekeeping measure," allowing easy change of venue within a unified federal system. Id., at 613, 11 L Ed 2d 945, 84 S Ct 805. The Court feared that if a change in venue were accompanied by a change in law, forum-shopping parties would take unfair advantage of the relaxed standards for transfer. The rule was necessary to ensure the just and efficient operation of the statute.[21]

20. Barrack at least implicitly recognized that the rule it announced for transfer under § 1404(a) was not the common-law rule. It cited several decisions under § 1404(a) in which lower courts had been "strongly inclined to protect plaintiffs against the risk that transfer might be accompanied by a prejudicial change in applicable state laws." 376 US, at 630, n 26, 11 L Ed 2d 945, 84 S Ct 805. These decisions frequently rested on the assumption that a change in law would have been unavoidable under common law forum non conveniens, but could be avoided under § 1404(a). See, e. g., Greve v Gibraltar Enterprises, Inc. 85 F Supp 410, 414 (NM 1949).

21. The United States Court of Appeals for the Second Circuit has expressly rejected the contention that rules governing transfers pursuant to § 1404(a) also govern forum non conveniens dismissals. Schertenleib v Traum, 589 F2d 1156 (1978).

[6a] We do not hold that the possibility of an unfavorable change in law should *never* be a relevant consideration in a forum non conveniens inquiry. Of course, if the remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all, the unfavorable change in law may be given substantial weight; the district court may conclude that dismissal would not be in the interests of justice.[22] In these cases, however, the remedies that

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would be provided by the Scottish courts do not fall within this category. Although the relatives of the decedents may not be able to rely on a strict liability theory, and although their potential damages award may be smaller, there is no danger that they will be deprived of any remedy or treated unfairly.

III

The Court of Appeals also erred in rejecting the District Court's Gilbert analysis. The Court of Appeals stated that more weight should have been given to the plaintiff's choice of forum, and criticized the District Court's analysis of the private and public interests. However, the District Court's decision regarding the deference due plaintiff's choice of forum was appropriate. Furthermore, we do not believe that the District Court abused its discretion in weighing the private and public interests.

A

[7a] The District Court acknowledged that there is ordinarily a strong presumption in favor of the plaintiff's choice of forum, which may be overcome only when the private and public interest factors clearly point towards trial in the alternative forum. It held, however, that the presumption applies with less force when the plaintiff or real parties in interest are foreign.

[7b] The District Court's distinction between resident or citizen plaintiffs and foreign plaintiffs is fully justified. In Koster, the Court indicated that a plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum. 330 US, at 524, 91 L Ed 2d 1067, 67 S Ct 828.[23]

22. [6b] At the outset of any forum non conveniens inquiry, the court must determine whether there exists an alternative forum. Ordinarily, this requirement will be satisfied when the defendant is "amenable to process" in the other jurisdiction. Gilbert, 330 US, at 506–507, 91 L Ed 1055, 67 S Ct 839. In rare circumstances, however, where the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate alternative, and the initial requirement may not be satisfied. Thus, for example, dismissal would not be appropriate where the alternative forum does not permit litigation of the subject matter of the dispute. Cf. Phoenix Canada Oil Co. Ltd. v Texaco, Inc. 78 FRD 445 (Del 1978) (court refuses to dismiss, where alternative forum is Ecuador, it is unclear whether Ecuadorean tribunal will hear the case, and there is no generally codified Ecuadorean legal remedy for the unjust enrichment and tort claims asserted).

23. In Koster, we stated that "[i]n any balancing of conveniences, a real showing of convenience by a plaintiff who has sued in his home forum will normally outweigh the inconvenience the defendant may have shown." 330 US, at 524, 91 L Ed 1067, 67 S Ct 828. See also Swift & Co. Packers v Compania Colombiana del Caribe, 339 US 684, 697, 94 L Ed 1206, 70 S Ct 861, 19 ALR2d 630 (1950) ("suit by a United States citizen against a foreign respondent brings into force considerations very different from those in suits between foreigners"); Canada Malting Co. v Paterson Steamships, Ltd. 285 US, at 421, 76 L Ed 837, 52 S Ct 413 ("[t]he rule recognizing an unqualified discretion to decline jurisdiction in suits in admiralty between foreigners appears to be supported by an unbroken line of decisions in the lower federal courts").

As the District Court correctly noted in its

When the home forum has
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been chosen, it is reasonable to assume that this choice is convenient. When the plaintiff is foreign, however, this assumption is much less reasonable. Because the central purpose of any forum non conveniens inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less deference.[24]

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B

[2b, 8] The forum non conveniens determination is committed to the sound discretion of the trial court. It may be reversed only when there has been a clear abuse of discretion; where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference. Gilbert, 330 US, at 511–512, 91 L Ed 1055, 67 S Ct 839; Koster, 330 US, at 531, 91 L Ed 1067, 67 S Ct 828. Here, the Court of Appeals expressly acknowledged that the standard of review was one of abuse of discretion. In examining the District Court's analysis of the public and private interests, however, the Court of Appeals seems to have lost sight of this rule, and substituted its own judgment for that of the District Court.

(1)

In analyzing the private interest factors, the District Court stated that the connections with Scotland are "overwhelming," 479 F Supp, at 732. This characterization may be somewhat exaggerated. Particularly with respect to the question

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opinion, 479 F Supp, at 731; see also n 10, supra, the lower federal courts have routinely given less weight to a foreign plaintiff's choice of forum. See, e. g., Founding Church of Scientology v Verlag, 175 US App DC 402, 408, 536 F2d 429, 435 (1976); Paper Operations Consultants Int'l, Ltd. v SS Hong Kong Amber, 513 F2d 667, 672 (CA9 1975); Fitzgerald v Texaco, Inc., 521 F2d 448, 451 (CA2 1975), cert denied, 423 US 1052, 46 L Ed 2d 641, 96 S Ct 781 (1976); Mobile Tankers Co. v Mene Grande Oil Co. 363 F2d 611, 614 (CA3), cert denied, 385 US 945, 17 L Ed 2d 225, 87 S Ct 318 (1966); Ionescu v E. F. Hutton & Co. (France), 465 F Supp 139 (SDNY 1979); Michell v General Motors Corp. 439 F Supp 24, 27 (ND Ohio 1977).

[7c] A citizen's forum choice should not be given dispositive weight, however. See Pain v United Technologies Corp., 205 US App DC 229, 252–253, 637 F2d 775, 796–797 (1980); Mizokami Bros. of Arizona, Inc. v Baychem Corp. 556 F2d 975 (CA9 1977), cert denied, 434 US 1035, 54 L Ed 2d 783, 98 S Ct 770 (1978). Citizens or residents deserve somewhat more deference than foreign plaintiffs, but dismissal should not be automatically barred when a plaintiff has filed suit in his home forum. As always, if the balance of conveniences suggests that trial in the chosen forum would be unnecessarily burdensome for the defendant or the court, dismissal is proper.

24. See Pain v United Technologies Corp., supra, at 253, 637 F2d, at 797 (citizenship and residence are proxies for convenience); see also Note, Forum Non Conveniens and American Plaintiffs in the Federal Courts, 47 U Chi L Rev 373, 382–383 (1980).

Respondent argues that since plaintiffs will ordinarily file suit in the jurisdiction that offers the most favorable law, establishing a strong presumption in favor of both home and foreign plaintiffs will ensure that defendants will always be held to the highest possible standard of accountability for their purported wrongdoing. However, the deference accorded a plaintiff's choice of forum has never been intended to guarantee that the plaintiff will be able to select the law that will govern the case. See supra, at 247–250, 70 L Ed 2d, at 430–432.

of relative ease of access to sources of proof, the private interests point in both directions. As respondent emphasizes, records concerning the design, manufacture, and testing of the propeller and plane are located in the United States. She would have greater access to sources of proof relevant to her strict liability and negligence theories if trial were held here.[25] However, the District Court did not act

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unreasonably in concluding that fewer evidentiary problems would be posed if the trial were held in Scotland. A large proportion of the relevant evidence is located in Great Britain.

The Court of Appeals found that the problems of proof could not be given any weight because Piper and Hartzell failed to describe with specificity the evidence they would not be able to obtain if trial were held in the United States. It suggested that defendants seeking forum non conveniens dismissal must submit affidavits identifying the witnesses they would call and the testimony these witnesses would provide if the trial were held in the alternative forum. Such detail is not necessary.[26] Piper and Hartzell have moved for dismissal precisely because many crucial witnesses are located beyond the reach of compulsory process, and thus are difficult to identify or interview. Requiring extensive investigation would defeat the purpose of their motion. Of course, defendants must provide enough information to enable the District Court to balance the parties' interests. Our examination of the record convinces us that sufficient information

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was provided here. Both Piper and Hartzell submitted affidavits describing the evidentiary problems they would face if the trial were held in the United States.[27]

The District Court correctly concluded that the problems posed by the inability to implead potential third-party defendants clearly supported holding the trial in Scotland. Joinder of the pilot's estate, Air Navigation, and McDonald is crucial

25. In the future, where similar problems are presented, district courts might dismiss subject to the condition that defendant corporations agree to provide the records relevant to the plaintiff's claims.

26. The United States Court of Appeals for the Second Circuit has expressly rejected such a requirement. Fitzgerald v Texaco, Inc. supra, at 451, n 3. In other cases, dismissals have been affirmed despite the failure to provide detailed affidavits. See Farmanfarmaian v Gulf Oil Corp., 437 F Supp 910, 924 (SDNY 1977), affd, 588 F2d 880 (CA2 1978). And in a decision handed down two weeks after the decision in this case, another Third Circuit panel affirmed a dismissal without mentioning such a requirement. See Dahl v United Technologies Corp., 632 F2d 1027 (1980).

The Court of Appeals apparently relied on an analogy to motions to transfer under 28 USC § 1404(a) [28 USCS § 1404(a)]. 630 F2d, at 160–161. It cited Marbury-Patiflo Construction Co. v Bayside Warehouse Co., 490 F2d 155, 158 (CA5 1974), and Texas Gulf Sulphur Co. v Ritter, 371 F2d 145, 148 (CA10 1967), which suggest an affidavit requirement in the § 1404(a) context. As we have explained, however, dismissals on grounds of forum non conveniens and § 1404(a) transfers are not directly comparable. See supra, at 253–254, 70 L Ed 2d, at 433–434.

27. See Affidavit of Ronald C. Scott, App to Pet for Cert of Hartzell Propeller, Inc., A75; Affidavit of Charles J. McKelvey, App to Pet for Cert of Piper Aircraft Co. If. The affidavit provided to the District Court by Piper states that it would call the following witnesses: the relatives of the decedents; the owners and employees of McDonald Aviation; the persons responsible for the training and licensing of the pilot; the persons responsible for servicing and maintaining the aircraft; and two or three of its own employees involved in the design and manufacture of the aircraft.

to the presentation of petitioners defense. If Piper and Hartzell can show that the accident was caused not by a design defect, but rather by the negligence of the pilot, the plane's owners, or the charter company, they will be relieved of all liability. It is true, of course, that if Hartzell and Piper were found liable after a trial in the United States, they could institute an action for indemnity or contribution against these parties in Scotland. It would be far more convenient, however, to resolve all claims in one trial. The Court of Appeals rejected this argument. Forcing petitioners to rely on actions for indemnity or contributions would be "burdensome" but not "unfair." 630 F2d, at 162. Finding that trial in the plaintiff's chosen forum would be burdensome, however, is sufficient to support dismissal on grounds of forum non conveniens.[28]

(2)

[9a] The District Court's review of the factors relating to the public interest was also reasonable. On the basis of its

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choice-of-law analysis, it concluded that if the case were tried in the Middle District of Pennsylvania, Pennsylvania law would apply to Piper and Scottish law to Hartzell. It stated that a trial involving two sets of laws would be confusing to the jury. It also noted its own lack of familiarity with Scottish law. Consideration of these problems was clearly appropriate under Gilbert; in that case we explicitly held that the need to apply foreign law pointed towards dismissal.[29] The Court of Appeals found that the District Court's choice-of-law analysis was incorrect, and that American law would apply to both Hartzell and Piper. Thus, lack of familiarity with foreign law would not be a problem. Even if the Court of Appeals' conclusion is correct, however, all other public interest factors favored trial in Scotland.

Scotland has a very strong interest in this litigation. The accident occurred in its airspace. All of the decedents were Scottish. Apart from Piper and Hartzell, all potential plaintiffs and defendants are either Scottish or English. As we stated in Gilbert, there is "a local interest in having localized controversies decided at home." 330 US, at 509, 91 L Ed 1055, 67 S Ct 839. Respondent argues that American citizens have an interest in ensuring that American manufacturers are deterred from producing defective products, and that additional deterrence might be obtained if Piper and Hartzell were tried in the United States, where they could be sued on the basis of both negligence and strict liability. However, the incremental deterrence that would be gained if this trial were held in an

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American court is likely to be insig-

28. See Pain v United Technologies Corp., 205 US App DC, at 244, 637 F2d, at 790 (relying on similar argument in approving dismissal of action arising out of helicopter crash that took place in Norway).

29. [9b] Many forum non conveniens decisions have held that the need to apply foreign law favors dismissal. See, e.g., Calavo Growers of California v Belgium, 632 F2d 963, 967 (CA2 1980), cert denied, 449 US 1084, 66 L Ed 809, 101 S Ct 871 (1981); Schertenleib v Traum, 589 F2d, at 1165. Of course, this factor alone is not sufficient to warrant dismissal when a balancing of all relevant factors shows that the plaintiff's chosen forum is appropriate. See, e.g., Founding Church of Scientology v Verlag, 175 US App DC, at 409, 536 F2d, at 436; Burt v Isthmus Development Co., 218 F2d 353, 357 (CA5), cert denied, 349 US 922, 99 L Ed 1254, 75 S Ct 661 (1955).

nificant. The American interest in this accident is simply not sufficient to justify the enormous commitment of judicial time and resources that would inevitably be required if the case were to be tried here.

IV

[1c, 2c, 7d] The Court of Appeals erred in holding that the possibility of an unfavorable change in law bars dismissal on the ground of forum non conveniens. It also erred in rejecting the District Court's Gilbert analysis. The District Court properly decided that the presumption in favor of the respondent's forum choice applied with less than maximum force because the real parties in interest are foreign. It did not act unreasonably in deciding that the private interests pointed towards trial in Scotland. Nor did it act unreasonably in deciding that the public interests favored trial in Scotland. Thus, the judgment of the Court of Appeals is reversed.

Justice Powell took no part in the decision of these cases.

Justice O'Connor took no part in the consideration or decision of these cases.

SEPARATE OPINIONS

Justice White, concurring in part and dissenting in part.

I join Parts I and II of the Court's opinion. However, like Justice Brennan and Justice Stevens, I would not proceed to deal with the issues addressed in Part III. To that extent, I am in dissent.

Justice Stevens, with whom Justice Brennan joins, dissenting.

In No. 80-848, only one question is presented for review to this Court:

"Whether, in an action in federal district court brought by foreign plaintiffs against American defendants, the plaintiffs may defeat a motion to dismiss on the ground of

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forum non conveniens merely by showing that the substantive law that would be applied if the case were litigated in the district court is more favorable to them than the law that would be applied by the courts of their own nation." Pet for Cert in No. 80-848, p i.

In No. 80-883, the Court limited its grant of certiorari, see 450 US 909, 67 L Ed 2d 333, 101 S Ct 1346, to the same question:

"Must a motion to dismiss on grounds of forum non conveniens be denied whenever the law of the alternate forum is less favorable to recovery than that which would be applied by the district court?" Pet for Cert in No. 80-883, p i.

I agree that this question should be answered in the negative. Having decided that question, I would simply remand the case to the Court of Appeals for further consideration of the question whether the District Court correctly decided that Pennsylvania was not a convenient forum in which to litigate a claim against a Pennsylvania company that a plane was defectively designed and manufactured in Pennsylvania.

1 of 71 DOCUMENTS

AMERICAN DREDGING COMPANY, PETITIONER v. WILLIAM ROBERT MILLER

No. 91-1950

SUPREME COURT OF THE UNITED STATES

510 U.S. 443; 114 S. Ct. 981; 127 L. Ed. 2d 285; 1994 U.S. LEXIS 1870; 62 U.S.L.W. 4130; 1994 AMC 913; 94 Cal. Daily Op. Service 1288; 93 Daily Journal DAR 2371; 7 Fla. L. Weekly Fed. S 754

November 9, 1993, Argued
February 23, 1994, Decided

PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

DISPOSITION: *595 So. 2d 615*, affirmed.

SYLLABUS

After respondent was injured while working as a seaman on a tug operating on the Delaware River and owned by petitioner, a Pennsylvania corporation with its principal place of business in New Jersey, he filed this action in a Louisiana state court pursuant to the "saving to suitors clause," *28 U.S.C. § 1333(1)*, seeking damages under the Jones Act, *46 U.S.C. App. § 688*, and relief under general maritime law. The trial court granted petitioner's motion to dismiss under the doctrine of *forum non conveniens*, holding that it was bound to apply that doctrine by federal maritime law. The Court of Appeal affirmed, but the Supreme Court of Louisiana reversed, holding that a state statute rendering the doctrine of *forum non conveniens* unavailable in Jones Act and maritime law cases brought in state court is not pre-empted by federal maritime law.

Held: In admiralty cases filed in a state court under the Jones Act and the "saving to suitors clause," federal law does not pre-empt state law regarding the doctrine of *forum non conveniens*. Pp. 446-457.

(a) In exercising *in personam* jurisdiction over maritime actions under the "saving to suitors clause," a state court may adopt such remedies, and attach to them such incidents, as it sees fit, so long as those remedies do not "work material prejudice to the characteristic features of the general maritime law or interfere with the proper harmony and uniformity of that law in its international and interstate relations." *Southern Pacific Co. v. Jensen, 244 U.S. 205, 216*. Pp. 446-447, *61 L. Ed. 1086, 37 S. Ct. 524*.

(b) Because *forum non conveniens* did not originate in admiralty or have exclusive application there, but has long been a doctrine of general application, Louisiana's refusal to apply it does not work "material prejudice to [a] characteristic feature of the general maritime law" within *Jensen*'s meaning. Pp. 447-450.

(c) Nor is *forum non conveniens* a doctrine whose uniform application is necessary to maintain "the proper harmony" of maritime law under *Jensen, 244 U.S. at 216*. The uniformity requirement is not absolute; the general maritime law may be changed to some extent by state legislation. See *ibid. Forum non conveniens* is in two respects quite dissimilar from any other matter that this Court's opinions have held to be pre-empted by federal admiralty law: First, it is a sort of venue rule -- procedural in nature -- rather than a substantive rule upon which maritime actors rely in making decisions about how to manage their business. Second, it is most unlikely ever to produce uniform results, since the doctrine vests great discretion in the trial court, see, *e. g., Piper Aircraft Co. v. Reyno, 454 U.S. 235, 257, 70 L. Ed. 2d 419, 102 S. Ct. 252*, and acknowledges multifarious factors as being relevant to its application, see *Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-509*. Pp. 450-455, *91 L. Ed. 1055, 67 S. Ct. 839*.

(d) The foregoing conclusion is strongly confirmed by examination of federal legislation. The Jones Act

permits state courts to apply their local *forum non conveniens* rules. See *46 U.S.C. App. § 688(a)*; *Missouri ex rel. Southern R. Co. v. Mayfield, 340 U.S. 1, 5, 95 L. Ed. 3, 71 S. Ct. 1*. This supports the view that maritime commerce in general does not require a uniform rule on the subject. The implication of the Court's holding in *Bainbridge v. Merchants & Miners Transp. Co., 287 U.S. 278, 280-281, 77 L. Ed. 302, 53 S. Ct. 159* -- that although *§ 688(a)* contains a venue provision, Jones Act venue in state court should be determined in accordance with state law -- is that federal venue rules in maritime actions are a matter of judicial housekeeping, prescribed only for the federal courts. Pp. 455-457.

COUNSEL: Thomas J. Wagner argued the cause for petitioner. With him on the briefs was Whitney L. Cole.

Timothy J. Falcon argued the cause for respondent. With him on the brief were Stephen M. Wiles, John Hunter, and James A. George.

John F. Manning argued the cause for the United States as amicus curiae urging affirmance. With him on the brief were Solicitor General Days, Assistant Attorney General Hunger, and Acting Deputy Solicitor General Kneedler.

* Lizabeth L. Burrell and George W. Healy III filed a brief for the Maritime Law Association of the United States as amicus curiae urging reversal.

JUDGES: SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and BLACKMUN, O'CONNOR, SOUTER, and GINSBURG, JJ., joined, and in Part II-C of which STEVENS, J., joined. SOUTER, J., filed a concurring opinion, post, p. 457. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, post, p. 458. KENNEDY, J., filed a dissenting opinion, in which THOMAS, J., joined, post, p. 462.

OPINION BY: SCALIA

OPINION

[*445] [***292] [**984] JUSTICE SCALIA delivered the opinion of the Court.

[***LEdHR1A] [1A]This case presents the question whether, in admiralty cases filed in a state court under the Jones Act, *46 U.S.C. App. § 688*, and the "saving to suitors clause," *28 U.S.C. § 1333(1)*, federal law pre-empts state law regarding the doctrine of *forum non conveniens*.

I

Respondent William Robert Miller, a resident of Mississippi, moved to Pennsylvania to seek employment in 1987. He was hired by petitioner American Dredging Company, a Pennsylvania corporation with its principal place of business in New Jersey, to work as a seaman aboard the MV *John R.*, a tug operating on the Delaware River. In the course of that employment respondent was injured. After receiving medical treatment in Pennsylvania and New York, he returned to Mississippi where he continued to be treated by local physicians.

[***LEdHR2] [2]On December 1, 1989, respondent filed this action in the Civil District Court for the Parish of Orleans, Louisiana. He sought relief under the Jones Act, which authorizes a seaman who suffers personal injury "in the course of his employment" to bring "an action for damages at law," *46 U.S.C. App. § 688 (a)*, and over which state and federal courts have concurrent jurisdiction. See *Engel v. Davenport, 271 U.S. 33, 37, 70 L. Ed. 813, 46 S. Ct. 410 (1926)*. Respondent also requested relief under general maritime law for unseaworthiness, for wages, and for maintenance and cure. See *McAllister v. Magnolia Petroleum Co., 357 U.S. 221, 224, 2 L. Ed. 2d 1272, 78 S. Ct. 1201 (1958)* (setting forth means of recovery available to injured seaman).

The trial court granted petitioner's motion to dismiss the action under the doctrine of *forum non conveniens*, holding that it was bound to apply that doctrine by federal maritime law. The Louisiana Court of Appeal for the Fourth District affirmed. *580 So. 2d 1091 (1991)*. The Supreme Court of Louisiana reversed, holding that Article 123(C) of the Louisiana [*446] Code of Civil Procedure, which renders the doctrine of *forum non conveniens* unavailable in Jones Act and maritime law cases brought in Louisiana state courts, is not preempted by federal maritime law. *595 So. 2d 615 (1992)*. American Dredging Company filed a petition for a writ of certiorari, which we granted. *507 U.S. 1028 (1993)*.

II

[***LEdHR1B] [1B] [***LEdHR3] [3] [***LEdHR4] [4]The Constitution provides that the federal judicial power "shall extend . . . to all Cases of admiralty and maritime Jurisdiction." *U.S. Const., Art. III, § 2, cl. 1*. Federal-court jurisdiction over such cases, however, has never been entirely exclusive. The Judiciary Act of 1789 provided:

> "That the district courts shall have, exclusively of the courts of the several States . . . exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . within their respective districts as well as upon the high seas; *saving to suitors, in all cases, the right of*

> *a common law remedy, where the common law* [***293] *is competent to give it.*" § 9, 1 Stat. 76-77 (emphasis added).

The emphasized language is known as the "saving to suitors clause." This provision has its modern expression at *28 U.S.C. § 1333(1)*, which reads (with emphasis added):

> "The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> [**985] "(1) Any civil case of admiralty or maritime jurisdiction, *saving to suitors in all cases all other remedies to which they are otherwise entitled.*"

We have held it to be the consequence of exclusive federal jurisdiction that state courts "may not provide a remedy *in rem* for any cause of action within the admiralty jurisdiction." *Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 124, 68 L. Ed. 582, 44 S. Ct. 274 (1924)*. An *in rem* suit against a vessel is, we have said, [*447] distinctively an admiralty proceeding, and is hence within the exclusive province of the federal courts. *The Moses Taylor, 71 U.S. 411, 4 Wall. 411, 431, 18 L. Ed. 397 (1867)*. In exercising *in personam* jurisdiction, however, a state court may "'adopt such remedies, and . . . attach to them such incidents, as it sees fit' so long as it does not attempt to make changes in the 'substantive maritime law.'" *Madruga v. Superior Court of Cal., County of San Diego, 346 U.S. 556, 561, 98 L. Ed. 290, 74 S. Ct. 298 (1954)* (quoting *Red Cross Line, supra, at 124*). That proviso is violated when the state remedy "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations." *Southern Pacific Co. v. Jensen, 244 U.S. 205, 216, 61 L. Ed. 1086, 37 S. Ct. 524 (1917)*. The issue before us here is whether the doctrine of *forum non conveniens* is either a "characteristic feature" of admiralty or a doctrine whose uniform application is necessary to maintain the "proper harmony" of maritime law. We think it is neither. [1]

[1] JUSTICE STEVENS asserts that we should not test the Louisiana law against the standards of *Jensen*, a case which, though never explicitly overruled, is in his view as discredited as *Lochner v. New York, 198 U.S. 45, 49 L. Ed. 937, 25 S. Ct. 539 (1905)*. See *post*, at 458-459. Petitioner's pre-emption argument was primarily based upon the principles established in *Jensen*, as repeated in the later cases (which JUSTICE STEVENS also disparages, see *post*, at 459) of *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 64 L. Ed. 834, 40 S. Ct. 438 (1920)*, and *Washington v. W. C. Dawson & Co., 264 U.S. 219, 68 L. Ed. 646, 44 S. Ct. 302 (1924)*, see Brief for Petitioner 12-13. Respondent did not assert that those principles had been repudiated; nor did the Solicitor General, who, in support of respondent, discussed *Jensen* at length, see Brief for United States as *Amicus Curiae* 5, 11-13, and n.12. Since we ultimately find that the Louisiana law meets the standards of *Jensen* anyway, we think it inappropriate to overrule *Jensen* in dictum, and without argument or even invitation.

A

[***LEdHR5A] [5A]Under the federal doctrine of *forum non conveniens*, "when an alternative forum has jurisdiction to hear [a] case, and when trial in the chosen forum would 'establish . . . oppressiveness [*448] and vexation to a defendant . . . out of all proportion to plaintiff's convenience,' or when the 'chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems,' the court may, in the exercise of its sound discretion, dismiss the case," even if jurisdiction [***294] and proper venue are established. *Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241, 70 L. Ed. 2d 419, 102 S. Ct. 252 (1981)* (quoting *Koster v. (American) Lumbermens Mut. Casualty Co., 330 U.S. 518, 524, 91 L. Ed. 1067, 67 S. Ct. 828 (1947)*).In *Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 91 L. Ed. 1055, 67 S. Ct. 839 (1947)*, Justice Jackson described some of the multifarious factors relevant to the *forum non conveniens* determination:

> "An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforcibility *[sic]* of a judgment if one is obtained. . . .
>
> "Factors of public interest also have [a] place in applying the doctrine. Administrative difficulties follow for courts when [**986] litigation is piled up in

> congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a [*449] court in some other forum untangle problems in conflict of laws, and in law foreign to itself." *Id., at 508-509.* [2]

[***LEdHR5B] [5B]

> 2 *Gilbert* held that it was permissible to dismiss an action brought in a District Court in New York by a Virginia plaintiff against a defendant doing business in Virginia for a fire that occurred in Virginia. Such a dismissal would be improper today because of the federal venue transfer statute, *28 U.S.C. § 1404(a)*: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." By this statute, "district courts were given more discretion to transfer . . . than they had to dismiss on grounds of *forum non conveniens." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 253, 70 L. Ed. 2d 419, 102 S. Ct. 252 (1981)*. As a consequence, the federal doctrine of *forum non conveniens* has continuing application only in cases where the alternative forum is abroad.

Although the origins of the doctrine in Anglo-American law are murky, most authorities agree that *forum non conveniens* had its earliest expression not in admiralty but in Scottish estate cases. See *Macmaster* v. *Macmaster*, 11 Sess. Cas. 685, 687 (No. 280) (2d Div. Scot.) (1833); *McMorine* v. *Cowie*, 7 Sess. Cas. (2d ser.) 270, 272 (No. 48) (1st Div. Scot.) (1845); *La Societe du Gaz de Paris* v. *La Societe Anonyme de Navigation "Les Armateurs Francais,"* [1926] Sess. Cas. (H. L.) 13 (1925). See generally Speck, Forum Non Conveniens and Choice of Law in Admiralty: Time for an Overhaul, 18 J. Mar. L. & Com. 185, 187 (1987); Barrett, The Doctrine of *Forum Non Conveniens*, 35 Calif. L. Rev. 380, 386-387 (1947); Braucher, The Inconvenient Federal Forum, 60 Harv. L. Rev. 908, 909 (1947); but see Dainow, The Inappropriate Forum, [***295] 29 Ill. L. Rev. 867, 881, n.58 (1935) (doctrine in Scotland was "borrowed" from elsewhere before middle of 19th century).

Even within the United States alone, there is no basis for regarding *forum non conveniens* as a doctrine that originated in admiralty. To be sure, within federal courts it may have been given its earliest and most frequent expression in admiralty cases. See *The Maggie Hammond, 76 U.S. 435, 9 Wall. 435, 457, 19 L. Ed. 772 (1870)*; *The Belgenland, 114 U.S. 355, 365-366, 29 L. Ed. 152, 5 S. Ct. 860 (1885)*. [*450] But the doctrine's application has not been unique to admiralty. When the Court held, in *Gilbert, supra*, that *forum non conveniens* applied to all federal diversity cases, Justice Black's dissent argued that the doctrine had been applied in maritime cases "for reasons peculiar to the special problems of admiralty." *Id., at 513*. The Court disagreed, reciting a long history of valid application of the doctrine by state courts, both at law and in equity. *Id., at 504-505*, and n.4. It observed that the problem of plaintiffs' misusing venue to the inconvenience of defendants "is a very old one affecting the administration of the courts as well as the rights of litigants, and both in England and in this country the common law worked out techniques and criteria for dealing with it." *Id., at 507*. Our most recent opinion dealing with *forum non conveniens, Piper Aircraft Co. v. Reyno, 454 U.S. 235, 70 L. Ed. 2d 419, 102 S. Ct. 252 (1981)*, recognized that the doctrine "originated in Scotland, and became part of the common law of many States," *Id., at 248, n.13* (citation omitted), and treated the *forum non conveniens* analysis of *Canada Malting Co. v. Paterson S. S., Ltd., 285 U.S. 413, 76 L. Ed. 837, 52 S. Ct. 413 (1932)*, an admiralty case, as binding precedent in the nonadmiralty context.

[**987] [***LEdHR1C] [1C]In sum, the doctrine of *forum non conveniens* neither originated in admiralty nor has exclusive application there. To the contrary, it is and has long been a doctrine of general application. Louisiana's refusal to apply *forum non conveniens* does not, therefore, work "material prejudice to [a] characteristic feature of the general maritime law." *Southern Pacific Co. v. Jensen, 244 U.S. at 216*.

B

Petitioner correctly points out that the decision here under review produces disuniformity. As the Fifth Circuit noted in *Ikospentakis v. Thalassic S. S. Agency, 915 F.2d 176, 179 (1990)*, maritime defendants "have access to a *forum non conveniens* defense in federal court that is not presently recognized in Louisiana state courts." We

must therefore consider [*451] whether Louisiana's rule "interferes with the proper harmony and uniformity" of maritime law, *Southern Pacific Co. v. Jensen, supra, at 216.*

In *The Lottawanna, 88 U.S. 558,*

[***LEdHR6] [6]*21 Wall. 558, 575, 22 L. Ed. 654 (1875)*, Justice Bradley, writing for the Court, said of the Article III provision extending federal judicial power "to all Cases of admiralty and maritime Jurisdiction":

> "One thing . . . is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention [***296] to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states."

By reason of this principle, we disallowed in *Jensen* the application of state workers' compensation statutes to injuries covered by the admiralty jurisdiction. Later, in *Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 163-164, 64 L. Ed. 834, 40 S. Ct. 438 (1920)*, we held that not even Congress itself could permit such application and thereby sanction destruction of the constitutionally prescribed uniformity. We have also relied on the uniformity principle to hold that a State may not require that a maritime contract be in writing where admiralty law regards oral contracts as valid, *Kossick v. United Fruit Co., 365 U.S. 731, 6 L. Ed. 2d 56, 81 S. Ct. 886 (1961).*

[***LEdHR7] [7]The requirement of uniformity is not, however, absolute. As *Jensen* itself recognized: "It would be difficult, if not impossible, to define with exactness just how far the general maritime law may be changed, modified, or affected by state legislation. That this may be done to some extent cannot be denied." *244 U.S. at 216.* A later case describes to what breadth this "some extent" extends:

> [*452] "It is true that state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system[,] but this limitation still leaves the States a wide scope. State-created liens are enforced in admiralty. State remedies for wrongful death and state statutes providing for the survival of actions . . . have been upheld when applied to maritime causes of action. . . . State rules for the partition and sale of ships, state laws governing the specific performance of arbitration agreements, state laws regulating the effect of a breach of warranty under contracts of maritime insurance -- all these laws and others have been accepted as rules of decision in admiralty cases, even, at times, when they conflicted with a rule of maritime law which did not require uniformity." *Romero v. International Terminal Operating Co., 358 U.S. 354, 373-374, 3 L. Ed. 2d 368, 79 S. Ct. 468 (1959)* (footnotes omitted).

[***LEdHR1D] [1D]It would be idle to pretend that the line separating permissible from impermissible [***297] state regulation is readily discernible in our admiralty jurisprudence, or indeed is even entirely consistent within our admiralty jurisprudence. Compare *Kossick, supra* (state law cannot require provision of maritime contract [**988] to be in writing), with *Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 99 L. Ed. 337, 75 S. Ct. 368 (1955)* (state law can determine effect of breach of warranty in marine insurance policy). [3] Happily, it is unnecessary to wrestle [*453] with that difficulty today. Wherever the boundaries of permissible state regulation may lie, they do not invalidate state rejection of *forum non conveniens*, which is in two respects quite dissimilar from any other matter that our opinions have held to be governed by federal admiralty law: it is procedural rather than substantive, and it is most unlikely to produce uniform results.

3 Whatever might be the unifying theme of this aspect of our admiralty jurisprudence, it assuredly is *not* what the dissent takes it to be, namely, the principle that the States may not impair maritime commerce, see *post*, at 463-464, 467. In *Fireman's Fund*, for example, we did not inquire whether the breach-of-warranty rule Oklahoma imposed would help or harm maritime commerce, but simply whether the State had power to regulate the matter. The no-harm-to-commerce theme that the dissent plays is of course familiar to the ear – not from our admiralty repertoire, however, but from our "negative *Commerce Clause*" jurisprudence, see *Bendix Autolite Corp. v. Midwes-*

co Enterprises, Inc., 486 U.S. 888, 891, 100 L. Ed. 2d 896, 108 S. Ct. 2218 (1988). No *Commerce Clause* challenge is presented in this case.

Similarly misdirected is the dissent's complaint that Article 123 of the Louisiana Code of Civil Procedure unfairly discriminates against maritime defendants because it permits application of *forum non conveniens* in nonmaritime cases, see *post*, at 462-463. The only issue raised and argued in this appeal, and the only issue we decide, is whether state courts must apply the federal rule of *forum non conveniens* in maritime actions. Whether they may accord discriminatory treatment to maritime actions by applying a state *forum non conveniens* rule in all except maritime cases is a question not remotely before us.

[*LEdHR1E]** [1E] **[***LEdHR8A]** [8A] **[***LEdHR9]** [9] **[***LEdHR10]** [10] **[***LEdHR11]** [11]As to the former point: At bottom, the doctrine of *forum non conveniens* is nothing more or less than a supervening venue provision, permitting displacement of the ordinary rules of venue when, in light of certain conditions, the trial court thinks that jurisdiction ought to be declined. But venue is a matter that goes to process rather than substantive rights -- determining which among various competent courts will decide the case. Uniformity of process (beyond the rudimentary elements of procedural fairness) is assuredly not what the law of admiralty seeks to achieve, since it is supposed to apply in all the courts of the world. Just as state courts, in deciding admiralty cases, are not bound by the venue requirements set forth for federal courts in the United States Code, so also they are not bound by the federal common-law venue rule (so to speak) of *forum non conveniens*. Because the doctrine is one of procedure rather than substance, petitioner is wrong to claim support from our decision in *Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 98 L. Ed. 143, 74 S. Ct. 202 (1953)*, which held that Pennsylvania courts must apply the admiralty **[*454]** rule that contributory negligence is no bar to recovery. The other case petitioner relies on, *Garrett v. Moore-McCormack Co., 317 U.S. 239, 248-249, 87 L. Ed. 239, 63 S. Ct. 246 (1942)*, held that the traditional maritime rule placing the burden of proving the validity of a release upon the defendant pre-empts state law placing the burden of proving invalidity upon the plaintiff. In earlier times, burden of proof was regarded as "procedural" for choice-of-law purposes such as the one before us here, see, *e.g., Levy v. Steiger, 233 Mass. 600, 124 N.E. 477 (1919)*; Restatement of Conflict of Laws § 595 (1934). For many years, however, it has been viewed as a matter of substance, see *Cities Service Oil Co. v. Dunlap, 308 U.S. 208, 212, 84 L. Ed. 196, 60 S. Ct. 201 (1939)* -- which is unquestionably the view that the Court took in *Garrett*, stating that the right of the plaintiff to be free of the burden of proof "inhered in his cause of action," "was a part of the very substance of his claim and cannot be considered a mere incident of a form of procedure." *317 U.S. at 249*. Unlike burden of proof (which is a sort of default rule of liability) and affirmative defenses such as contributory negligence (which eliminate liability), *forum non conveniens* does not bear upon the **[***298]** substantive right to recover, and is not a rule upon which maritime actors rely in **[**989]** making decisions about primary conduct -- how to manage their business and what precautions to take. [4]

[*LEdHR8B]** [8B]

4 It is because *forum non conveniens* is not a substantive right of the parties, but a procedural rule of the forum, that the dissent is wrong to say our decision will cause federal-court *forum non conveniens* determinations in admiralty cases to be driven, henceforth, by state law -- *i.e.*, that the federal court in a State with the Louisiana rule may as well accept jurisdiction, since otherwise the state court will. See *post*, at 468-469. That is no more true of *forum non conveniens* than it is of venue. Under both doctrines, the object of the dismissal is achieved whether or not the party can then repair to a state court in the same location. Federal courts will continue to invoke *forum non conveniens* to decline jurisdiction in appropriate cases, whether or not the State in which they sit chooses to burden its judiciary with litigation better handled elsewhere.

[*455] **[***LEdHR1F]** [1F] **[***LEdHR12]** [12]But to tell the truth, *forum non conveniens* cannot really be *relied* upon in making decisions about secondary conduct -- in deciding, for example, where to sue or where one is subject to being sued. The discretionary nature of the doctrine, combined with the multifariousness of the factors relevant to its application, see the quotation from *Gilbert, supra*, at 448-449, make uniformity and predictability of outcome almost impossible. "The *forum non conveniens* determination," we have said, "is committed to the sound discretion of the trial court. It may be reversed only when there has been a clear abuse of discretion; where the court has considered all relevant public and private interest factors, and where its balancing of these factors is reasonable, its decision deserves substantial deference." *Piper Aircraft Co. v. Reyno, 454 U.S. at 257*. We have emphasized that "'each case turns on its facts'" and have repeatedly rejected the use of *per se* rules in applying the doctrine. *Id., at 249*; *Koster v. (American) Lumbermens Mut. Casualty Co., 330 U.S. at*

527. In such a regime, one can rarely count on the fact that jurisdiction will be declined.

C

[***LEdHR13] [13]What we have concluded from our analysis of admiralty law in general is strongly confirmed by examination of federal legislation. While there is an established and continuing tradition of federal common lawmaking in admiralty, that law is to be developed, insofar as possible, to harmonize with the enactments of Congress in the field. Foremost among those enactments in the field of maritime torts is the Jones Act, *46 U.S.C. App. § 688*.

[***LEdHR14] [14] [***LEdHR15] [15]That legislation, which establishes a uniform federal law that state as well as federal courts must apply to the determination of employer liability to seamen, *Garrett, supra, at 244*, incorporates by reference "all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees." *46* [*456] *U.S.C. App. § 688(a)*. Accordingly, we have held that the Jones Act adopts "the entire judicially developed doctrine of liability" under the Federal Employers' Liability Act (FELA), 35 Stat. 65, as amended, *45 U.S.C. § 51 et seq. Kernan v. American Dredging Co., 355 U.S. 426, 439, 2 L. Ed. 2d 382, 78 S. Ct. 394 (1958)*. More [***299] particularly, we have held that the Jones Act adopts the "uniformity requirement" of the FELA, requiring state courts to apply a uniform federal law. *Garrett, supra, at 244*. And -- to come to the point of this excursus -- despite that uniformity requirement we held in *Missouri ex rel. Southern R. Co. v. Mayfield, 340 U.S. 1, 5, 95 L. Ed. 3, 71 S. Ct. 1 (1950)*, that a state court presiding over an action pursuant to the FELA "should be freed to decide the availability of the principle of *forum non conveniens* in these suits according to its own local law." We declared *forum non conveniens* to be a matter of "local policy," *id., at 4*, a proposition well substantiated by the local nature of the "public factors" relevant to the *forum non conveniens* determination. See *Reyno, supra, 454 U.S. at* [**990] *241*, and n.6 (quoting *Gilbert, 330 U.S. at 509*).

[***LEdHR1G] [1G]We think it evident that the rule which *Mayfield* announced for the FELA applies as well to the Jones Act, which in turn supports the view that maritime commerce in general does not require a uniform rule of *forum non conveniens*. *Amicus* Maritime Law Association of the United States argues that "whether or not it is appropriate to analogize from FELA to the Jones Act, *Mayfield* cannot save the result below because the Louisiana statute abolishes the *forum non conveniens* doctrine in *all* maritime cases, not just those arising under the Jones Act." Brief for Maritime Law Association as *Amicus Curiae* 16. It is true enough that the *Mayfield* rule does not operate *ex proprio vigore* beyond the field of the FELA and (by incorporation) the Jones Act. But harmonization of general admiralty law with congressional enactments would have little meaning if we were to hold that, though *forum non conveniens* is a local matter for purposes of the Jones Act, it is nevertheless a matter of global concern requiring uniformity under general [*457] maritime law. That is especially so in light of our recognition in *McAllister v. Magnolia Petroleum Co., 357 U.S. at 224-225*, that, for practical reasons, a seaman will almost always combine in a single action claims for relief under the Jones Act and general maritime law. It would produce dissonance rather than harmony to hold that his claims for unseaworthiness and maintenance and cure, but not his Jones Act claim, could be dismissed for *forum non conveniens*.

[***LEdHR1H] [1H] [***LEdHR8C] [8C]The Jones Act's treatment of venue lends further support to our conclusion. In *Bainbridge v. Merchants & Miners Transp. Co., 287 U.S. 278, 280-281, 77 L. Ed. 302, 53 S. Ct. 159 (1932)*, we held that although *46 U.S.C. App. § 688(a)* contains a venue provision, "venue [in Jones Act cases brought in state court] should . . . [be] determined by the trial court in accordance with the law of the state." The implication of that holding is that venue under the Jones Act is a matter of judicial housekeeping that has been prescribed only for the federal courts. We noted earlier that *forum non conveniens* is a sort of supervening venue rule -- and here again, what is true for venue under the Jones Act should ordinarily be true under maritime law in general. What we have prescribed for the federal courts with regard to *forum non conveniens* is not applicable to the States.

* * *

[***LEdHR16] [16]*Amicus* the Solicitor General [***300] has urged that we limit our holding, that *forum non conveniens* is not part of the uniform law of admiralty, to cases involving domestic entities. We think it unnecessary to do that. Since the parties to this suit are domestic entities it is quite impossible for our holding to be any broader.

The judgment of the Supreme Court of Louisiana is

Affirmed.

CONCUR BY: SOUTER, STEVENS (In Part)

CONCUR

STOP

JUSTICE SOUTER, concurring.

I join in the opinion of the Court because I agree that in most cases the characterization of a state rule as subs-

DILBERT IVAN CALIX-CHACON, Plaintiff-Appellee, v. GLOBAL INTERNATIONAL MARINE, INC., Defendant-Appellant.

No. 06-30686

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

493 F.3d 507; 2007 U.S. App. LEXIS 17239; 26 I.E.R. Cas. (BNA) 545; 2007 AMC 1852

July 19, 2007, Filed

SUBSEQUENT HISTORY: Motion denied by *Calix v. Global Int'l Marine, Inc., 2007 U.S. Dist. LEXIS 86151 (E.D. La., Nov. 21, 2007)*

PRIOR HISTORY: [**1]

Appeal from the United States District Court for the Eastern District of Louisiana. C.A. No. 2-06-1645(J)(4). *Calix v. Global Int'l Marine, Inc., 2006 U.S. Dist. LEXIS 24365 (E.D. La., Apr. 27, 2006)*

COUNSEL: For DILBERT IVAN CALIX-CHACON, Plaintiff - Appellee: Robert T Myers, Young, Richard & Myers, Metairie, LA.

For GLOBAL INTERNATIONAL MARINE INC, Defendant - Appellant: Randolph J Waits, Matthew Francis Popp, Emmett, Cobb, Waits & Henning, New Orleans, LA.

JUDGES: Before KING, DAVIS, and BARKSDALE, Circuit Judges.

OPINION BY: W. EUGENE DAVIS

OPINION

[*509] W. EUGENE DAVIS, Circuit Judge:

Defendant Global International Marine, Inc. appeals the judgement of the district court denying its motion to dismiss the action for maintenance and cure brought by seaman Dilbert Ivan Calix-Chacon. The district court refused to enforce the forum selection clause in the employment agreement between the parties on public policy grounds. Because we conclude that the public policy grounds relied on by the district court were improper, we vacate and remand for further proceedings to determine whether the forum selection clause is enforceable under the guidelines established in Bremen and its progeny. [1]

1 *M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972).*

I.

A.

Honduran native Dilbert Ivan Calix-Chacon ("Calix") was hired by Global International [**2] Marine, Inc. ("Global"), a U.S. corporation operating out of Houma, Louisiana, to work as a seaman on its ship, the M/V SAMSON. Global used the Honduran crewing agency Sitralmahr to hire Caliz. Calix, who speaks limited English, signed an employment contract which was written in English for a term beginning December 19, 2005, and ending March 19, 2006. [2] The contract contained a choice of law clause providing that Honduran

law would apply to the employment agreement, including recovery or compensation for injury, death, or medical expenses. It also included a forum selection clause providing that any claim arising out of the employment agreement or for injury would be brought exclusively in a court of competent jurisdiction in Honduras. Sitralmahr's owner, Felipe Rodriguez, submitted an affidavit stating that he explained the terms of the contract, including the forum selection clause, to Calix.

2 This was his second employment engagement with Global.

The M/V SAMSON is a U.S. flagged vessel that ordinarily operates in the Carribean. At the time Calix was hired, it was in dry dock in Louisiana undergoing routine maintenance and inspections for United States certification.

While doing [**3] maintenance aboard the SAMSON on January 31, 2006, Calix experienced severe stomach pain. He was diagnosed [*510] with an inflamed gall bladder and his gall bladder was removed at Terrebonne General Medical Center in Houma, Louisiana. After the gall bladder surgery doctors determined that Calix had an enlarged heart (cardiomegaly). His physician recommended an immediate heart transplant.

B.

Although Global paid for Calix's gall bladder surgery, it refused to pay for his heart transplant. Calix filed suit in district court seeking maintenance and cure including the cost of a heart transplant and ancillary care. Global responded with a Motion to Dismiss under *Federal Rule of Civil Procedure 12(b)(3)*, asking the court to enforce the forum selection clause in the employment contract. The district court held an expedited hearing and denied Global's motion. The court concluded that the forum selection clause was unenforceable based on the Supreme Court's decision in *M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972)*. The court concluded that the forum selection clause was not enforceable under Bremen because its enforcement would "contravene a strong public policy of the forum in which suit is [**4] brought, whether declared by statute or by judicial decision." *Id. at 15.*

The district court concluded that both the general maritime law and the Shipowner's Liability (Sick and Injured Seamen) Convention of 1936, an international treaty ratified by the United States, express a strong public policy preventing the contractual abridgment of maintenance and cure liability. The court noted that the Convention codified the pre-existing federal common law of American maintenance and cure as binding international law for those who ratified it.

The district court then held an expedited trial on the merits of Calix's claim for maintenance and cure. The district court found that Calix's medical condition arose in the service of the vessel and that Global was obligated to provide cure to Calix. The court's judgment ordered Global to pay for all necessary past and future care as recommended by Calix's physician, including the immediate transfer of Calix to an accredited heart transplantation facility to await an available heart for a transplant. Counsel advised the court at oral argument that while this appeal was pending, Calix underwent a successful heart transplant operation. He is currently [**5] receiving followup care including round-the-clock nurses, and anti-rejection medication.

The district court issued a *Rule 54(b)* certificate to allow an immediate appeal. Global appeals.

II.

"[T]he enforcement of a forum selection clause is an issue of law, and we review the district court's conclusions of law *de novo*." *MacPhail v. Oceaneering Int'l, Inc., 302 F.3d 274, 278 (5th Cir. 2002)*. We also review *de novo* a district court's determination that a contract clause is unenforceable based on public policy grounds. Id. Because this is a case in admiralty, federal law governs whether the forum selection clause in Calix's employment contract with Global is enforceable. *Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 590, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991)*. [3]

3 Any discussion by Calix of Louisiana law, particularly *La. R.S. 23:921A(2)*, is irrelevant to this case.

[*511] III.

In analyzing the enforceability of the forum selection clause in Calix's employment contract we begin with the Supreme Court's decision in *M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 92 S. Ct. 1907, 32 L. Ed. 2d*

513 (1972). In Bremen a tugboat owner (a German corporation) entered into a contract with Zapata (a Texas corporation) to tow Zapata's oil rig from Louisiana to Italy. The [**6] contract provided that "[a]ny dispute arising [out of the contract] must be treated before the London Court of Justice." *Id. at 2*.

While the tug and tow were in the Gulf of Mexico they encountered a storm which resulted in damage to the rig which was then brought to Florida. Zapata later filed suit against the German company in admiralty in federal court in Tampa seeking damages for negligent towage and breach of contract. The German company sought to enforce the forum selection clause and challenged the jurisdiction of the U.S. court asking the court to dismiss the suit based on lack of jurisdiction or forum non conveniens.

The district court held the contract's forum selection clause unenforceable and this court affirmed. The Supreme Court reversed and held that in maritime actions forum selection clauses are to be enforced unless the forum selection clause is fundamentally unfair and therefore unreasonable. The court established four bases for concluding that a forum selection clause is unreasonable:

> (1) the incorporation of the forum selection clause into the agreement was the product of fraud or overreaching; (2) the party seeking to escape enforcement "will for all practical purposes [**7] be deprived of his day in court" because of the grave inconvenience or unfairness of the selected forum; (3) the fundamental unfairness of the chosen law will deprive the plaintiff of a remedy; or (4) enforcement of the forum selection clause would contravene a strong public policy of the forum state.

Haynsworth v. Corporation, 121 F.3d 956, 963 (5th Cir. 1997), citing *Carnival Cruise Lines, 499 U.S. 585, 595, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991)*, and *Bremen, 407 U.S. at 12-13*.

The Supreme Court next addressed the enforceability of forum selection clauses in *Carnival Cruise Lines v. Shute, 499 U.S. 585, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991)*. In this case Russell and Eulala Shute purchased cruise tickets through a Washington travel agency for a 7 day Carnival Cruise Lines cruise. The agent forwarded the Shutes' payment to Carnival's headquarters and Carnival sent the Shutes their tickets. The forum selection clause was on the back of the tickets and required that all suits relating to the cruise be litigated in Florida. The Shutes boarded the ship destined for Puerto Vallarta, Mexico in Los Angeles. While in international waters off Mexico, Eulala Shute was injured when she slipped on a deck mat during a guided tour of the ship's galley. The Shutes [**8] sued in federal court in the State of Washington. The district court granted Carnival's motion to dismiss for lack of personal jurisdiction due to insufficient contacts with the State of Washington. The Ninth Circuit reversed. In addition to the personal jurisdiction question the Ninth Circuit also concluded that because the forum selection clause "was not freely bargained for" it was invalid.

The Supreme Court reversed and held that the clause in question was enforceable though not the product of bargaining, because it was unreasonable to assume that a cruise line would negotiate with a passenger over a provision in a passage contract. The court followed the Bremen analysis [*512] and held that, as a general rule, forum selection clauses in cruise ship passage contract tickets are valid and should be enforced unless enforcement is shown to be unreasonable. The court declined to deny enforcement against a routine consumer cruise ticket holder based on the passenger's argument that the provisions incorporated in the printed ticket were not negotiated agreements between parties of equal bargaining power. Rather the court gave broad approval of forum selection clauses despite the lack of equal [**9] bargaining position and the fact that the provision was not negotiated.

The case which is most factually analogous to today's case is a decision by this court in *Marinechance Shipping, Ltd. v. Sebastian, 143 F.3d 216 (5th Cir. 1998)*. In that case, we applied the Bremen/Shute analysis to a forum selection clause included in a seaman's employment contract. In Marinechance, two seaman, both citizens of the Philippines were injured in an accident aboard the M/V ELLISPONTOS while in the Mississippi River near Burnside, Louisiana. The seamen were transported to a hospital in Baton Rouge, Louisiana for treatment.

The M/V ELLISPONTOS was owned by

Marinechance, a corporation with its principal place of business in Nicosia, Cyprus. Marinechance sued in federal district court seeking a declaratory judgment that any litigation arising from the accident must proceed if at all in the courts of the Philippines under the law of the Philippines. The district court granted summary declaratory judgment in favor of Marinechance and enjoined the seamen from filing suit in the Louisiana state courts.

The seamen were employed under a contract approved by the Philippine Overseas Employment Administration. The [**10] contract required that "any disputes . . shall be referred for settlement solely to the exclusive jurisdiction of the competent Courts or Authorities, as the case may be, in the country of the seaman's nationality where the contract of employment was signed and approved." In holding that the forum selection clause was valid and enforceable Judge Wisdom, speaking for this court, stated:

> In M/S Bremen v. Zapata Off-Shore, the Supreme Court held that forum selection clauses in admiralty cases are presumptively valid and enforceable. Forum selection clauses are important in international cases such as the instant case because there is much uncertainty regarding the resolution of disputes. Ocean-going vessels travel through many jurisdictions, and could become subject to the laws of a particular jurisdiction based solely upon the fortuitous event of an accident. "The elimination of all such uncertainties by agreeing in advance on a forum acceptable to both parties is an indispensable element in international trade, commerce, and contracting." To overcome the presumption that the forum selection clause is enforceable, the party challenging the clause must make a "strong showing" that the [**11] clause is unreasonable.

Id. at 220. We concluded that:

> The similarities between the present case and Carnival Cruise Lines are many. The contracts of employment for seamen aboard international vessels are routine: the seaman individually do not have much bargaining power. The selection of a forum in advance reduces the vessel owner's exposure to suits in forums all over the world. Furthermore, it informs the seamen of where their causes of action can be maintained.

Id. at 221.

We also rejected the seamen's argument that the forum selection clause in their contract did not apply to their tort causes [*513] of action. We pointed out that the action in Carnival Cruise Lines was a slip and fall case on the deck of the vessel and that the Supreme Court held that the forum selection clause was enforceable in that case.

We found Justice Kennedy's views in his concurrence helpful on understanding the strong presumption in favor of enforcement of forum selection clauses. "Justice Kennedy summarized the strong presumption in favor of the enforceability of forum selection clauses as follows: 'a valid forum selection clause is given controlling weight in all but the most exceptional cases.' *Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 108 S. Ct. 2239, 101 L. Ed. 2d 22* [**12] (Kennedy, J., concurring)." *Id. at 220, n.16.*

B.

With this background we now turn to the question presented to the district court: whether this is an exceptional case where the forum selection clause in the seaman's employment contract should be considered so unfair and unreasonable as to be unenforceable. The district court found the clause to be unreasonable and therefore unenforceable because enforcement would contravene a strong public policy of the U.S. which favors a seaman's maintenance and cure remedy as expressed in the Shipowner's Liability (Sick and Injured Seaman) Convention of 1936.

The Shipowners' Liability Convention of 1936 (the "Convention") is an international treaty ratified by the United States Senate in 1938. Article 2 of the Convention declares that "[t]he shipowner shall be liable in respect of (a) sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement." Article 1(1) of the Convention declares that it applies to "all persons employed on board any vessel, other than a ship of war,

registered in a territory for which this Convention is in force and ordinarily engaged in maritime |**13| navigation."

The Supreme Court, however, has made it clear that the Convention restates the rule as it exists under the General Maritime Law. By signing on to the Convention there was no intent to change existing law. Rather,

> [t]he aim of the Convention "was not to change materially American standards but to equalize operating costs by raising the standards of member nations to the American level." *Warren v. United States, 340 U.S. 523, 527, 71 S. Ct. 432, 95 L. Ed. 503 (1951)*. Thus Art. 4, P. 1, is declaratory of a longstanding tradition respecting the scope of the shipowner's duty to furnish injured seamen maintenance and cure, *Farrell v. United States, [336 U.S. 511] at 518, 69 S. Ct. 707, 93 L. Ed. 850.*

Vella v. Ford Motor Co., 421 U.S. 1, 95 S. Ct. 1381, 1384, 43 L. Ed. 2d 682 (1975).

This policy statement regarding the shipowner's duty to furnish injured seaman maintenance and cure did not bar this court from deciding in Marinechance that a forum selection clause is valid and enforceable against all of the claims raised by the injured seamen. The record in Marinechance reflects that the seamen in that case had requested maintenance and cure. Their briefs made it clear that they asserted claims under the General Maritime Law, the source of their maintenance and cure action, |**14| as well as damage claims under the Jones Act.

The district court has in effect held that the Convention prohibits a federal district court from refusing to entertain maintenance and cure claims brought by foreign seamen in a United States court. Based on our decision in Marinechance, that is clearly not the law. Also, in In re McClelland Engineers, Inc., foreign seamen were injured in foreign waters and brought suit |*514| against American defendants in the Southern District of Texas. Regarding the district court's conclusion that the Convention precluded a court from choosing foreign law when it imposes a lower standard of care or relief than domestic law and that "any foreign seaman injured on the high seas (as these may not have been) is entitled to access to United States courts and United States remedies, apparently whether he is suing a United States vessel or not; and to deny him that access is to deny him 'equality of treatment,'" this court viewed the ruling as "a candidly novel and clear departure from our holdings and those of the Supreme Court." *In re McClelland Engineers, Inc., 742 F.2d 837, 839 (5th Cir. 1984), cert. denied, 469 U.S. 1228, 105 S. Ct. 1228, 84 L. Ed. 2d 366 (1985)*, overruled on other grounds by |**15| *In re Air Crash Disaster Near New Orleans, La., 821 F.2d 1147 (5th Cir. 1987)*. [4]

4 McClelland came to this court on a petition for Writ of Mandamas directing the district court to vacate its order denying forum non conveniens motion and dismiss the actions or certify its order for interlocutory review. Although no forum selection clause was at issue in that case, the opinion makes clear that the district court's reliance on the Convention as a basis for a blanket bar against forcing seamen to raise their claims outside the United States' court system was unsupportable.

Thus we conclude that the district court erred in relying on the Convention as representing a strong public policy in favor of the maintenance and cure remedy that renders a forum selection clause unenforceable. We therefore vacate the district court's judgment finding the forum selection clause unreasonable on this basis and remand this case to the district court for further proceedings on this issue. On remand, the burden of establishing unreasonableness is on Calix, the party seeking to set aside the provision. *Bremen, 407 U.S. at 15.* On remand the district court should make factual findings so it can apply the Bremen |**16| factors and determine whether "(1) the incorporation of the forum selection clause into the agreement was the product of fraud or overreaching; (2) [Calix] 'will for all practical purposes be deprived of his day in court' because of the grave inconvenience or unfairness of the selected forum; (3) the fundamental unfairness of the chosen law will deprive [him] of a remedy; or (4) enforcement of the forum selection clause would contravene a strong public policy of the forum state." *Haynsworth, 121 F.3d at 963.*

At oral argument, Calix's counsel focused on the third Bremen factor -- "the fundamental unfairness of the chosen law will deprive the plaintiff of a remedy." Calix

argued that Honduran law would not provide sufficient funds to permit him to maintain his anti-rejection drug regime necessary to sustain life following his heart transplant. Calix argued that unless he can recover medical expenses sufficient to prevent rejection of his new heart, it will fail and he will in effect be deprived of a remedy.

On the assumption that Calix will present a similar argument to the district court it will be necessary for the district court to determine what remedy is available to Calix under [**17] Honduran law and whether such recovery will be likely adequate for Calix to avoid his body's rejection of the transplanted heart. The available medical care in Honduras may also be relevant in this context. The district court should make factual findings on these and other issues presented by the parties related to whether plaintiff will for all practical purposes be deprived of his day in court or be deprived of a remedy if the court enforces the forum selection clause.

[*515] In applying the facts to the Bremen exceptions, we do not mean to suggest Calix is entitled to medical care that could be considered standard in the United States. In a forum non conveniens context, the Supreme Court has stated that a dismissal "may be granted even though the law applicable in the alternative forum is less favorable to the plaintiff's chance of recovery." *Piper Aircraft Co. v. Reyno, 454 U.S. 235, 250, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981).* [5] As the court stated in Carnival Cruise Lines v. Shute, we will declare forum selection clauses unenforceable only when the remedies available in the chosen forum are so inadequate that enforcement would be fundamentally unfair. *Shute, 499 U.S. 585, 595, 111 S. Ct. 1522, 113 L. Ed. 2d 622.* See also *Piper Aircraft, 454 U.S. at 254* [**18] (An unfavorable change in law is a relevant consideration in a forum non conveniens inquiry "if the remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all.")

5 A forum selection clause is a contractual waiver of the right to seek transfer or dismissal based on the parties own inconvenience. *Northwestern Nat'l Ins. Co. v. Donovan, 916 F.2d 372, 378 (7th Cir. 1990).* Where the parties have agreed on a forum, as in this case, the factors relevant in a forum non conveniens analysis would seem to apply with even greater force in favor of the chosen forum.

Concerning Calix's physical limitations, Carnival Cruise Lines did not accept the Court of Appeal's justification that a choice of forum clause should not be enforced because the plaintiffs are physically and financially incapable of pursuing litigation in the forum chosen in the choice of forum clause when the district court made no factual findings on the issue. *499 U.S. at 594.* And as the Second Circuit has held, with modern conveniences of electronic filing and videoconferencing, "[a] plaintiff may have his 'day in court' without ever setting foot in a courtroom." *Effron v. Sun Line Cruises, Inc., 67 F.3d 7, 11 (2d Cir. 1995).* [**19] Thus, a conclusion that Calix's legal remedy must be pursued in Honduras does not necessarily mean that he physically must travel to that jurisdiction. [6]

6 It would, of course, be relevant to consider whether Honduran law requires his physical presence to pursue litigation. Repatriation is a separate issue not yet addressed by the district court.

CONCLUSION.

For the reasons stated above, we VACATE the judgment of the district court and REMAND this case to the district court for further proceedings consistent with this opinion.

ancillary letters testamentary under Section 105, Texas Probate Code, to bring and prosecute the action.

Added by Acts 1999, 76th Leg., ch. 382, § 2, eff. May 29, 1999.

[Sections 71.023 to 71.030 reserved for expansion]

SUBCHAPTER C. DEATH OR INJURY CAUSED BY ACT OR OMISSION OUT OF STATE

§ 71.031. Act or Omission Out of State

(a) An action for damages for the death or personal injury of a citizen of this state, of the United States, or of a foreign country may be enforced in the courts of this state, although the wrongful act, neglect, or default causing the death or injury takes place in a foreign state or country, if:

(1) a law of the foreign state or country or of this state gives a right to maintain an action for damages for the death or injury;

(2) the action is begun in this state within the time provided by the laws of this state for beginning the action;

(3) for a resident of a foreign state or country, the action is begun in this state within the time provided by the laws of the foreign state or country in which the wrongful act, neglect, or default took place; and

(4) in the case of a citizen of a foreign country, the country has equal treaty rights with the United States on behalf of its citizens.

(b) Except as provided by Subsection (a), all matters pertaining to procedure in the prosecution or maintenance of the action in the courts of this state are governed by the law of this state.

(c) The court shall apply the rules of substantive law that are appropriate under the facts of the case.

Acts 1985, 69th Leg., ch. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 424, § 3, eff. May 29, 1997.

Section 4(c) of Acts 1997, 75th Leg., ch. 424 provides:

"Section 3 of this Act applies to a civil action commenced on or after the effective date of this Act. A civil action commenced before the effective date of this Act is governed by the applicable law in effect immediately before that date as to all parties joined in that action before that date and as to other defendants properly joined after the effective date who could not have been joined in the action before the effective date because of the existence of an injunction prohibiting such joinder, and that law is continued in effect for that purpose."

SUBCHAPTER D. FORUM NON CONVENIENS

§ 71.051. Forum Non Conveniens

(a) Repealed by Acts 2003, 78th Leg., ch. 204, § 3.09.

(b) If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to

which this section applies would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action. In determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens, the court may consider whether:

(1) an alternate forum exists in which the claim or action may be tried;

(2) the alternate forum provides an adequate remedy;

(3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

(5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum; and

(6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(c) The court may set terms and conditions for staying or dismissing a claim or action under this section as the interests of justice may require, giving due regard to the rights of the parties to the claim or action. If a moving party violates a term or condition of a stay or dismissal, the court shall withdraw the order staying or dismissing the claim or action and proceed as if the order had never been issued. Notwithstanding any other law, the court shall have continuing jurisdiction for purposes of this subsection.

(d) A request for stay or dismissal under this section is timely if it is filed not later than 180 days after the time required for filing a motion to transfer venue of the claim or action. The court may rule on a motion filed under this section only after a hearing with notice to all parties not less than 21 days before the date specified for the hearing. The court shall afford all of the parties ample opportunity to obtain discovery of information relevant to the motion prior to a hearing on a motion under this section. The moving party shall have the responsibility to request and obtain a hearing on such motion at a reasonable time prior to commencement of the trial, and in no case shall the hearing be held less than 30 days prior to trial.

(e) The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state. If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court may not stay or dismiss the action under Subsection (b) if the plaintiffs who are legal residents of this state are properly joined in the action and the action arose out of a single occurrence. The court shall dismiss a claim under Subsection (b) if the court finds by a preponderance of the evidence that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard in a forum outside this state.

(f) A court may not stay or dismiss a claim or action pursuant to Subsection (b)

if a party opposing the motion under Subsection (b) alleges and makes a prima facie showing that an act or omission that was a proximate or producing cause of the injury or death occurred in this state. The prima facie showing need not be made by a preponderance of the evidence and shall be deemed to be satisfied if the party produces credible evidence in support of the pleading, which evidence need not be in admissible form and may include affidavits, deposition testimony, discovery responses, or other verified evidence.

(g) Any time limit established by this section may be extended by the court at the request of any party for good cause shown.

(h) In this section:

(1) "Legal resident" means an individual who intends the specified political subdivision to be his permanent residence and who intends to return to the specified political subdivision despite temporary residence elsewhere or despite temporary absences, without regard to the individual's country of citizenship or national origin. The term does not include an individual who adopts a residence in the specified political subdivision in bad faith for purposes of avoiding the application of this section.

(2) "Plaintiff" means a party seeking recovery of damages for personal injury or wrongful death. In a cause of action in which a party seeks recovery of damages for personal injury to or the wrongful death of another person, "plaintiff" includes both that other person and the party seeking such recovery. The term does not include a counterclaimant, cross-claimant, or third-party plaintiff or a person who is assigned a cause of action for personal injury, or who accepts an appointment as a personal representative in a wrongful death action, in bad faith for purposes of affecting in any way the application of this section.

(i) This section applies to actions for personal injury or wrongful death. This section shall govern the courts of this state in determining issues under the doctrine of forum non conveniens in the actions to which it applies, notwithstanding Section 71.031(a) or any other law.

Added by Acts 1993, 73rd Leg., ch. 4, § 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 567, § 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 424, § 1, eff. May 29, 1997; Acts 2003, 78th Leg., ch. 204, §§ 3.04, 3.09, eff. Sept. 1, 2003.

Section 4(a) of Acts 1997, 75th Leg., ch. 424 provides:

"Section 1 of this Act applies to:

"(1) a civil action commenced on or after January 1, 1999, that is:

"(A) an action against a railroad company brought under the federal Employers' Liability Act (45 U.S.C. Section 51 et seq.), the federal Safety Appliance Act (45 U.S.C. Section 1 et seq.), or the federal Boiler Inspection Act (45 U.S.C. Section 22 et seq.); or

"(B) an action in which it is alleged that the personal injury or death was caused by a means of air transportation operated in this state or occurred while traveling in or on a means of air transportation during a trip originating from or destined for a location in this state; and

"(2) a civil action commenced on or after the effective date of this Act, other than an action described in Subdivision (1) of this section."

Section 2 of the 1993 Act provides:

"This Act applies to a cause of action filed on or after September 1, 1993."

Section 2 of the 1995 amendatory act provides:

"This Act takes effect September 1, 1995, and applies only to a suit filed on or after that date. A suit filed before the effective date of this Act is governed by the law applicable to the suit immediately before the effective date of this Act."

AN ACT

relating to venue in civil actions under the Jones Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 15.018, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 15.018. FEDERAL EMPLOYERS' LIABILITY ACT ~~[AND JONES ACT]~~. (a) This section only applies to suits brought under the federal Employers' Liability Act (45 U.S.C. Section 51 et seq.) ~~[or the Jones Act (46 U.S.C. Section 688)]~~.

(b) All suits brought under the federal Employers' Liability Act ~~[or the Jones Act]~~ shall be brought:

(1) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) in the county where the defendant's principal office in this state is located; or

(3) in the county where the plaintiff resided at the time the cause of action accrued.

SECTION 2. Subchapter B, Chapter 15, Civil Practice and Remedies Code, is amended by adding Section 15.0181 to read as follows:

Sec. 15.0181. JONES ACT. (a) In this section:

(1) "Coastal county" means:

(A) a county in a coastal area, as defined by Section 33.004, Natural Resources Code; or

(B) a county having a United States Customs port through which waterborne freight is transported.

(2) "Coastal erosion" means the loss of land, marshes, wetlands, beaches, or other coastal features because of the actions of wind, waves, tides, storm surges, subsidence, or other forces.

(3) "Erosion response project" means an action intended to address or mitigate coastal erosion, including beach nourishment, sediment management, beneficial use of dredged material, creation or enhancement of a dune, wetland, or marsh, and construction of a breakwater, bulkhead, groin, jetty, or other structure.

(4) "Gulf Coast state" means Louisiana, Mississippi, Alabama, or Florida.

(5) "Inland waters" means the navigable waters shoreward of the navigational demarcation lines dividing the high seas from harbors, rivers, the Gulf Intracoastal Waterway, and other inland waters of Texas, Louisiana, Mississippi, Alabama, Arkansas, Tennessee, Missouri, Illinois, Kentucky, or Indiana or of Florida along the Gulf of Mexico shoreline of Florida from the Florida-Alabama border down to and including the shoreline of Key West, Florida. The term does not include the Great Lakes.

(b) This section applies only to suits brought under the Jones Act (46 U.S.C. Section 688).

(c) Except as provided by this section, a suit brought under the Jones Act shall be brought:

(1) in the county where the defendant's principal office in this state is located;

(2) in the county in which all or a substantial part of the events or omissions giving rise to the claim occurred; or

(3) in the county where the plaintiff resided at the time the cause of action accrued.

(d) If all or a substantial part of the events or omissions giving rise to the claim occurred on the inland waters of this state, ashore in this state, or during the course of an erosion response project in this state, the suit shall be brought:

(1) in the county in which all or a substantial part of the events giving rise to the claim occurred; or

(2) in the county where the defendant's principal office in this state is located.

(e) If all or a substantial part of the events or omissions giving rise to the claim occurred on inland waters outside this state, ashore in a Gulf Coast state, or during the course of an erosion response project in a Gulf Coast state, the suit shall be brought:

(1) in the county where the defendant's principal office in this state is located if the defendant's principal office in this state is located in a coastal county;

(2) in Harris County unless the plaintiff resided in Galveston County at the time the cause of action accrued;

(3) in Galveston County unless the plaintiff resided in Harris County at the time the cause of action accrued; or

(4) if the defendant does not have a principal office in this state located in a coastal county, in the county where the plaintiff resided at the time the cause of action accrued.

SECTION 3. The change in law made by this Act applies only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

JURISDICTION

NATIONAL LONG ARM JURISDICTION

The preamble to Fed. R. Civ. P. 4(k)(2) states: "[I]f the exercise of jurisdiction is consistent with the Constitution and laws of the United States then service of summons in litigation based upon federal law upon a defendant is proper by taking into consideration the defendant's contacts with the several states of the United States." (emphasis supplied). *World Tanker Carriers Corp. v. M/V YA MAWALAYA*, 99 F.3d 717 (5th Cir. 1996) concluded that admiralty law is "federal," and therefore Rule 4(k)(2) can be invoked for the purpose of national jurisdiction. This decision did not address any possible constitutional infirmities with the rule's application. *Delgado v. Reef Resort, Ltd.*, 364 F.3d 642, 2004 (5th Cir. 2004) is an example of the plaintiff overlooking a necessary allegation for the purpose of making the rule applicable; the appellate stage was too late to correct the mistake. There are some questions that undoubtedly will be the subject of future litigation. Is it constitutional to ignore state boundaries in evaluating a defendant's minimal contacts in the context of "fair play" in bringing a defendant into federal court? Are the parameters of national jurisdiction the same as those for evaluating a defendant's contacts with a state in non-federal law matters? In other words, is there a national definition of minimum contacts for general and specific jurisdiction as discussed in the *Helicopteros* decision? It appears that the last inquiry is being answered by the courts in the affirmative in the event the initial inquiry is whether the action arose out of activities in the United States (specific jurisdiction); the alternative would be general jurisdiction through the defendant's continuous and systematic contacts with this county. Additional Fifth Circuit decisions permitting the consideration of national contacts to be considered in determining the general jurisdiction issue are *Quick Technologies, Inc. v. The Sage Group PLC*, 313 F.3d 338 (5th Cir. 2002), and *System Pipe & Supply, Inc. v. M/V VIKTOR KURNATOVSKEY*, 242 F.3d 322, 324 fn. 5 (5th Cir. 2001).

Associated Transport Line, Inc. v. Productos Fitosanitarios Proficol El Carmen, S.A., 197 F.3d 1070 (11th Cir. 1999) focused upon a spill of chemicals in Florida waters while a Colombian vessel was carrying the cargo from Colombia to Trinidad. The focus of the action was CERCLA on the basis of the chemical being mislabeled. The plaintiff spent a significant sum in cleaning the spill due to the mislabeling, i.e. the chemical was believed to be more toxic than it actually was. The court analyzed Rule 4(k)(2) jurisdiction on the basis of specific and/or general jurisdiction. There

was no specific jurisdiction due to no tort having taken place in this country; parenthetically, this conclusion is questionable since pollution occurred in the waters of Florida. On the issue of general jurisdiction, the court noted the defendant's nine sales of products directed to the United States during a four-year period, and concluded that these acts did not meet the constitutional requirement of sufficient contacts for the purpose of supporting general jurisdiction. Due process was not satisfied. The Fifth Circuit further explained the due process requirement for a Rule 4(k)(2) service of process in *Submersible Systems, Inc. v. Perforadora Central, S.A.*, 249 F.3d 413 (5th Cir. 2001). The court considered the issue in the context of the Fifth Amendment rather than the Fourteenth Amendment. The opinion concluded that if the cause of action did not arise from events in this country, the defendant's contacts with the United States for Rule 4(k)(2) purposes must be the "continuous and systematic" test (general jurisdiction). *See also Glencore Grain v. Shivnath Rai Harnarain*, 284 F.3d 1114 (9th Cir. 2002). The court in *Glencore Grain* suggested that the presence of defendant's asset within the jurisdiction might satisfy the requirement.

United States v. Swiss American Bank, Ltd., 191 F.3d 30 (1st Cir. 1999) focused upon the rule's limitation on "any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state." The issue is how will a plaintiff go about showing that a defendant is *not* amenable to personal jurisdiction in any one state. The First Circuit's opinion in this non-maritime case offers a sensible answer in the form of a "special burden-shifting framework" (*id.* at 41) that would work as follows:

> The plaintiff ... must certify that, based on the information that is readily available to the plaintiff and his counsel, (1) the defendant is not subject to suit in the courts of general jurisdiction of any state. [The] burden [then] shifts to the defendant to produce evidence which, if credited, (2) would show that one or more specific states exist in which it would be subject to suit .... [T]he plaintiff [then] has three choices: he may move for a transfer [under 28 U.S.C. § 1404(a)] to a district (a) within that state, or (b) he may discontinue his action (preliminarily, perhaps, to the initiation of a suit in the courts of the identified state), or (c) he may contest the defendant's proffer. If the plaintiff elects the last-mentioned course, the defendant will be deemed to have waived any claim that it is subject to personal jurisdiction in the courts of general jurisdiction of any state other than the state or states which it has identified.... (Emphasis and parenthetical expressions added)

The Fifth Circuit adopted this test to determine that a jurisdiction with which the defendant did not have sufficient contacts since the defendant had sufficient national contacts but insufficient activities in any state. *Adams v. Unione Mediterranean Di Securata*, 364 F.3d 646, 2004(5th Cir. 2004).

Service of process must be effected pursuant to Rule 4(e). or a provision within a U.S. statute. *Omni Capital International, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97 (1987). There is no federal common law on the subject related to the service of process. A decision underscoring this point is *United Rope Distributors v. Seatriumph Marine*, 930 F.2d 532 (7th Cir. 1991), which holds that personal jurisdiction may be created only by statute or federal rule with the force of a statute; there is no federal common law rule on this subject in an admiralty center. Rule 4(e) of the Fed. R. Civ. P. requires lock step application by the federal court of the forum state's rules with respect to jurisdiction in the event the state service procedure is selected for Rule 4(e)(1) purposes.[1]

There is a question with respect to the manner of effecting service of process in the event the defendant's activities in the forum state do not meet the requirement of that state's Long Arm Statute. An example is the *Submersible Systems* decision.[2] The foreign defendant's activities in Mississippi did not call into play the Mississippi Long Arm Statute. In the event the defendant's representative in the forum state was not "an agent authorized by appointment or by law to receive service of process" (Rule 4(e)(2)), the plaintiff's only alternative would be the provisions pursuant to the Hague Convention (assuming that the country in which the defendant is located is a signatory to the Convention) or another mechanism set forth in Rule 4(f).

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[1] The court concluded at page 534 that the vessel owner had minimal contacts with this country based upon "four previous voyages to seven different U.S. ports in 1986-87. and was bound for a fifth encounter. at an eighth port when it sank."

[2] *Submersible Systems, Inc. v. Perforadora Central, S.A.*, 249 F.3d 413 (5th Cir. 2001).