111 S.Ct. 1522
Supreme Court of the United States
CARNIVAL CRUISE LINES, INC., Petitioner
v.
Eulala SHUTE, et vir.
No. 89-1647.
|
Argued Jan. 15, 1991.
|
Decided April 17, 1991.

Opinion

***587** Justice BLACKMUN delivered the opinion of the Court.

In this admiralty case we primarily consider whether the United States Court of Appeals for the Ninth Circuit correctly refused to enforce a forum-selection clause contained in tickets issued by petitioner Carnival Cruise Lines, Inc., to respondents Eulala and Russel Shute.

I

The Shutes, through an Arlington, Wash., travel agent, purchased passage for a 7-day cruise on petitioner's ship, the *Tropicale.* Respondents paid the fare to the agent who forwarded the payment to petitioner's headquarters in Miami, Fla. Petitioner then prepared the tickets and sent them to respondents in the State of Washington. The face of each ticket, at its left-hand lower corner, contained this admonition:

"SUBJECT TO CONDITIONS OF CONTRACT ON LAST PAGES **IMPORTANT!** PLEASE READ CONTRACT-ON LAST PAGES 1, 2, 3" App. 15.

The following appeared on "contract page 1" of each ticket:

"TERMS AND CONDITIONS OF PASSAGE CONTRACT TICKET

. . . . .

"3. (a) The acceptance of this ticket by the person or persons named hereon as passengers shall be deemed to be an acceptance and agreement by each of them of all of the terms and conditions of this Passage Contract Ticket.

. . . . .

"8. It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract ***588** shall be litigated, if at all, in and before a Court located in the State of Florida, U.S.A., to the exclusion of the Courts of any other state or country." *Id.,* at 16.

The last quoted paragraph is the forum-selection clause at issue.

II

Respondents boarded the *Tropicale* in Los Angeles, Cal. The ship sailed to Puerto Vallarta, Mexico, and then returned to Los Angeles. While the ship was in international waters off the Mexican coast, respondent Eulala Shute was injured when she slipped on a deck mat during a guided tour of the ship's galley. Respondents filed suit against petitioner in the United States District Court for the Western District of Washington, claiming that Mrs. Shute's injuries had been caused by the negligence of Carnival Cruise Lines and its employees. *Id.,* at 4.

Petitioner moved for summary judgment, contending that the forum clause in respondents' tickets required the Shutes to bring their suit against petitioner in a court in the State of Florida. Petitioner contended, alternatively, that the District Court lacked personal jurisdiction over petitioner because petitioner's contacts with the State of Washington were insubstantial. The District Court granted the motion, holding that petitioner's contacts with Washington were constitutionally insufficient to support the exercise of personal jurisdiction. See App. to Pet. for Cert. 60a.

The Court of Appeals reversed. Reasoning that "but for" petitioner's solicitation of business in Washington, respondents ****1525** would not have taken the cruise and Mrs. Shute would not have been injured, the court concluded that petitioner had sufficient contacts with Washington to justify the District Court's exercise of personal jurisdiction. 897 F.2d 377, 385-386 (CA9 1990).*

Turning to the forum-selection clause, the Court of Appeals acknowledged that a court concerned with the enforceability of such a clause must begin its analysis with *The Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972), where this Court held that forum-selection clauses, although not "historically ... favored," are "prima facie valid." *Id.,* at 9-10, 92 S.Ct., at 1913. See 897 F.2d, at 388. The appellate court concluded that the forum clause should not be enforced because it "was not freely bargained for." *Id.,* at 389. As an "independent justification" for refusing to enforce the

clause, the Court of Appeals noted that there was evidence in the record to indicate that "the Shutes are physically and financially incapable of pursuing this litigation in Florida" and that the enforcement of the clause would operate to deprive them of their day in court and thereby contravene this Court's holding in *The Bremen.* 897 F.2d, at 389.

We granted certiorari to address the question whether the Court of Appeals was correct in holding that the District Court should hear respondents' tort claim against petitioner. 498 U.S. 807-808, 111 S.Ct. 39, 112 L.Ed.2d 16 (1990). Because we find the forum-selection clause to be dispositive of this question, we need not consider petitioner's constitutional argument as to personal jurisdiction. See *Ashwander v. TVA,* 297 U.S. 288, 347, 56 S.Ct. 466, 483, 80 L.Ed. 688 (1936) (Brandeis, J., concurring) (" 'It is not the habit of the Court to decide questions of a constitutional nature unless ***590** absolutely necessary to a decision of the case,' " quoting *Burton v. United States,* 196 U.S. 283, 295, 25 S.Ct. 243, 245, 49 L.Ed. 482 (1905)).

IV

A

Both petitioner and respondents argue vigorously that the Court's opinion in *The Bremen* governs this case, and each side purports to find ample support for its position in that ***591** opinion's broad-ranging language. This seeming paradox derives in large part from key factual differences between this case and *The Bremen,* differences that preclude an automatic and simple application of *The Bremen*'s general principles to the facts here.

In *The Bremen,* this Court addressed the enforceability of a forum-selection clause in a contract between two business corporations. An American corporation, Zapata, made a contract with Unterweser, a German corporation, for the towage of Zapata's oceangoing drilling rig from Louisiana to a point in the Adriatic Sea off the coast of Italy. The agreement provided that any dispute arising under the contract was to be resolved in the London Court of Justice. After a storm in the Gulf of Mexico seriously damaged the rig, Zapata ordered Unterweser's ship to tow the rig to Tampa, Fla., the nearest point of refuge. Thereafter, Zapata sued Unterweser in admiralty in federal court at Tampa. Citing the forum clause, Unterweser moved to dismiss. The District Court denied Unterweser's motion, and the Court of Appeals for the Fifth Circuit, sitting en banc on rehearing, and by a sharply divided vote, affirmed. *In re Complaint of Unterweser Reederei GmbH,* 446 F.2d 907 (1971).

This Court vacated and remanded, stating that, in general, "a freely negotiated private international agreement, unaffected by fraud, undue influence, or overweening bargaining power, such as that involved here, should be given full effect." 407 U.S., at 12-13, 92

S.Ct. at 1914-1915 (footnote omitted). The Court further generalized that "in the light of present-day commercial realities and expanding international trade we conclude that the forum clause should control absent a strong showing that it should be set aside." *Id.,* at 15, 92 S.Ct., at 1916. The Court did not define precisely the circumstances that would make it unreasonable for a court to enforce a forum clause. Instead, the Court discussed a number of factors that made it reasonable to enforce the clause at issue in *The Bremen* and ***592** that, presumably, would be pertinent in any determination whether to enforce a similar clause.

In this respect, the Court noted that there was "strong evidence that the forum clause was a vital part of the agreement, and [that] it would be unrealistic to think that the parties did not conduct their negotiations, including fixing the monetary terms, with the consequences of the forum clause figuring prominently in their calculations." *Id.,* at 14, 92 S.Ct., 1915 (footnote omitted). Further, the Court observed that it was not "dealing with an agreement between two Americans to resolve their essentially local disputes in a remote alien forum," and that in such a case, "the serious inconvenience of the contractual forum to one or both of the parties might carry greater weight in determining the reasonableness of the forum clause." *Id.,* at 17, 92 S.Ct., at 1917. The Court stated that even where the forum clause establishes a remote forum for resolution of conflicts, "the party claiming [unfairness] should bear a heavy burden of proof." *Ibid.*

In applying *The Bremen,* the Court of Appeals in the present litigation took note of the foregoing "reasonableness" factors and rather automatically decided that the forum-selection clause was unenforceable because, ****1527** unlike the parties in *The Bremen,* respondents are not business persons and did not negotiate the terms of the clause with petitioner. Alternatively, the Court of Appeals ruled that the clause should not be enforced because enforcement effectively would deprive respondents of an opportunity to litigate their claim against petitioner.

The Bremen concerned a "far from routine transaction between companies of two different nations contemplating the tow of an extremely costly piece of equipment from Louisiana across the Gulf of Mexico and the Atlantic Ocean, through the Mediterranean Sea to its final destination in the Adriatic Sea." *Id.,* at 13, 92 S.Ct., at 1915. These facts suggest that, even apart from the evidence of negotiation regarding the forum clause, it was entirely reasonable for the Court in *The* ***593** *Bremen* to have expected Unterweser and Zapata to have negotiated with care in selecting a forum for the resolution of disputes arising from their special towing contract.

In contrast, respondents' passage contract was purely routine and doubtless nearly identical to every commercial passage contract issued by petitioner and most other cruise

lines. See, *e.g., Hodes v. S.N.C. Achille Lauro ed Altri-Gestione,* 858 F.2d 905, 910 (CA3 1988), cert. dism'd, 490 U.S. 1001, 109 S.Ct. 1633, 104 L.Ed.2d 149 (1989). In this context, it would be entirely unreasonable for us to assume that respondents-or any other cruise passenger-would negotiate with petitioner the terms of a forum-selection clause in an ordinary commercial cruise ticket. Common sense dictates that a ticket of this kind will be a form contract the terms of which are not subject to negotiation, and that an individual purchasing the ticket will not have bargaining parity with the cruise line. But by ignoring the crucial differences in the business contexts in which the respective contracts were executed, the Court of Appeals' analysis seems to us to have distorted somewhat this Court's holding in *The Bremen.*

In evaluating the reasonableness of the forum clause at issue in this case, we must refine the analysis of *The Bremen* to account for the realities of form passage contracts. As an initial matter, we do not adopt the Court of Appeals' determination that a nonnegotiated forum-selection clause in a form ticket contract is never enforceable simply because it is not the subject of bargaining. Including a reasonable forum clause in a form contract of this kind well may be permissible for several reasons: First, a cruise line has a special interest in limiting the fora in which it potentially could be subject to suit. Because a cruise ship typically carries passengers from many locales, it is not unlikely that a mishap on a cruise could subject the cruise line to litigation in several different fora. See *The Bremen,* 407 U.S., at 13, and n. 15, 92 S.Ct., at 1915, and n. 15; *Hodes,* 858 F.2d, at 913. Additionally, a clause establishing *ex ante* the forum for dispute resolution has the salutary ***594** effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions. See *Stewart Organization,* 487 U.S., at 33, 108 S.Ct., at 2246 (concurring opinion). Finally, it stands to reason that passengers who purchase tickets containing a forum clause like that at issue in this case benefit in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting the fora in which it may be sued. Cf. *Northwestern Nat. Ins. Co. v. Donovan,* 916 F.2d 372, 378 (CA7 1990).

We also do not accept the Court of Appeals' "independent justification" for its conclusion that *The Bremen* dictates that the clause should not be enforced because "[t]here is evidence in the record to indicate that the Shutes are physically and financially incapable of pursuing this litigation in Florida." 897 F.2d, at 389. We do not defer to the Court of Appeals' findings of fact. In ****1528** dismissing the case for lack of personal jurisdiction over petitioner, the District Court made no finding regarding the physical and financial impediments to the Shutes' pursuing their case in Florida. The Court of Appeals' conclusory reference to the record provides no basis for this Court to validate

the finding of inconvenience. Furthermore, the Court of Appeals did not place in proper context this Court's statement in *The Bremen* that "the serious inconvenience of the contractual forum to one or both of the parties might carry greater weight in determining the reasonableness of the forum clause." 407 U.S., at 17, 92 S.Ct., at 1917. The Court made this statement in evaluating a hypothetical "agreement between two Americans to resolve their essentially local disputes in a remote alien forum." *Ibid.* In the present case, Florida is not a "remote alien forum," nor-given the fact that Mrs. Shute's accident occurred off the coast of Mexico-is this dispute an essentially local one inherently more suited to resolution in the State of Washington than in Florida. In ***595** light of these distinctions, and because respondents do not claim lack of notice of the forum clause, we conclude that they have not satisfied the "heavy burden of proof," *ibid.,* required to set aside the clause on grounds of inconvenience.

It bears emphasis that forum-selection clauses contained in form passage contracts are subject to judicial scrutiny for fundamental fairness. In this case, there is no indication that petitioner set Florida as the forum in which disputes were to be resolved as a means of discouraging cruise passengers from pursuing legitimate claims. Any suggestion of such a bad-faith motive is belied by two facts: Petitioner has its principal place of business in Florida, and many of its cruises depart from and return to Florida ports. Similarly, there is no evidence that petitioner obtained respondents' accession to the forum clause by fraud or overreaching. Finally, respondents have conceded that they were given notice of the forum provision and, therefore, presumably retained the option of rejecting the contract with impunity. In the case before us, therefore, we conclude that the Court of Appeals erred in refusing to enforce the forum-selection clause.

V

The judgment of the Court of Appeals is reversed.

It is so ordered.

10 Each fully paid adult passenger will be allowed an unlimited amount of baggage free of charge Baggage means only trunks valises satchels bags hangers and bundles with their contents consisting of only such wearing apparel toilet articles and similar personal effects as are necessary and appropriate for the station or life of the passenger and for the purpose of the journey

11 No sorts of trade, household goods, presents and/or property of others jewelry, money documents valuables of any description including but not limited to such articles as are described in Section 4281 Revised Statute of the U S A (46 USCA § 181) shall be carried except under and subject to the terms of a special written contract or Bill of Lading entered into with the Carrier prior to embarkation upon application of the passenger and the passenger hereby warrants that no such articles are contained in any receptacle or container presented by him as baggage hereunder, and if any such article or articles are shipped and the passenger's baggage in breach of this warranty no liability for negligence, gross or ordinary, shall attach to the Carrier for any loss or damage thereto

12 It is stipulated and agreed that the aggregate value of each passenger's property under the Adult ticket does not exceed $100 00 (half ticket $50 00) and any liability of the Carrier for any cause whatsoever with respect to said property shall not exceed such sum, unless the passenger shall in writing, delivered to the Carrier prior to embarkation, declare the true value thereof and pay to the Carrier prior to embarkation a sum (in U S Dollars) equal to 5% of the excess of such value, in which event the Carrier's liability shall be limited to the actual damages sustained to the property but not to excess of the declared value

13 The Vessel shall be entitled to have and enter ports with or without pilots or tugs, to tow and assist other vessels in any circumstances to salvage to or enter any port at the Master's discretion and for any purpose and to deviate in any direction or for any purpose from the direct or usual course, all such deviations being considered as forming part of and included in the proposed voyage

14 If the performance of the proposed voyage is hindered or prevented[d] or in the opinion of the Carrier or the Master is likely to be hindered or prevented by war, hostilities blockade, ice, labor conflicts, strikes on board or ashore, Restraint of Rulers or Princes, breakdown of the Vessel, congestion, docking difficulties, or any other cause whatsoever, or if the Carrier or the Master considers that for any reason whatsoever, proceeding to, attempting to enter, or entering or remaining at the port of passenger's destination may expose the Vessel to risk or loss or damage or be likely to delay her, the passenger and his baggage may be landed at the port of embarkation or at any port or place at which the Vessel may call when the responsibility of the Carrier shall cease and this contract shall be deemed to have been fully performed, or if the passenger has not embarked the Carrier may cancel the proposed voyage without liability to refund passage money or fares paid in advance.

15 The Carrier and the Master shall have liberty to comply with any orders, recommendations or directions whatsoever given by the Government of any nation or by any Department thereof or by any person acting or purporting to act with the authority of such Government or Department or by any Committee or person having under the terms of the War Risks Insurance on the Vessel the right to give such orders, recommendations or directions, and if by reason of and in compliance with any such orders, recommendations or directions anything is done or is not done the same shall not be deemed a deviation or a breach of this Contract. Disembarkation of any passenger or discharge of the baggage in accordance with such orders, recommendations or directions shall constitute due and proper fulfillment of the obligations of the Carrier under this Contract.

16 (a) The Carrier shall not be liable to make any refund to passengers in respect of lost tickets or in respect of tickets wholly or partly not used by a passenger.

(b) If for any reason whatsoever the passenger is refused permission to land at the port of disembarkation or such other ports as is provided for in Clauses 14 and 15 hereof, the passenger and his baggage may be landed at any port or place at which the Vessel calls or be carried back to the port of embarkation and shall pay the Carrier full fare according to its tariff in use at such time for such further carriage, which shall be upon the terms herein contained

11. The Carrier may use, with the consent of the Customer, vessels or other means of transportation whatsoever customarily used for the carriage of goods of the kind specified herein. The Customer warrants the description and particulars of the goods furnished by him and shall be responsible for any loss or damage sustained by the Carrier or any vessel or property as a result of any inaccuracy therein.

12. The Customer shall not ship any goods which are of a dangerous, inflammable or explosive nature without first informing the Carrier of the exact character of such goods, and specifically marking the packages so that they may be known to be dangerous. If the Customer fails to inform the Carrier as aforesaid and the goods are of a dangerous, inflammable or explosive nature, they may be destroyed or rendered harmless by the Carrier without compensation and the Customer shall be liable for all damages and expenses arising directly or indirectly out of the shipment.

13. The Carrier shall have a lien on the goods for all charges due to the Carrier for any services rendered in connection with the goods, and a general lien on any property belonging to the Customer which is in the Carrier's possession from time to time, and may refuse to deliver the goods or property until payment is made. If the charges remain unpaid for 30 days after delivery of the goods or property, the Carrier may sell the goods or property by public auction or private treaty without notice to the Customer.

14. The Carrier shall not be liable for any loss of or damage to the goods or property caused by riots, strikes, civil commotions or labour disturbances, or arising from any cause beyond the Carrier's control, whether or not the Carrier could have foreseen such cause.

15. The Carrier shall not be liable for any loss of or damage to the goods or property caused by perils of the sea or other navigable waters, acts of God, or any other cause, accident or misfortune arising without the actual fault or privity of the Carrier or its servants or agents.

16. The Carrier shall not be liable for any loss of or damage to the goods or property caused by the act, neglect or default of the Customer, its agents or servants.

17. The Carrier shall not be liable for any loss of or damage to the goods or property caused by fire, unless caused by the actual fault or privity of the Carrier.

18. The Carrier shall not be liable for any loss of or damage to the goods or property caused by theft, pilferage or non-delivery, unless such theft, pilferage or non-delivery occurs while the goods or property are in the actual custody of the Carrier.

19. Any passenger shall be allowed to bring on board the vessel, firearms, ammunition, explosives or other dangerous goods only with the written permission of the Carrier.

20. The Carrier shall not be liable for any loss of or damage to any part of the Customer's baggage or personal effects unless a written claim is delivered to the Carrier before the Customer disembarks from the vessel on which the baggage or personal effects were carried, or, if the Customer is not carried, before the baggage or personal effects are delivered.

21. The Carrier reserves the right to refuse passage to any person who, in the opinion of the Carrier, may be suffering from any infectious or contagious disease, or who refuses to submit to a medical examination if requested by the Carrier to do so.

22. All matters in all of the activities and operations from time to time provided by the Carrier shall be governed by the laws of the State of New York, and the Carrier shall not be liable for any loss or damage suffered by the Customer unless proceedings are commenced against the Carrier within one year after the date of the loss or damage. Any proceedings against the Carrier shall be brought only in the Supreme Court of the State of New York, County of New York, or in the United States District Court for the Southern District of New York, and the Customer irrevocably submits to the jurisdiction of such courts in respect of any such proceedings.

23. Should any provision of this Contract be unenforceable or invalid for any reason, it shall be severed from the remainder of this Contract which shall continue to be binding and enforceable as if such provision had not been included.

CONTRACT PAGE 5

THE ARBITRATION-LITIGATION PARADOX

Pamela K. Bookman*

forthcoming VANDERBILT LAW REVIEW 2019

A. DOMESTIC COMMERCIAL ARBITRATION

The origin story of the FAA has been told many times.[69] The 1925 Act responded to the then-prevalent refusal of courts to specifically enforce arbitration agreements.[70] It instructed courts to put arbitration clauses on an "equal footing" with other kinds of contract terms,[71] and "set forth the procedures to be followed in federal court for litigation about arbitration."[72] The federal law followed in the footsteps of the 1920 New York state arbitration statute and other similar statutes.[73]

According to scholars, the Act "was originally designed to cover contractual disputes between merchants of relatively co-equal bargaining power."[74] Its lead proponents, Julius Cohen and Charles Bernheimer, worked for the New York State Chamber of Commerce and appeared before Congress as representatives of dozens of "business men's organizations." They sang arbitration's praises "as a way 'to make the disposition of business in the commercial world less expensive,'" faster, and more just.[75] Also appearing before Congress were Herbert Hoover, the Secretary of Commerce; W.H.H. Piatt, Chairman of the Committee on Commerce, Trade, and Commercial Law of the American Bar Association (who testified that the Act should not be read to apply to labor disputes); and others advocating for "arbitration in

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[69] MacNeil, Chap. 4; IMRE SZALAI, OUTSOURCING JUSTICE: THE RISE OF MODERN ARBITRATION LAWS IN AMERICA (2013); Hiro N. Aragaki, *The Federal Arbitration Act As Procedural Reform*, 89 N.Y.U. L. Rev. 1939 (2014); *see also* Amalia D. Kessler, *Arbitration and Americanization: The Paternalism of Progressive Procedural Reform*, 124 YALE L.J. 2940, 2957 (2015); AMALIA D. KESSLER, INVENTING AMERICAN EXCEPTIONALISM: THE ORIGINS OF AMERICAN ADVERSARIAL LEGAL CULTURE, 1800-1877 (2017).

[70] David L. Noll, *Regulating Arbitration*, 105 CAL. L. REV. 985, 994 (2017).

[71] E.E.O.C. v. Waffle House, Inc., 534 U.S. 279, 293 (2002).

[72] Aragaki, *supra* note __.

[73] MacNeil, *supra* note __, at §8.1; IAN MACNEIL, AMERICAN ARBITRATION LAW: REFORMATION–NATIONALIZATION—INTERNATIONALIZATION, Part I (1992).

[74] Szalai, *supra* note __, at 524-525 (footnotes omitted); Leslie, *supra* note __, at 305-306; Margaret L. Moses, *Statutory Misconstruction: How the Supreme Court Created A Federal Arbitration Law Never Enacted by Congress*, 34 FLA. ST. U. L. REV. 99, 106 (2006). *But compare Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001) ("[T]he FAA compels judicial enforcement of a wide range of written arbitration agreements.") *with id.* at 125 (Stevens, J., dissenting) ("The history of the Act, which is extensive and well documented, makes clear that the FAA was a response to the refusal of courts to enforce commercial arbitration agreements...."). In fascinating new work, Amalia Kessler sheds important light on Progressive lawyers' influence on the FAA and their understanding of arbitration as part of "their program for urban civil justice." Amalia D. Kessler, *Arbitration and Americanization: The Paternalism of Progressive Procedural Reform*, 124 YALE L.J. 2940, 2962 (2015). But she does not purport to rebut the foundational assumption that the Act originally targeted arbitration clauses in commercial contracts.

[75] Leslie, *supra* note __, at 302 (citations omitted); Moses, *supra* note __, at 103.

commercial matters."[76] Indeed, in the proceedings leading up to the FAA's enactment, "every witness, every Senator, and every Representative discussed one issue and one issue only: arbitration of contract disputes between merchants."[77] The cited examples discussed contracts between merchants, often involving international transactions.[78]

The business world had legitimate complaints about litigation. Civil procedure before the 1938 adoption of the Federal Rules of Civil Procedure was rigid and complex; it notoriously provided lawyers with incentives to "insist on procedural formalities for strategic gain."[79] It involved long delays.[80] Hiro Aragaki argues that the FAA was developed in the context of "[an] increasingly intolerable situation in the courts and the seeming stagnation of judicial reform efforts in Congress," by advocates who "saw privatization as the most effective vehicle for improving adjudicative dispute resolution."[81]

There was much to recommend arbitration in these commercial contexts. An extensive literature explores how and why arbitration, the "creature of contract,"[82] can provide sophisticated parties with important opportunities to craft the fate of their disputes in the name of maintaining party autonomy, procedural flexibility, and other private law virtues.[83] The ability to choose arbitration can be an expression of contractual freedom.[84] These are the private-law values of arbitration. They have particular force in combination with essentialist values, that is, in circumstances when litigation is viewed as "intolerable" and arbitration seems to offer a cure for litigation's ills.

The Supreme Court's version of the FAA's origin story is superficially consistent with the scholarly account just described. The Court cites two main reasons for the FAA's enactment: first, to "revers[e] centuries of judicial hostility to arbitration agreements" and "to place arbitration agreements 'upon the same footing as other contracts," and second, "to allow parties to avoid 'the costliness and delays of litigation.'"[85] The Court does not consider the business interests driving the arbitration reform movement to limit its interpretation of the statute.[86] Conversely, the Court has focused on the

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[76] Leslie, *supra* note __, at 303–04.

[77] *Id.* at 305.

[78] *Id.* at 306.

[79] Aragaki, *supra* note __, at 1966.

[80] *Id.* at 1968.

[81] *Id.* at 1976.

[82] *See* Aragaki, *Creature of Contract*, *supra* note __ (discussing the popularity of and problems with this term).

[83] *See, e.g.*, Drahozal & Ware, *Why Do Businesses Use (Or Not Use) Arbitration Clauses?*, Ohio State Journal on Dispute Resolution (2010).

[84] *See, e.g.*, Gaillard, *supra* ("autonomy and freedom are at the heart of [international arbitration]").

[85] Scherk v. Alberto-Culver, Co., 417 U.S. 506, 511 (1974).

[86] *See Concepcion; Epic.*

importance of arbitration *displacing* litigation.[87] As a result, while the Court recognizes the private-law values of arbitration, it focuses its attention on safeguarding the essentialist values. Scholars' historical account that the FAA sought to promote arbitration as a flexible alternative to litigation lends credence to the idea that businesses favored arbitration for its perceived speed and low cost and efficiency, especially as compared to courts. But the FAA was also a procedural reform effort that could proceed in parallel with reform efforts in the courts.[88] In other words, one can view the FAA as valuing better procedures in dispute resolution rather than simply (or only) valuing the avoidance of litigation.

At its most basic, however, the FAA mandated judicial support for arbitration when parties chose it as their dispute resolution mechanism of choice.[89] It placed exceedingly few limits on what counts as arbitration. The statute does not define arbitration, either vis-à-vis litigation or otherwise.

B. ENTHUSIASM FOR ARBITRATION

Litigation-avoidance values have driven the Court's love affair with arbitration since the 1970s. Scholars have noted that a likely motivator "was the Court's view that litigation had become excessive and needed to be curtailed."[150] Chief Justice Burger, who often expressed concern with judicial workload pressures, consistently criticized "'litigiousness'" and linked it to a "'mass neurosis . . . [that] leads people to think courts were created to solve all the problems of society.'"[151] At the Pound Conference on the Causes of Popular Dissatisfaction with the Administration of Justice in 1976, Burger's "chief message" "was that the 'litigation explosion would have to be controlled.'"[152] This message was consonant with "the business community's growing dissatisfaction with the legal system."[153]

At the same time, the Court has exalted arbitration. The Court has described the FAA as embodying "a national policy favoring arbitration,"[154] which does not just put arbitration contracts on equal footing with other kinds of contracts, but seems to affirmatively favor arbitration over litigation.[155] As the most recent Restatement of the U.S. Law of International Commercial Arbitration reports, "U.S. law now has a now long-established history of providing strong support to both party autonomy in arbitration and to the enforceability of arbitral agreements and awards."[156]

The Court identifies the purpose of the FAA's pro-arbitration policies as twofold: first, to enforce arbitration agreements and preserve freedom of contract,[157] and second, to avoid or replace litigation.[158] An extensive literature examines arbitration as a manifestation of contractual freedom[159] and a

hallmark of private law.[160] According to these private-law values, the signature features of arbitration are the choice, autonomy, and flexibility that it affords parties. As Alan Rau argues, "if there is any 'public policy' at all implicated in arbitration, it ... lies in making a relatively inexpensive and efficient process of dispute resolution available to the parties if and to the extent they wish to take advantage of it."[161] In the 1980s, the Court cited arbitration's "adaptability" of as one of its key virtues.[162]

In recent decades, however, the Court has focused intensely on the importance of arbitration's function as a substitute for litigation. Relying on the FAA's legislative history,[163] the Court often states that the FAA was intended "to allow parties to avoid 'the costliness and delays of litigation'"[164] because arbitration was supposed to be able to "largely eliminate[]" that cost and delay.[165] This litigation-avoidance purpose, the Court has now held in multiple contexts, prevails over Congress's intent in other statutes to provide claimants with their day in court[166] or to allow collective action,[167] and over many areas of state law.[168] As noted, these policies often align with developments that mark the Court's hostility to litigation.[169] The vision of arbitration as a substitute for litigation goes hand in hand with an understanding of arbitration's "essential" virtues as those that differentiate it from the litigation "it was meant to displace"—e.g., its speed, low cost, and efficiency.[170] The Court has accordingly seen the FAA's purpose as protecting those virtues.[171]

In international commercial cases, a third set of values is also at play:

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[160] *See* Steven Ware, Minn. L. Rev. (1999).

[161] Alan Scott Rau, Fear of Freedom, 17 AM. REV. INT'L ARB. 469, 479 (2006).

[162] *See, e.g.*, Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985).

[163] Commentators have noted that the course of developing this robust FAA, "the Court's reading of legislative history [of the FAA] appears selective." Miller, *supra* note __, at 327-328 & n.156; *see also* Aragaki, *supra* note __.

[164] *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-11 (1974) (citing H.R.Rep.No.96, 68th Cong., 1st Sess., 1, 2 (1924); S.Rep.No.536, 68th Cong., 1st Sess. (1924)).

[165] Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 220 (1985).

[166] Of course, in international contexts, the Court may emphasize that the Court has made clear that this policy "applies with special force in the field of international commerce." Mitsubishi, etc.

[167] See Epic.

[168] *See* Southland ____; MacNeil § 8.6. *But see* [O'Connor's dissent] (saying that the legislative history plainly does not suggest that congress intended the FAA to preempt state law).

[169] See supra [notes discussing Siegel]; MacNeil § 8.6 ("Underlying this pro-arbitration stance appears to be the desire to help clear court dockets, not as a simple consequence of party choice to use arbitration, but as a policy in its own right."). Writing in 1994, MacNeil noted that *Volt Information Sciences v. Stanford University* (1986) provided a potential exception to this trend because it permitted parties to direct that state law would govern their arbitration agreements, but *DIRECTV, Inc. v. Imburgia*, 577 U.S. ___ (2015) has undermined that holding.

[170] See Epic.

[171] See infra discussion of Concepcion and Epic.

promoting trade, orderliness, and predictability in international commerce. Indeed, in the international commercial context, the argument in favor of arbitration is especially strong.[172] Enforcement of arbitration agreements not only supports freedom of contract and avoiding litigation in potentially biased national courts (which international business operators seem justified in wanting to avoid).[173] At its best, it also enables parties from different nations to choose a neutral and expert arbiter for potential disputes and, if the arbitration clause will be enforced, to create some much-desired predictability.[174] In the international commercial context, the Supreme Court has sensibly acknowledged, the success of international trade and commerce requires the United States to recognize the validity of laws and dispute resolution outside of U.S. courts.[175]

It is no wonder that the Supreme Court's major shifts to enforcing arbitration and forum selection clauses occurred in cases involving international commercial contracts, with the Court explaining that the international context weighed heavily in favor of enforcing the parties' choices in those contracts.[176] As discussed in Part I, *The Bremen* and *Scherk* explicitly relied on the particular circumstances in international business transactions to justify enforcement of such clauses.

In the 1980s, the Court acknowledged the important role that national courts play in supporting the institution of international commercial arbitration. It played that role by prioritizing private-law and international business values over essentialist ones. In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, the Court noted:

> If they are to take a central place in the international legal order, national courts will need to "shake off the old judicial

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[172] In the investment arbitration context, there is also a strong argument in favor of arbitration, but the calculus about judicial review is somewhat different. *See* Roberts & Trahanas, *supra* note __.

[173] *See supra* Part I.B. (discussing *The Bremen* and *Scherk*).

[174] *See, e.g.*, Bermann, *supra* note __; Cuniberti, *supra* note __; Sussman, *supra* note __. There are also arguments in favor of arbitration that go beyond its role as a dispute resolution mechanism. *See* Helfand, *supra* note __ (questioning that that's arbitration's only purpose); Markovits, *supra* note __ (similar). *But see* Dammann & Hansmann, *supra* note __ (arguing that arbitration affords less predictable results because arbitrators want to provide a resolution that pleases both sides rather than following more predictable legal reasoning).

[175] *Scherk*, 417 U.S. at 519 (invalidating the arbitration clause "would ... reflect a 'parochial concept that all disputes must be resolved under our laws and in our courts.' ... We cannot have trade and commerce in world markets and international waters exclusively on our terms, governed by our laws, and resolved in our courts."); M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 9.

[176] *See Bremen*, 407 U.S. at 11-12 (enforcing forum selection clauses "accords with ancient concepts of freedom of contract and reflects an appreciation of the expanding horizons of American contractors who seek business in all parts of the world"); *Scherk*, 417 U.S. at 515 (finding it "significant ... and ... crucial" that the contract involved was a "truly international agreement"); Main, *supra* note __ (discussing *Bremen* as the "taproot of [the] kudzu vine" that is arbitration).

> hostility to arbitration," and also their customary and understandable unwillingness to cede jurisdiction of a claim arising under domestic law to a foreign or transnational tribunal. To this extent, at least, it will be necessary for national courts to subordinate domestic notions of arbitrability to the international policy favoring commercial arbitration.[177]

There, the Court asserted that arbitration's "hallmarks" were its "adaptability and access to expertise," rather than its contrasts to litigation. Indeed, had the Court prioritized the differences between arbitration and litigation and sought to safeguard arbitration's "essential" characteristics, it might have reached a different result. The claimants had argued that the Court should not enforce the agreement to arbitrate antitrust claims because arbitration was less equipped than litigation to handle such complex disputes and important federal statutory rights.[178] The Court rejected this argument. Instead, it found that arbitration was up to the challenge and recognized the importance of courts' support for arbitration in the context of international trade.[179]

Key to the Court's decision in *Mitsubishi* was recognizing this conflict of values and then subordinating essentialist concerns to the more important considerations of private-law values and supporting international business. As discussed below, the essentialist view has serious flaws—for example not valuing arbitration's adaptability and capacity for complexity, as *Mitsubishi* understood. *Mitsubishi* provides an example of the Court not only prioritizing other arbitration values over essentialist ones, but also acknowledging that the multiple values underlying arbitration can conflict, considering courts' important role in supporting international commercial arbitration system, and balancing the different competing values.

In the past few decades, however, the Court has shifted to prioritize arbitration's essentialist values over its private-law or international-business ones, either without recognizing the possibility of a conflict, or discounting its

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[177] Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 638–39 (1985).

[178] *Id.* at 633. Notably, the Court in *Mitsubishi* was not as enthusiastic about arbitration as it seemed. In dicta, *Mitsubishi* assumed that courts could invalidate an arbitral *award* as against public policy if they interpreted a foreign choice-of-law clause to preclude the effective vindication of federal statutory rights. *Id.* at 637 n.19 ("We ... note that in the event the choice-of-forum and choice-of-law clauses operated in tandem as a prospective waiver of a party's right to pursue statutory remedies for antitrust violations, we would have little hesitation in condemning the agreement as against public policy."). But subsequent Supreme Court decisions have all but eliminated the public policy defense in public cases, and this dictum has "proven to be largely an empty threat." Rogers, *supra* note __, at 367 n.154. U.S. courts do not decline to enforce arbitral awards based on the public policy considerations in *Mitsubishi*. Sweet & Grisel, *supra* note __, at 178 n.38 ("We are not aware of any" U.S. court refusing "to enforce awards based on public policy considerations after *Mitsubishi*").

[179] *Id.*

importance. In this shift, there is rarely balancing analysis or even consideration of the possibility that these different values could conflict in theory or do conflict in practice.[180] As discussed in Part IV, this development has important consequences for many unresolved legal issues concerning international commercial arbitration in U.S. courts. The next section discusses the Court's recent embrace of arbitration's essentialist values and hostility to litigation, to the exclusion of other values that are critically important to international commercial arbitration.

Syllabus

JONES *v.* FLOWERS ET AL.

CERTIORARI TO THE SUPREME COURT OF ARKANSAS

No. 04–1477. Argued January 17, 2006—Decided April 26, 2006

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Before a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner "notice and opportunity for hearing appropriate to the nature of the case." *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313 (1950). We granted certiorari to determine whether, when notice of a tax sale is mailed to the owner and returned undelivered, the government must take additional reasonable steps to provide notice before taking the owner's property.

I

In 1967, petitioner Gary Jones purchased a house at 717 North Bryan Street in Little Rock, Arkansas. He lived in the house with his wife until they separated in 1993. Jones then moved into an apartment in Little Rock, and his wife continued to live in the North Bryan Street house. Jones paid his mortgage each month for 30 years, and the mortgage company paid Jones' property taxes. After Jones paid off his mortgage in 1997, the property taxes went unpaid, and the property was certified as delinquent.

In April 2000, respondent Mark Wilcox, the Commissioner of State Lands (Commissioner), attempted to notify Jones of his tax delinquency, and his right to redeem the property, by mailing a certified letter to Jones at the North Bryan Street address. See Ark. Code Ann. §26–37–301 (1997). The packet of information stated that unless Jones redeemed the property, it would be subject to public sale two years later on April 17, 2002. See *ibid.* Nobody was home to sign for

the letter, and nobody appeared at the post office to retrieve the letter within the next 15 days. The post office returned the unopened packet to the Commissioner marked "'unclaimed.'" Pet. for Cert. 3.

Two years later, and just a few weeks before the public sale, the Commissioner published a notice of public sale in the Arkansas Democrat Gazette. No bids were submitted, which permitted the State to negotiate a private sale of the property. See § 26–37–202(b). Several months later, respondent Linda Flowers submitted a purchase offer. The Commissioner mailed another certified letter to Jones at the North Bryan Street address, attempting to notify him that his house would be sold to Flowers if he did not pay his taxes. Like the first letter, the second was also returned to the Commissioner marked "unclaimed." Pet. for Cert. 3. Flowers purchased the house, which the parties stipulated in the trial court had a fair market value of $80,000, for $21,042.15. Record 224. Immediately after the 30-day period for postsale redemption passed, see § 26–37–202(e), Flowers had an unlawful detainer notice delivered to the property. The notice was served on Jones' daughter, who contacted Jones and notified him of the tax sale. *Id.*, at 11 (Exh. B).

Jones filed a lawsuit in Arkansas state court against the Commissioner and Flowers, alleging that the Commissioner's failure to provide notice of the tax sale and of Jones' right to redeem resulted in the taking of his property without due process. The Commissioner and Flowers moved for summary judgment on the ground that the two unclaimed letters sent by the Commissioner were a constitutionally adequate attempt at notice, and Jones filed a cross-motion for summary judgment. The trial court granted summary judgment in favor of the Commissioner and Flowers. App. to Pet. for Cert. 12a–13a. It concluded that the Arkansas tax sale statute, which set forth the notice procedure followed by the Commissioner, complied with constitutional due process requirements.

II

A

Due process does not require that a property owner receive actual notice before the government may take his property. *Dusenbery, supra,* at 170. Rather, we have stated that due process requires the government to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane,* 339 U. S., at 314. The Commissioner argues that once the State provided notice reasonably calculated to apprise Jones of the impending tax sale by mailing him a certified letter, due process was satisfied. The Arkansas statutory scheme is reasonably calculated to provide notice, the Commissioner continues, because it provides for notice by certified mail to an address that the property owner is responsible for keeping up to date. See Ark. Code Ann. §26–35–705 (1997). The Commissioner notes this Court's ample precedent condoning notice by mail, see, *e. g., Dusenbery, supra,* at 169; *Tulsa Professional Collection Services, Inc.* v. *Pope,* 485 U. S. 478, 490 (1988); *Mennonite Bd. of Missions* v. *Adams,* 462 U. S. 791, 798 (1983); *Mullane, supra,* at 318–319, and adds that the Arkansas scheme exceeds constitutional requirements by requiring the Commissioner to use certified mail. Brief for Respondent Commissioner 14–15.

It is true that this Court has deemed notice constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent. See, *e. g., Dusenbery, supra,* at 168–169; *Mullane,* 339 U. S., at 314. In each of these cases, the government attempted to provide notice and heard nothing back indicating that anything had gone awry, and we stated that "[t]he reasonableness and hence the constitutional validity of [the] chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected." *Id.,* at 315; see also *Dusenbery, supra,* at 170. But we have never addressed whether due process entails further responsibility when the government becomes aware prior to the taking that its attempt at notice has failed. That is a new wrinkle, and we have explained that the "notice required will vary with circumstances and conditions." *Walker* v. *City of Hutchinson,* 352 U. S. 112, 115 (1956). The question presented is whether such knowledge on the government's part is a "circumstance and condition" that varies the "notice required."

In *Mullane*, we stated that "when notice is a person's due . . . [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it," 339 U. S., at 315, and that assessing the adequacy of a particular form of notice requires balancing the "interest of the State" against "the individual interest sought to be protected by the Fourteenth Amendment," *id.*, at 314. Our leading cases on notice have evaluated the adequacy of notice given to beneficiaries of a common trust fund, *Mullane, supra;* a mortgagee, *Mennonite*, 462 U. S. 791; owners of seized cash and automobiles, *Dusenbery*, 534 U. S. 161; *Robinson* v. *Hanrahan*, 409 U. S. 38 (1972) *(per curiam);* creditors of an estate, *Tulsa Professional*, 485 U. S. 478; and tenants living in public housing, *Greene* v. *Lindsey*, 456 U. S. 444 (1982). In this case, we evaluate the adequacy of notice prior to the State extinguishing a property owner's interest in a home.

We do not think that a person who actually desired to inform a real property owner of an impending tax sale of a house he owns would do nothing when a certified letter sent to the owner is returned unclaimed. If the Commissioner prepared a stack of letters to mail to delinquent taxpayers, handed them to the postman, and then watched as the departing postman accidentally dropped the letters down a storm drain, one would certainly expect the Commissioner's office to prepare a new stack of letters and send them again. No one "desirous of actually informing" the owners would simply shrug his shoulders as the letters disappeared and say "I tried." Failure to follow up would be unreasonable, despite the fact that the letters were reasonably calculated to reach their intended recipients when delivered to the postman.

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foreclosure by the Secretary of Housing and Urban Development); §3758(2)(B)(ii) (requiring that notice be posted on the property if occupants are unknown).

By the same token, when a letter is returned by the post office, the sender will ordinarily attempt to resend it, if it is practicable to do so. See *Small* v. *United States*, 136 F. 3d 1334, 1337 (CADC 1998). This is especially true when, as here, the subject matter of the letter concerns such an important and irreversible prospect as the loss of a house. Although the State may have made a reasonable calculation of how to reach Jones, it had good reason to suspect when the notice was returned that Jones was "no better off than if the notice had never been sent." *Malone*, 614 A. 2d, at 37. Deciding to take no further action is not what someone "desirous of actually informing" Jones would do; such a person would take further reasonable steps if any were available.

In prior cases, we have required the government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case. In *Robinson* v. *Hanrahan*, we held that notice of forfeiture proceedings sent to a vehicle owner's home address was inadequate when the State knew that the property owner was in prison. 409 U. S., at 40. In *Covey* v. *Town of Somers*, 351 U. S. 141 (1956), we held that notice of foreclosure by mailing, posting, and publication was inadequate when town officials knew that the property owner was incompetent and without a guardian's protection. *Id.*, at 146–147.

The Commissioner points out that in these cases, the State was aware of such information *before* it calculated how best to provide notice. But it is difficult to explain why due process would have settled for something less if the government had learned after notice was sent, but before the taking occurred, that the property owner was in prison or was incompetent. Under *Robinson* and *Covey*, the government's knowledge that notice pursuant to the normal procedure was ineffective triggered an obligation on the government's part to take additional steps to effect notice. That knowledge was one of the "practicalities and peculiarities of the case,"

Mullane, supra, at 314–315, that the Court took into account in determining whether constitutional requirements were met. It should similarly be taken into account in assessing the adequacy of notice in this case. The dissent dismisses the State's knowledge that its notice was ineffective as "learned long after the fact," *post,* at 246, n. 5 (opinion of THOMAS, J.), but the notice letter was promptly returned to the State two to three weeks after it was sent, and the Arkansas statutory regime precludes the State from taking the property for two *years* while the property owner may exercise his right to redeem, see Ark. Code Ann. §26–37–301 (Supp. 2005).

It is certainly true, as the Commissioner and Solicitor General contend, that the failure of notice in a specific case does not establish the inadequacy of the attempted notice; in that sense, the constitutionality of a particular procedure for notice is assessed *ex ante,* rather than *post hoc.* But if a feature of the State's chosen procedure is that it promptly provides additional information to the government about the effectiveness of notice, it does not contravene the *ex ante* principle to consider what the government does with that information in assessing the adequacy of the chosen procedure. After all, the State knew *ex ante* that it would promptly learn whether its effort to effect notice through certified mail had succeeded. It would not be inconsistent with the approach the Court has taken in notice cases to ask, with respect to a procedure under which telephone calls were placed to owners, what the State did when no one answered. Asking what the State does when a notice letter is returned unclaimed is not substantively different.

Jones should have been more diligent with respect to his property, no question. People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property. But before forcing a citizen to satisfy his debt by forfeiting his property, due process requires the government to provide adequate notice of the impending taking. U. S. Const., Amdt. 14; *Mennonite, supra,* at 799.

B

In response to the returned form suggesting that Jones had not received notice that he was about to lose his property, the State did—nothing. For the reasons stated, we conclude the State should have taken additional reasonable steps to notify Jones, if practicable to do so. The question remains whether there were any such available steps. While "[i]t is not our responsibility to prescribe the form of service that the [government] should adopt," *Greene,* 456 U. S., at 455, n. 9, if there were no reasonable additional steps the government could have taken upon return of the unclaimed notice letter, it cannot be faulted for doing nothing.

We think there were several reasonable steps the State could have taken. What steps are reasonable in response to new information depends upon what the new information reveals. The return of the certified letter marked "unclaimed" meant either that Jones still lived at 717 North Bryan Street, but was not home when the postman called and did not retrieve the letter at the post office, or that Jones no longer resided at that address. One reasonable step primarily addressed to the former possibility would be for the State to resend the notice by regular mail, so that a signature was not required. The Commissioner says that use of certified mail makes actual notice more likely, because requiring the recipient's signature protects against misdelivery. But that is only true, of course, when someone is home to sign for the letter, or to inform the mail carrier that he has arrived at the wrong address. Otherwise, "[c]ertified

mail is dispatched and handled in transit as ordinary mail," United States Postal Service, Domestic Mail Manual § 503.3.2.1 (Mar. 16, 2006), and the use of certified mail might make actual notice less likely in some cases—the letter cannot be left like regular mail to be examined at the end of the day, and it can only be retrieved from the post office for a specified period of time. Following up with regular mail might also increase the chances of actual notice to Jones if—as it turned out—he had moved. Even occupants who ignored certified mail notice slips addressed to the owner (if any had been left) might scrawl the owner's new address on the notice packet and leave it for the postman to retrieve, or notify Jones directly.

Other reasonable followup measures, directed at the possibility that Jones had moved as well as that he had simply not retrieved the certified letter, would have been to post notice on the front door, or to address otherwise undeliverable mail to "occupant." Most States that explicitly outline additional procedures in their tax sale statutes require just such steps. See n. 2, *supra*. Either approach would increase the likelihood that the owner would be notified that he was about to lose his property, given the failure of a letter deliverable only to the owner in person. That is clear in the case of an owner who still resided at the premises. It is also true in the case of an owner who has moved: Occupants who might disregard a certified mail slip not addressed to them are less likely to ignore posted notice, and a letter addressed to them (even as "occupant") might be opened and read. In either case, there is a significant chance the occupants will alert the owner, if only because a change in ownership could well affect their own occupancy. In fact, Jones first learned of the State's effort to sell his house when he was alerted by one of the occupants—his daughter—after she was served with an unlawful detainer notice.

Jones believes that the Commissioner should have searched for his new address in the Little Rock phonebook

and other government records such as income tax rolls. We do not believe the government was required to go this far. As the Commissioner points out, the return of Jones' mail marked "unclaimed" did not necessarily mean that 717 North Bryan Street was an incorrect address; it merely informed the Commissioner that no one appeared to sign for the mail before the designated date on which it would be returned to the sender. An open-ended search for a new address—especially when the State obligates the taxpayer to keep his address updated with the tax collector, see Ark. Code Ann. §26–35–705 (1997)—imposes burdens on the State significantly greater than the several relatively easy options outlined above.

* * *

There is no reason to suppose that the State will ever be less than fully zealous in its efforts to secure the tax revenue it needs. The same cannot be said for the State's efforts to ensure that its citizens receive proper notice before the State takes action against them. In this case, the State is exerting extraordinary power against a property owner—taking and selling a house he owns. It is not too much to insist that the State do a bit more to attempt to let him know about it when the notice letter addressed to him is returned unclaimed.

The Commissioner's effort to provide notice to Jones of an impending tax sale of his house was insufficient to satisfy due process given the circumstances of this case. The judgment of the Arkansas Supreme Court is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

Venue Problems

1. Peter and Dennis are in a car accident. Peter is a Massachusetts citizen. Dennis from New York and his home is in Brooklyn, which is in the Eastern District of New York. The accident occurred in Maine. Assume that Peter brings a lawsuit in federal court and that his claim is for more than $75,000.

   (A) In what federal district courts would venue be proper?

   (B) Now assume Peter decides to sue Dennis in the United States District Court for the District of Vermont. (There is only one district in Vermont.) Assume Dennis resides in Vermont while attending college there. Is venue proper in Vermont?

   (C) Now assume Dennis is a citizen of France. Where would venue be proper now? Would it matter if he were admitted for permanent residence? See 28 U.S.C. 1332(a).

   (D) Now assume Peter sues Dennis in the United States District Court for the District of Massachusetts. (There is only one federal district in MA.) If Peter sues Dennis while Dennis is in Massachusetts, on vacation, is venue proper there?

2. Suppose Peter decides to sue Car, Inc., the manufacturer of her car, alleging defective design and manufacture of the vehicle. Car, Inc. is incorporated in Delaware with its headquarters and a factory in the Western District of Michigan. It also has factories in the Western District of Tennessee and the Northern District of Georgia. Assume that Peter's claim exceeds $75,000.

   (A) In Peter v. Car, Inc. where is venue proper?

   (B) Assume that Car, Inc. did not acquire the factory in Tennessee until after the accident between Peter and Dennis. In Peter v. Car, Inc. would venue be proper in the Western District of Tennessee?

   (C) In addition to the facts described above, Car, Inc. is licensed to do business in New York and has an agent for service of process there. The agent is located in the Western District of New York. Currently, Car, Inc. has no operations in New York. In Peter v. Car, Inc. would venue be proper in the Western District of New York? The Eastern District of New York?

   (D) Assume that the facts are as described in 2(C). Peter sues Dennis and Car, Inc. Would venue be proper in the Western District of Michigan? The Eastern District of New York? The Western District of New York? The Western District of Tennessee?

3. Assume that in Questions 1 and 2 above there was federal question jurisdiction. Would this change any of your answers?

banks of any unauthorized transactions within 60 days of receiving the bank statements containing the transaction to avoid liability for subsequent transactions. 12 C.F.R. § 205.6(b)(3). If the consumer fails to report within 60 days, there is no requirement that they be reimbursed for losses that could have been prevented if they had reported the unauthorized transaction. 15 U.S.C. § 1693g(a). Had Mr. Binns told BB & T of the unauthorized transactions, BB & T would undoubtedly have taken preventative measures, which was in fact what happened in March 2017 shortly after Mr. Binns submitted his affidavit. Moreover, EFTA's statute of limitations precludes claims that are filed more than one year from the occurrence of the violation, precluding recovery for transactions that occurred more than one year prior to the filing of this action (transactions 1-220). 15 U.S.C. § 1693m(g). Therefore, EFTA would similarly preclude all of the unauthorized transactions and entitle BB & T to summary judgment.

IV. CONCLUSION

Based on the foregoing, Defendant's Motion for Summary Judgment is granted. An appropriate order follows.

Hansjoerg DARIZ, Plaintiff,

v.

REPUBLIC AIRLINE INC and Republic Airways Holdings Inc., Defendants.

CIVIL ACTION NO. 18-4883

United States District Court, E.D. Pennsylvania.

Filed May 1, 2019

Background: Employee, an individual over the age of 40, brought state action against employer-airline, asserting claims of age discrimination in violation of the Age Discrimination in Employment Act (ADEA) and intentional infliction of emotional distress (IIED) following the termination of his employment. Employer removed the suit to federal court, and then filed motion to transfer venue to the Southern District of Indiana.

Holding: The District Court, Rufe, J., held that transfer of venue from Eastern District of Pennsylvania to Southern District of Indiana was not appropriate.

Motion denied.

1. Federal Courts ⇐2931

District court may transfer the venue of any civil action for the convenience of parties and witnesses or in the interests of justice, to any other district where it might have been brought. 28 U.S.C.A. § 1404(a).

2. Federal Courts ⇐2944

Burden rests with the party moving for transfer of venue to prove that transfer is appropriate. 28 U.S.C.A. § 1404(a).

3. Federal Courts ⇐2945

As a threshold matter in deciding a motion to transfer venue, the district court must first assess whether the action could have been brought in the proposed transferee district. 28 U.S.C.A. § 1404(a).

4. Federal Courts ⇐2941

If the district court determines that the action could have been brought in the proposed transferee district, then the court considers whether the party moving to transfer venue has demonstrated that the action would be more convenient and would better serve the interests of justice by a transfer to the proposed district. 28 U.S.C.A. § 1404(a).

5. Federal Courts ⇐2905, 2906

Private interests that the court considers on a motion to transfer venue on ground of convenience of parties and witnesses, in interest of justice, include plaintiff's forum preference as manifested in the original choice; the defendant's preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses, but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and the location of books and records, similarly limited to the extent that the files could not be produced in the alternative forum. 28 U.S.C.A. § 1404(a).

6. Federal Courts ⇐2905

Public interests that the court considers on a motion to transfer venue on ground of convenience of parties and witnesses, in interest of justice, include the enforceability of any judgment; practical considerations that could make the trial easy, expeditious or inexpensive; relative administrative difficulty resulting from court congestion; local interest in deciding the controversy; relative importance of public policies; and familiarity of the trial judge with the applicable state law in diversity cases. 28 U.S.C.A. § 1404(a).

7. Federal Courts ⇐2905

Public interests to be balanced in deciding a motion to transfer venue on ground of convenience of parties and witnesses are not necessarily tied to the parties, but instead derive from the interest of justice. 28 U.S.C.A. § 1404(a).

8. Federal Courts ⇐2903

Because the analysis in deciding a motion for transfer of venue on ground of convenience of parties and witnesses, in interest of justice, is flexible and individualized, the district court is vested with broad discretion. 28 U.S.C.A. § 1404(a).

9. Federal Courts ⇐2905

Transferring venue in a case which in effect shifts the inconvenience from the defendant to the plaintiff will not be warranted. 28 U.S.C.A. § 1404(a).

10. Federal Courts ⇐2906

Unless the party moving to transfer venue on ground of convenience of parties and witnesses, in interest of justice, can demonstrate that the relevant factors weigh strongly in its favor, the plaintiff's choice of forum will likely prevail. 28 U.S.C.A. § 1404(a).

11. Federal Courts ⇐2908

Transfer of venue from Eastern District of Pennsylvania to Southern District of Indiana was not appropriate in employee's action against employer-airline, asserting claims of age discrimination in violation of the Age Discrimination in Employment Act (ADEA) and intentional infliction of emotional distress (IIED) following the termination of his employment; employee's forum of choice, which was located only 18 miles from his home, the stark disparity as to the financial and physical resources available to parties, and the overall neutrality regarding the convenience of witnesses and evidence, suggested that a transfer would merely shift the inconvenience of litigation from employer to employee, employer was a national company with offices in both Indiana and Pennsylvania, elements for proving state-law claim of IIED were identical in Pennsylvania and Indiana, and Southern District of Indiana had more pending cases per judge and a longer median time from filing to disposition or to trial for a civil case. 28 U.S.C.A. § 1404(a); Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.

12. Federal Courts ⇐2905

Public interest factors that the court considers on a motion to transfer venue on ground of convenience of parties and witnesses, in interest of justice, such as the enforceability of the judgment, public policies, and the familiarity of the trial judge with the applicable law are neutral when the causes of action at issue arise under federal law. 28 U.S.C.A. § 1404(a).

James G. Lare, Large Law Firm, LLC, Souderton, PA, for Plaintiff.

Frederick A. Tecce, Ice Miller LLP, Philadelphia, PA, for Defendants.

MEMORANDUM OPINION

Rufe, District Judge.

Plaintiff Hansjoerg Dariz filed suit against Defendants Republic Airline Inc. and Republic Airways Holdings Inc. (collectively, "Republic"), asserting claims of age discrimination in violation of the Age Discrimination in Employment Act[1] ("ADEA") and intentional infliction of emotional distress ("IIED") following the termination of his employment. Republic has filed a motion to transfer venue from this Court to the Southern District of Indiana pursuant to 28 U.S.C. § 1404(a). Upon consideration of Republic's motion to transfer venue, and the responses thereto, Republic's motion will be denied for the following reasons.

I. BACKGROUND[2]

Plaintiff is an individual over the age of 40 who resides in Mount Laurel, New Jersey. After many years working in the hotel and restaurant business, Plaintiff decided to pursue his dreams of becoming a professional pilot and eventually was employed as a First Officer for an airline company located in Houston, Texas. As his commute to Houston proved to be inconvenient, he began to search for a different airline company with a crewmember base closer to his New Jersey residence.

A colleague of Plaintiff's had recommended that he apply to Republic, a large Indiana-based regional airline company with an operational office at the Philadelphia International Airport, out of which Republic operates hundreds of flights. After Plaintiff applied to become a First Officer for Republic, Republic flew Plaintiff roundtrip from Philadelphia to Indianapolis for an interview, during which he was told that he would be working at its Philadelphia base if hired and after completing its indoctrination training program. Plaintiff then resigned from his Houston-based job in anticipation of working at Republic's Philadelphia base, and soon thereafter was hired by Republic as a First Officer Trainee.

Republic arranged for Plaintiff to fly to Indiana for training at Republic's headquarters. Within two weeks of training, Plaintiff was told to gather his belongings during the middle of class and in front of his colleagues and was sent to an office, where a human resources representative informed him of his termination of employment. According to Plaintiff, his termination has caused him financial, psychological, and emotional damage.

Plaintiff filed this action in the Philadelphia Court of Common Pleas based on Republic's operations in Philadelphia, and the case was removed to this Court pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446. Republic now moves to transfer venue from this Court to the Southern District of Indiana under 28 U.S.C. § 1404(a).

1. 29 U.S.C. §§ 621, *et seq.*

2. The following facts, unless otherwise noted, are taken from Plaintiff's Complaint and assumed to be true for purposes of the motion.

II. LEGAL STANDARD

[1–4] Pursuant to 28 U.S.C. § 1404(a), a district court may transfer the venue of any civil action for the convenience of parties and witnesses or in the interests of justice, to any other district where it might have been brought.[3] The burden rests with the moving party to prove that transfer is appropriate.[4] As a threshold matter, the court must first assess whether the action could have been brought in the proposed transferee district.[5] Only then can the court consider whether the moving party has demonstrated that the action would be more convenient and would better serve the interests of justice by a transfer to the proposed district.[6]

[5–7] In balancing the convenience of parties and witnesses and the interests of justice listed in § 1404(a), the Third Circuit has identified a number of private and public interest factors to consider in the transfer analysis. Private interests include: "plaintiff's forum preference as manifested in the original choice; the defendant's preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses—but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum)." [7] Public interests include: the "enforceability of any judgment; practical considerations that could make the trial easy, expeditious or inexpensive; relative administrative difficulty resulting from court congestion; local interest in deciding the controversy; relative importance of public policies; and, familiarity of the trial judge with the applicable state law in diversity cases." [8]

[8–10] Because the analysis in deciding a motion for transfer of venue is "flexible and individualized," the district court is vested with broad discretion.[9] A transfer, however, should not be granted liberally.[10] For instance, transferring a case which in effect shifts the inconvenience from the defendant to the plaintiff will not be warranted.[11] Unless the moving party can demonstrate that the relevant factors

3. U.S.C. § 1404(a); *see also Van Dusen v. Barrack*, 376 U.S. 612, 616, 84 S.Ct. 805, 11 L.Ed.2d 945 (1964) (stating that the purpose of § 1404(a) is "to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense" (internal quotation marks and citations omitted)).

4. *Plum Tree, Inc. v. Stockment*, 488 F.2d 754, 756 (3d Cir. 1973); *Shutte v. Armco Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970).

5. *See SKF USA Inc. v. Okkerse*, 992 F.Supp.2d 432 (E.D. Pa. 2014) (citing *Shutte*, 431 F.2d at 24) ("An action may be transferred to another district if (1) venue is proper in the transferee district, and (2) the transferee district can exercise personal jurisdiction over the defendants.").

6. *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995).

7. *Id.* (internal citations omitted).

8. *Connors v. R & S Parts & Servs., Inc.*, 248 F.Supp.2d 394, 395 (E.D. Pa. 2003) (citing *Jumara*, 55 F.3d at 879; *Williams v. Weis Markets, Inc.*, No. 01-4474, 2002 WL 80309, at *1 (E.D. Pa. Jan. 18, 2002)). "[P]ublic interests to be balanced are not necessarily tied to the parties, but instead derive from 'the interest of justice.' " *In re: Howmedica Osteonics Corp.*, 867 F.3d 390, 402 (3d Cir. 2017) (quoting 28 U.S.C. § 1404(a)).

9. *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29, 108 S.Ct. 2239, 101 L.Ed.2d 22 (1988).

10. *Shutte*, 431 F.2d at 25 (internal citation omitted).

11. *See, e.g., Plum Tree, Inc.*, 488 F.2d at 757 n.3 ("Although it would undoubtedly be inconvenient for defendants to have their busi-

weigh strongly in its favor, the plaintiff's choice of forum will likely prevail.[12]

III. DISCUSSION

The parties do not dispute that this case could have been brought in the Southern District of Indiana, as Republic maintains its headquarters in Indianapolis.[13] Thus, the question is whether Republic has met its burden of establishing that private and public interest factors favor transferring venue to the Southern District of Indiana.[14]

A. Private Interest Considerations

[11] Republic has failed to prove that private interest considerations favor transferring this case to the Southern District of Indiana. Plaintiff's forum of choice, the stark disparity as to the financial and physical resources available to parties, and the overall neutrality regarding the convenience of witnesses and evidence, suggest that a transfer would merely shift the inconvenience of litigation from Republic to Plaintiff.

Although Plaintiff's forum of choice is accorded less deference because he resides not in the Eastern District of Pennsylvania but the neighboring District of New Jersey,[15] and the central facts of his lawsuit occurred in the Southern District of Indiana,[16] Plaintiff's preference to bring his action to this Court is nonetheless entitled to significant weight. Certainly, this District is convenient for Plaintiff as it is located only 18 miles from his home, and as Republic has significant operations here, it was logical to file suit in Philadelphia.[17] Furthermore, had Plaintiff not been terminated before completing the training program in Indiana, Plaintiff asserts he would have been based in Philadelphia.[18]

ness in Houston and travel to the Eastern District of Pennsylvania, there is nothing in the transfer motion to indicate that defendants would suffer a greater inconvenience than would plaintiff if the case is transferred to the Southern District of Texas."); *Edwards v. Equifax Info. Servs., LLC*, 313 F.Supp.3d 618, 622 (E.D. Pa. 2018) (collecting cases).

12. *Shutte*, 431 F.2d at 25 ("It is black letter law that a plaintiff's choice of proper forum is a paramount consideration in any determination of a transfer request and that choice [] should not be lightly disturbed." (internal quotation marks and citations omitted)).

13. Compl. ¶ 3. As the ADEA has no special venue provision, claims under the statute are governed by the general venue provision of 28 U.S.C. § 1391, which provides in relevant part that a plaintiff can bring a civil action in "a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located." 28 U.S.C. § 1391(b)(1).

14. *See Unlimited Tech., Inc. v. Leighton*, 266 F.Supp.3d 787, 796 (E.D. Pa. 2017) (citing *Shutte*, 431 F.2d at 24–25) ("[A] motion seeking transfer should not be granted without a careful weighing of factors favoring and disfavoring transfer.").

15. Compl. ¶ 2; *see Weber v. Basic Comfort Inc.*, 155 F.Supp.2d 283, 285 (E.D. Pa. 2001) (citation omitted) ("[W]here Plaintiff chooses a forum other than her state of residence, her choice is given less weight.").

16. *See Logopaint A/S v. 3D Sports Signs SI*, 163 F.Supp.3d 260, 266 (E.D. Pa. 2016) (internal quotation marks and citation omitted) ("[W]hen the central facts of a lawsuit occur outside the forum state, Plaintiff's choice of venue is accorded less deference."). Plaintiff's interview, training, and termination all occurred at Republic's headquarters in Indiana. Compl. ¶¶ 8-9, 25.

17. Br. in Supp. Pl.'s Resp. to Def.'s Mot. to Transfer Venue [Doc. No. 5-1] at 2; *see also Pro Spice, Inc. v. Omni Trade Grp., Inc.*, 173 F.Supp.2d 336, 341 (E.D. Pa. 2001) (holding that although the plaintiff was a New Jersey corporation, the fact that it chose to file suit in the Eastern District of Pennsylvania was in part because of its geographical convenience, and therefore the choice of venue was entitled to significant weight).

18. Compl. ¶¶ 6, 7, 25. Although Republic's preference is also a private factor to consider, this factor "in reality does little more than frame the issue, because there would be no

In addition, Republic not only concedes that the relative financial condition and physical resources of the parties favors Plaintiff,[19] but it also has failed to establish that either the convenience of witnesses, to the extent that they may be unavailable for trial, or the location of evidence, weighs in favor of transfer. Although Republic contends that there are several employees in Indiana who may act as witnesses in this case, this argument is entitled to less weight when the defendant is a transportation company and has little difficulty in bringing witnesses to the forum,[20] and particularly where the company is already "obligated to procure the attendance of its own employees for trial." [21] To the extent that some witnesses are former employees, Republic has not provided evidence that they would actually be unavailable for trial if the case were to remain in the Eastern District of Pennsylvania., and thus although this factor may weigh in favor of transfer, it does so only slightly.[22] Thus, Republic has not demonstrated that overall, the private interest factors weigh in favor of transferring this case to the Southern District of Indiana.

B. Public Interest Considerations

[12] The public interest factors also do not favor transfer. "[F]actors such as the enforceability of the judgment, public policies, and the familiarity of the trial judge with the applicable law are neutral [when] the causes of action at issue arise under federal law." [23] As Plaintiff's primary contention is based on age discrimination, which arises from the ADEA, these public factors carry no weight for that claim. Nor has Republic shown that litigating a state-law claim of IIED within this District would affect the enforceability of the judgment,[24] or that it prevents a novel issue of state law, as the elements for proving such a claim are identical in Pennsylvania and Indiana.[25]

motion to transfer *unless* the defendant prefers a different forum." *Edwards*, 313 F.Supp.3d at 622.

19. Br. in Supp. of Def.'s Mot. to Transfer Venue [Doc. No. 3-1] at 6.

20. *Harris v. Nat'l R.R. Passenger Corp.*, 979 F.Supp. 1052, 1054 (E.D. Pa. 1997); *Kielczynski v. Consol Rail. Corp.*, 837 F.Supp. 687, 689 (E.D. Pa. 1993).

21. *Coppola v. Ferrellgas, Inc.*, 250 F.R.D. 195, 199 (E.D. Pa. 2008) (citation omitted).

22. Republic does argue that these former employees "stand beyond the subpoena power of this court for attendance at a trial in [the Eastern District of Pennsylvania." Br. in Supp. of Def.'s Mot. to Transfer Venue [Doc. No. 3-1] at 6. Indeed, district courts in this Circuit have held that the convenience of witnesses weighs in a moving party's favor where the party establishes that witnesses reside outside of the current forum's subpoena power *and* where there is reason to believe that those witnesses will refuse to testify without a subpoena. *Mitel Networks Corp. v. Facebook, Inc.*, 943 F.Supp.2d 463, 473 (D. Del. 2013) (collecting cases). However, "simply stating that a witness would be unavailable because he or she is outside the subpoena power of a court is, without more, insufficient." *Id.*

As a final matter regarding private interest considerations, Republic concedes that "the evidence in this case can be produced in either fora." Def.'s Br. in Supp. of Mot. to Transfer Venue [Doc. No. 3-1] at 6.

23. *Scanlan v. Am. Airlines Grp., Inc.*, 366 F.Supp.3d 673, No. 18-4040, 2019 WL 1455472, at *4 (E.D. Pa. Apr. 2, 2019) (quoting *Samsung SDI Co. v. Matsushita Elec. Indus. Co.*, 524 F.Supp.2d 628, 633 (W.D. Pa. 2006)).

24. Republic concedes that "the judgment enforcement factor does not favor either party." Def.'s Br. in Supp. of Mot. to Transfer Venue [Doc. No. 3-1] at 6.

25. *Compare Williams v. Tharp*, 914 N.E.2d 756, 769 n.4 (Ind. 2009) (quoting Restatement (Second) of Torts § 46 (1965)) (recognizing a claim of IIED, which occurs when "one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another"), *with Bartanus v. Lis*, 332 Pa.Super. 48, 480 A.2d 1178, 1184 (1984)

The only public factor that slightly favors transferring is the Southern District of Indiana's local interest in adjudicating this action since the central facts of the case occurred there and several witnesses are located there. However, this factor carries less weight because this case is primarily concerned with a federal ADEA claim brought against a national company with offices in both Indiana and Pennsylvania, and Plaintiff was only in Indiana for a brief time; his employment allegedly would have ultimately been based in Philadelphia, not in Indiana.[26]

Finally, the relative congestion of the courts and practical considerations do not favor transfer. Although Republic argues that Federal Judicial Caseload Statistics show that the Southern District of Indiana has far fewer new case filings than the Eastern District of Pennsylvania,[27] the most recent statistics also show, more significantly, that as of June 30, 2018, the Southern District of Indiana had more pending cases per judge and a longer median time from filing to disposition or to trial for a civil case.[28] Accordingly, the relative congestion of the courts and the practical considerations of expediency appear to favor heavily *against* transfer, and the public interest considerations overall are therefore only neutral, at best. Thus, Republic has failed to meet its burden of establishing that the public factors favor Transfer.

IV. CONCLUSION

For the foregoing reasons, Republic's motion to transfer venue to the Southern District of Indiana will be denied. An appropriate order follows.

(quoting Restatement (Second) of Torts § 46 (1965)) (recognizing a claim of IIED, which occurs when "[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another").

26. Other courts in this District have transferred cases based on employment discrimination claims that occurred outside the state, in part because there was a local community interest in the controversy which occurred in the proposed transferee district. *Lamusta v. Lawson Mardon Wheaton, Inc.*, No. 99-3931, 2000 WL 274013, at *3 (E.D. Pa. Mar. 13, 2000) ("Resolution of the employment discrimination...claim[] particularly would be most meaningful and salutary in the community in which these unlawful acts were allegedly perpetrated, in which the alleged perpetrator maintains a workforce and in which the alleged victim was employed and resides."). In this case, however, Plaintiff was only in Indiana for training and expected to be based in Philadelphia.

27. Def.'s Br. in Supp. Of Mot. to Transfer Venue [Doc. No. 3-1] at 7.

28. U.S. District Courts, Combined Civil and Criminal Federal Court Management Statistics, National Judicial Caseload Profile (June 30, 2018),

https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0630.2018.pdf (last visited May 1, 2019).

SUPREME COURT OF THE UNITED STATES

No. 12–929

ATLANTIC MARINE CONSTRUCTION COMPANY, INC., PETITIONER *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[December 3, 2013]

JUSTICE ALITO delivered the opinion of the Court.

The question in this case concerns the procedure that is available for a defendant in a civil case who seeks to enforce a forum-selection clause. We reject petitioner's argument that such a clause may be enforced by a motion to dismiss under 28 U. S. C. §1406(a) or Rule 12(b)(3) of the Federal Rules of Civil Procedure. Instead, a forum-selection clause may be enforced by a motion to transfer under §1404(a) (2006 ed., Supp. V), which provides that "[f]or 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 or to any district or division to which all parties have consented." When a defendant files such a motion, we conclude, a district court should transfer the case unless extraordinary circumstances unrelated to the convenience of the parties clearly disfavor a transfer. In the present case, both the District Court and the Court of Appeals misunderstood the standards to be applied in adjudicating a §1404(a) motion in a case involving a forum-

selection clause, and we therefore reverse the decision below.

I

Petitioner Atlantic Marine Construction Co., a Virginia corporation with its principal place of business in Virginia, entered into a contract with the United States Army Corps of Engineers to construct a child-development center at Fort Hood in the Western District of Texas. Atlantic Marine then entered into a subcontract with respondent J-Crew Management, Inc., a Texas corporation, for work on the project. This subcontract included a forum-selection clause, which stated that all disputes between the parties "shall be litigated in the Circuit Court for the City of Norfolk, Virginia, or the United States District Court for the Eastern District of Virginia, Norfolk Division." *In re Atlantic Marine Constr. Co.*, 701 F. 3d 736, 737–738 (CA5 2012).

When a dispute about payment under the subcontract arose, however, J-Crew sued Atlantic Marine in the Western District of Texas, invoking that court's diversity jurisdiction. Atlantic Marine moved to dismiss the suit, arguing that the forum-selection clause rendered venue in the Western District of Texas "wrong" under §1406(a) and "improper" under Federal Rule of Civil Procedure 12(b)(3). In the alternative, Atlantic Marine moved to transfer the case to the Eastern District of Virginia under §1404(a). J-Crew opposed these motions.

The District Court denied both motions. It first concluded that §1404(a) is the exclusive mechanism for enforcing a forum-selection clause that points to another federal forum. The District Court then held that Atlantic Marine bore the burden of establishing that a transfer would be appropriate under §1404(a) and that the court would "consider a nonexhaustive and nonexclusive list of public and private interest factors," of which the "forum-

selection clause [was] only one such factor." *United States ex rel. J-Crew Management, Inc.* v. *Atlantic Marine Constr. Co.*, 2012 WL 8499879, *5 (WD Tex., Apr. 6, 2012). Giving particular weight to its findings that "compulsory process will not be available for the majority of J-Crew's witnesses" and that there would be "significant expense for those willing witnesses," the District Court held that Atlantic Marine had failed to carry its burden of showing that transfer "would be in the interest of justice or increase the convenience to the parties and their witnesses." *Id.*, at *7–*8; see also 701 F. 3d, at 743.

Atlantic Marine petitioned the Court of Appeals for a writ of mandamus directing the District Court to dismiss the case under §1406(a) or to transfer the case to the Eastern District of Virginia under §1404(a). The Court of Appeals denied Atlantic Marine's petition because Atlantic Marine had not established a "'clear and indisputable'" right to relief. *Id.*, at 738; see *Cheney* v. *United States Dist. Court for D. C.*, 542 U. S. 367, 381 (2004) (mandamus "petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable" (internal quotation marks omitted; brackets in original)). Relying on *Stewart Organization, Inc.* v. *Ricoh Corp.*, 487 U. S. 22 (1988), the Court of Appeals agreed with the District Court that §1404(a) is the exclusive mechanism for enforcing a forum-selection clause that points to another federal forum when venue is otherwise proper in the district where the case was brought. See 701 F. 3d, at 739–741.[1] The court stated, however, that if a forum-selection clause points to a nonfederal forum, dismissal under Rule 12(b)(3) would be the correct mechanism to

[1]Venue was otherwise proper in the Western District of Texas because the subcontract at issue in the suit was entered into and was to be performed in that district. See *United States ex rel. J-Crew Management, Inc.* v. *Atlantic Marine Constr. Co.*, 2012 WL 8499879, *5 (WD Tex., Apr. 6, 2012) (citing 28 U. S. C. §1391(b)(2)).

enforce the clause because §1404(a) by its terms does not permit transfer to any tribunal other than another federal court. *Id.*, at 740. The Court of Appeals then concluded that the District Court had not clearly abused its discretion in refusing to transfer the case after conducting the balance-of-interests analysis required by §1404(a). *Id.*, at 741–743; see *Cheney*, *supra*, at 380 (permitting mandamus relief to correct "a clear abuse of discretion" (internal quotation marks omitted)). That was so even though there was no dispute that the forum-selection clause was valid. See 701 F. 3d, at 742; *id.*, at 744 (concurring opinion). We granted certiorari. 569 U. S. ___ (2013).

II

Atlantic Marine contends that a party may enforce a forum-selection clause by seeking dismissal of the suit under §1406(a) and Rule 12(b)(3). We disagree. Section 1406(a) and Rule 12(b)(3) allow dismissal only when venue is "wrong" or "improper." Whether venue is "wrong" or "improper" depends exclusively on whether the court in which the case was brought satisfies the requirements of federal venue laws, and those provisions say nothing about a forum-selection clause.

A

Section 1406(a) provides that "[t]he district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." Rule 12(b)(3) states that a party may move to dismiss a case for "improper venue." These provisions therefore authorize dismissal only when venue is "wrong" or "improper" in the forum in which it was brought.

This question—whether venue is "wrong" or "improper"—is

generally governed by 28 U. S. C. §1391 (2006 ed., Supp. V).[2] That provision states that "[e]xcept as otherwise provided by *law* . . . this section *shall* govern the venue of *all civil actions* brought in district courts of the United States." §1391(a)(1) (emphasis added). It further provides that "[a] civil action may be brought in—(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." §1391(b).[3] When venue is challenged, the court must determine whether the case falls within one of the three categories set out in §1391(b). If it does, venue is proper; if it does not, venue is improper, and the case must be dismissed or transferred under §1406(a). Whether the parties entered into a contract containing a forum-selection clause has no bearing on whether a case falls into one of the categories of cases listed in §1391(b). As a result, a case filed in a district that falls within §1391 may not be dismissed under §1406(a) or Rule 12(b)(3).

Petitioner's contrary view improperly conflates the special statutory term "venue" and the word "forum." It is certainly true that, in some contexts, the word "venue" is used synonymously with the term "forum," but §1391 makes clear that venue in "all civil actions" must be determined in accordance with the criteria outlined in that

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[2]Section 1391 governs "venue generally," that is, in cases where a more specific venue provision does not apply. Cf., *e.g.*, §1400 (identifying proper venue for copyright and patent suits).

[3]Other provisions of §1391 define the requirements for proper venue in particular circumstances.

section. That language cannot reasonably be read to allow judicial consideration of other, extrastatutory limitations on the forum in which a case may be brought.

The structure of the federal venue provisions confirms that they alone define whether venue exists in a given forum. In particular, the venue statutes reflect Congress' intent that venue should always lie in *some* federal court whenever federal courts have personal jurisdiction over the defendant. The first two paragraphs of §1391(b) define the preferred judicial districts for venue in a typical case, but the third paragraph provides a fallback option: If no other venue is proper, then venue will lie in "*any judicial district* in which any defendant is subject to the court's personal jurisdiction" (emphasis added). The statute thereby ensures that so long as a federal court has personal jurisdiction over the defendant, venue will always lie somewhere. As we have previously noted, "Congress does not in general intend to create venue gaps which take away with one hand what Congress has given by way of jurisdictional grant with the other." *Smith* v. *United States*, 507 U. S. 197, 203 (1993) (internal quotation marks omitted). Yet petitioner's approach would mean that in some number of cases—those in which the forum-selection clause points to a state or foreign court—venue would not lie in any federal district. That would not comport with the statute's design, which contemplates that venue will always exist in some federal court.

The conclusion that venue is proper so long as the requirements of §1391(b) are met, irrespective of any forum-selection clause, also follows from our prior decisions construing the federal venue statutes. In *Van Dusen* v. *Barrack*, 376 U. S. 612 (1964), we considered the meaning of §1404(a), which authorizes a district court to "transfer any civil action to any other district or division where it might have been brought." The question in *Van Dusen* was whether §1404(a) allows transfer to a district in which

venue is proper under §1391 but in which the case could not have been pursued in light of substantive state-law limitations on the suit. See *id.*, at 614–615. In holding that transfer is permissible in that context, we construed the phrase "where it might have been brought" to refer to "the federal laws delimiting the districts in which such an action 'may be brought,'" *id.*, at 624, noting that "the phrase 'may be brought' recurs at least 10 times" in §§1391–1406, *id.*, at 622. We perceived "no valid reason for reading the words 'where it might have been brought' to narrow the range of permissible federal forums beyond those permitted by federal venue statutes." *Id.*, at 623.

As we noted in *Van Dusen*, §1406(a) "shares the same statutory context" as §1404(a) and "contain[s] a similar phrase." *Id.*, at 621, n. 11. It instructs a court to transfer a case from the "wrong" district to a district "in which it could have been brought." The most reasonable interpretation of that provision is that a district cannot be "wrong" if it is one in which the case could have been brought under §1391. Under the construction of the venue laws we adopted in *Van Dusen*, a "wrong" district is therefore a district other than "those districts in which Congress has provided *by its venue statutes* that the action 'may be brought.'" *Id.*, at 618 (emphasis added). If the federal venue statutes establish that suit may be brought in a particular district, a contractual bar cannot render venue in that district "wrong."

Our holding also finds support in *Stewart*, 487 U. S. 22. As here, the parties in *Stewart* had included a forum-selection clause in the relevant contract, but the plaintiff filed suit in a different federal district. The defendant had initially moved to transfer the case or, in the alternative, to dismiss for improper venue under §1406(a), but by the time the case reached this Court, the defendant had abandoned its §1406(a) argument and sought only transfer under §1404(a). We rejected the plaintiff's argument that

state law governs a motion to transfer venue pursuant to a forum-selection clause, concluding instead that "federal law, specifically 28 U. S. C. §1404(a), governs the District Court's decision whether to give effect to the parties' forum-selection clause." *Id.*, at 32. We went on to explain that a "motion to transfer under §1404(a) . . . calls on the district court to weigh in the balance a number of case-specific factors" and that the "presence of a forum-selection clause . . . will be a significant factor that figures centrally in the district court's calculus." *Id.*, at 29.

The question whether venue in the original court was "wrong" under §1406(a) was not before the Court, but we wrote in a footnote that "[t]he parties do not dispute that the District Court properly denied the motion to dismiss the case for improper venue under 28 U. S. C. §1406(a) because respondent apparently does business in the Northern District of Alabama. See 28 U. S. C. §1391(c) (venue proper in judicial district in which corporation is doing business)." *Id.*, at 28, n. 8. In other words, because §1391 made venue proper, venue could not be "wrong" for purposes of §1406(a). Though *dictum*, the Court's observation supports the holding we reach today. A contrary view would all but drain *Stewart* of any significance. If a forum-selection clause rendered venue in all other federal courts "wrong," a defendant could always obtain automatic dismissal or transfer under §1406(a) and would not have any reason to resort to §1404(a). *Stewart*'s holding would be limited to the presumably rare case in which the defendant inexplicably fails to file a motion under §1406(a) or Rule 12(b)(3).

B

Although a forum-selection clause does not render venue in a court "wrong" or "improper" within the meaning of §1406(a) or Rule 12(b)(3), the clause may be enforced through a motion to transfer under §1404(a). That provi-

sion states that "[f]or 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 or to any district or division to which all parties have consented." Unlike §1406(a), §1404(a) does not condition transfer on the initial forum's being "wrong." And it permits transfer to any district where venue is also proper (*i.e.*, "where [the case] might have been brought") or to any other district to which the parties have agreed by contract or stipulation.

Section 1404(a) therefore provides a mechanism for enforcement of forum-selection clauses that point to a particular federal district. And for the reasons we address in Part III, *infra*, a proper application of §1404(a) requires that a forum-selection clause be "given controlling weight in all but the most exceptional cases." *Stewart*, *supra*, at 33 (KENNEDY, J., concurring).

Atlantic Marine argues that §1404(a) is not a suitable mechanism to enforce forum-selection clauses because that provision cannot provide for transfer when a forum-selection clause specifies a state or foreign tribunal, see Brief for Petitioner 18–19, and we agree with Atlantic Marine that the Court of Appeals failed to provide a sound answer to this problem. The Court of Appeals opined that a forum-selection clause pointing to a nonfederal forum should be enforced through Rule 12(b)(3), which permits a party to move for dismissal of a case based on "improper venue." 701 F. 3d, at 740. As Atlantic Marine persuasively argues, however, that conclusion cannot be reconciled with our construction of the term "improper venue" in §1406 to refer only to a forum that does not satisfy federal venue laws. If venue is proper under federal venue rules, it does not matter for the purpose of Rule 12(b)(3) whether the forum-selection clause points to a federal or a nonfederal forum.

Instead, the appropriate way to enforce a forum-

selection clause pointing to a state or foreign forum is through the doctrine of *forum non conveniens*. Section 1404(a) is merely a codification of the doctrine of *forum non conveniens* for the subset of cases in which the transferee forum is within the federal court system; in such cases, Congress has replaced the traditional remedy of outright dismissal with transfer. See *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Corp.*, 549 U. S. 422, 430 (2007) ("For the federal court system, Congress has codified the doctrine . . ."); see also notes following §1404 (Historical and Revision Notes) (Section 1404(a) "was drafted in accordance with the doctrine of forum non conveniens, permitting transfer to a more convenient forum, even though the venue is proper"). For the remaining set of cases calling for a nonfederal forum, §1404(a) has no application, but the residual doctrine of *forum non conveniens* "has continuing application in federal courts." *Sinochem*, 549 U. S., at 430 (internal quotation marks and brackets omitted); see also *ibid.* (noting that federal courts invoke *forum non conveniens* "in cases where the alternative forum is abroad, and perhaps in rare instances where a state or territorial court serves litigational convenience best" (internal quotation marks and citation omitted)). And because both §1404(a) and the *forum non conveniens* doctrine from which it derives entail the same balancing-of-interests standard, courts should evaluate a forum-selection clause pointing to a nonfederal forum in the same way that they evaluate a forum-selection clause pointing to a federal forum. See *Stewart*, 487 U. S., at 37 (SCALIA, J., dissenting) (Section 1404(a) "did not change 'the relevant factors' which federal courts used to consider under the doctrine of *forum non conveniens*" (quoting *Norwood* v. *Kirkpatrick*, 349 U. S. 29, 32 (1955))).

C

An *amicus* before the Court argues that a defendant in a

breach-of-contract action should be able to obtain dismissal under Rule 12(b)(6) if the plaintiff files suit in a district other than the one specified in a valid forum-selection clause. See Brief for Stephen E. Sachs as *Amicus Curiae*. Petitioner, however, did not file a motion under Rule 12(b)(6), and the parties did not brief the Rule's application to this case at any stage of this litigation. We therefore will not consider it. Even if a defendant could use Rule 12(b)(6) to enforce a forum-selection clause, that would not change our conclusions that §1406(a) and Rule 12(b)(3) are not proper mechanisms to enforce a forum-selection clause and that §1404(a) and the *forum non conveniens* doctrine provide appropriate enforcement mechanisms.[4]

III

Although the Court of Appeals correctly identified §1404(a) as the appropriate provision to enforce the forum-selection clause in this case, the Court of Appeals erred in failing to make the adjustments required in a §1404(a) analysis when the transfer motion is premised on a forum-selection clause. When the parties have agreed to a valid forum-selection clause, a district court should ordinarily transfer the case to the forum specified in that clause.[5] Only under extraordinary circumstances unrelated to the convenience of the parties should a §1404(a) motion be denied. And no such exceptional factors appear to be present in this case.

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[4] We observe, moreover, that a motion under Rule 12(b)(6), unlike a motion under §1404(a) or the *forum non conveniens* doctrine, may lead to a jury trial on venue if issues of material fact relating to the validity of the forum-selection clause arise. Even if Professor Sachs is ultimately correct, therefore, defendants would have sensible reasons to invoke §1404(a) or the *forum non conveniens* doctrine in addition to Rule 12(b)(6).

[5] Our analysis presupposes a contractually valid forum-selection clause.

A

In the typical case not involving a forum-selection clause, a district court considering a §1404(a) motion (or a *forum non conveniens* motion) must evaluate both the convenience of the parties and various public-interest considerations.[6] Ordinarily, the district court would weigh the relevant factors and decide whether, on balance, a transfer would serve "the convenience of parties and witnesses" and otherwise promote "the interest of justice." §1404(a).

The calculus changes, however, when the parties' contract contains a valid forum-selection clause, which "represents the parties' agreement as to the most proper forum." *Stewart*, 487 U. S., at 31. The "enforcement of valid forum-selection clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system." *Id.*, at 33 (KENNEDY, J., concurring). For that reason, and because the overarching consideration under §1404(a) is whether a transfer would promote "the interest of justice," "a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases." *Id.*, at 33 (same). The presence of a valid forum-selection clause requires district courts to adjust their usual §1404(a) analysis in three ways.

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[6]Factors relating to the parties' private interests include "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." *Piper Aircraft Co.* v. *Reyno*, 454 U. S. 235, 241, n. 6 (1981) (internal quotation marks omitted). Public-interest factors may include "the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; [and] the interest in having the trial of a diversity case in a forum that is at home with the law." *Ibid.* (internal quotation marks omitted). The Court must also give some weight to the plaintiffs' choice of forum. See *Norwood* v. *Kirkpatrick*, 349 U. S. 29, 32 (1955).

First, the plaintiff's choice of forum merits no weight. Rather, as the party defying the forum-selection clause, the plaintiff bears the burden of establishing that transfer to the forum for which the parties bargained is unwarranted. Because plaintiffs are ordinarily allowed to select whatever forum they consider most advantageous (consistent with jurisdictional and venue limitations), we have termed their selection the "plaintiff's venue privilege." *Van Dusen*, 376 U. S., at 635.[7] But when a plaintiff agrees by contract to bring suit only in a specified forum—presumably in exchange for other binding promises by the defendant—the plaintiff has effectively exercised its "venue privilege" before a dispute arises. Only that initial choice deserves deference, and the plaintiff must bear the burden of showing why the court should not transfer the case to the forum to which the parties agreed.

Second, a court evaluating a defendant's §1404(a) motion to transfer based on a forum-selection clause should not consider arguments about the parties' private interests. When parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation. A court accordingly must deem the private-interest factors to weigh entirely in favor of the preselected forum. As we have explained in a different but "'instructive'" context, *Stewart*, *supra*, at 23, "[w]hatever 'inconvenience' [the parties] would suffer by being forced to litigate in the contractual forum as [they] agreed to do was clearly foreseeable at the time of contracting." *The Bremen* v. *Zapata Off-Shore Co.*, 407 U. S. 1, 17–18 (1972); see also *Stewart*,

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[7] We note that this "privilege" exists within the confines of statutory limitations, and "[i]n most instances, the purpose of statutorily specified venue is to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." *Leroy* v. *Great Western United Corp.*, 443 U. S. 173, 183–184 (1979).

supra, at 33 (KENNEDY, J., concurring) (stating that *Bremen*'s "reasoning applies with much force to federal courts sitting in diversity").

As a consequence, a district court may consider arguments about public-interest factors only. See n. 6, *supra*. Because those factors will rarely defeat a transfer motion, the practical result is that forum-selection clauses should control except in unusual cases. Although it is "conceivable in a particular case" that the district court "would refuse to transfer a case notwithstanding the counterweight of a forum-selection clause," *Stewart*, *supra*, at 30–31, such cases will not be common.

Third, when a party bound by a forum-selection clause flouts its contractual obligation and files suit in a different forum, a §1404(a) transfer of venue will not carry with it the original venue's choice-of-law rules—a factor that in some circumstances may affect public-interest considerations. See *Piper Aircraft Co.* v. *Reyno*, 454 U. S. 235, 241, n. 6 (1981) (listing a court's familiarity with the "law that must govern the action" as a potential factor). A federal court sitting in diversity ordinarily must follow the choice-of-law rules of the State in which it sits. See *Klaxon Co.* v. *Stentor Elec. Mfg. Co.*, 313 U. S. 487, 494–496 (1941). However, we previously identified an exception to that principle for §1404(a) transfers, requiring that the state law applicable in the original court also apply in the transferee court. See *Van Dusen*, 376 U. S., at 639. We deemed that exception necessary to prevent "defendants, properly subjected to suit in the transferor State," from "invok[ing] §1404(a) to gain the benefits of the laws of another jurisdiction . . . ." *Id.*, at 638; see *Ferens* v. *John Deere Co.*, 494 U. S. 516, 522 (1990) (extending the *Van Dusen* rule to §1404(a) motions by plaintiffs).

The policies motivating our exception to the *Klaxon* rule for §1404(a) transfers, however, do not support an extension to cases where a defendant's motion is premised on

enforcement of a valid forum-selection clause. See *Ferens*, *supra*, at 523. To the contrary, those considerations lead us to reject the rule that the law of the court in which the plaintiff inappropriately filed suit should follow the case to the forum contractually selected by the parties. In *Van Dusen*, we were concerned that, through a §1404(a) transfer, a defendant could "defeat the state-law advantages that might accrue from the exercise of [the plaintiff's] venue privilege." 376 U.S., at 635. But as discussed above, a plaintiff who files suit in violation of a forum-selection clause enjoys no such "privilege" with respect to its choice of forum, and therefore it is entitled to no concomitant "state-law advantages." Not only would it be inequitable to allow the plaintiff to fasten its choice of substantive law to the venue transfer, but it would also encourage gamesmanship. Because "§1404(a) should not create or multiply opportunities for forum shopping," *Ferens*, *supra*, at 523, we will not apply the *Van Dusen* rule when a transfer stems from enforcement of a forum-selection clause: The court in the contractually selected venue should not apply the law of the transferor venue to which the parties waived their right.[8]

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[8]For the reasons detailed above, see Part II–B, *supra*, the same standards should apply to motions to dismiss for *forum non conveniens* in cases involving valid forum-selection clauses pointing to state or foreign forums. We have noted in contexts unrelated to forum-selection clauses that a defendant "invoking *forum non conveniens* ordinarily bears a heavy burden in opposing the plaintiff's chosen forum." *Sinochem Int'l Co.* v. *Malaysia Int'l Shipping Co.*, 549 U.S. 422, 430 (2007). That is because of the "harsh[] result" of that doctrine: Unlike a §1404(a) motion, a successful motion under *forum non conveniens* requires dismissal of the case. *Norwood*, 349 U.S., at 32. That inconveniences plaintiffs in several respects and even "makes it possible for [plaintiffs] to lose out completely, through the running of the statute of limitations in the forum finally deemed appropriate." *Id.*, at 31 (internal quotation marks omitted). Such caution is not warranted, however, when the plaintiff has violated a contractual obligation by filing suit in a forum other than the one specified in a valid forum-selection

When parties have contracted in advance to litigate disputes in a particular forum, courts should not unnecessarily disrupt the parties' settled expectations. A forum-selection clause, after all, may have figured centrally in the parties' negotiations and may have affected how they set monetary and other contractual terms; it may, in fact, have been a critical factor in their agreement to do business together in the first place. In all but the most unusual cases, therefore, "the interest of justice" is served by holding parties to their bargain.

B

The District Court's application of §1404(a) in this case did not comport with these principles. The District Court improperly placed the burden on Atlantic Marine to prove that transfer to the parties' contractually preselected forum was appropriate. As the party acting in violation of the forum-selection clause, J-Crew must bear the burden of showing that public-interest factors overwhelmingly disfavor a transfer.

The District Court also erred in giving weight to arguments about the parties' private interests, given that all private interests, as expressed in the forum-selection clause, weigh in favor of the transfer. The District Court stated that the private-interest factors "militat[e] against a transfer to Virginia" because "compulsory process will not be available for the majority of J-Crew's witnesses" and there will be "significant expense for those willing witnesses." 2012 WL 8499879, *6–*7; see 701 F. 3d, at 743 (noting District Court's "concer[n] with J-Crew's ability to secure witnesses for trial"). But when J-Crew entered into a contract to litigate all disputes in Virginia, it knew that a distant forum might hinder its ability to call certain witnesses and might impose other burdens on

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clause. In such a case, dismissal would work no injustice on the plaintiff.

its litigation efforts. It nevertheless promised to resolve its disputes in Virginia, and the District Court should not have given any weight to J-Crew's current claims of inconvenience.

The District Court also held that the public-interest factors weighed in favor of keeping the case in Texas because Texas contract law is more familiar to federal judges in Texas than to their federal colleagues in Virginia. That ruling, however, rested in part on the District Court's belief that the federal court sitting in Virginia would have been required to apply Texas' choice-of-law rules, which in this case pointed to Texas contract law. See 2012 WL 8499879, *8 (citing *Van Dusen*, *supra*, at 639). But for the reasons we have explained, the transferee court would apply Virginia choice-of-law rules. It is true that even these Virginia rules may point to the contract law of Texas, as the State in which the contract was formed. But at minimum, the fact that the Virginia court will not be required to apply Texas choice-of-law rules reduces whatever weight the District Court might have given to the public-interest factor that looks to the familiarity of the transferee court with the applicable law. And in any event, federal judges routinely apply the law of a State other than the State in which they sit. We are not aware of any exceptionally arcane features of Texas contract law that are likely to defy comprehension by a federal judge sitting in Virginia.

* * *

We reverse the judgment of the Court of Appeals for the Fifth Circuit. Although no public-interest factors that might support the denial of Atlantic Marine's motion to transfer are apparent on the record before us, we remand the case for the courts below to decide that question.

It is so ordered.

102 S.Ct. 252
Supreme Court of the United States
PIPER AIRCRAFT COMPANY, Petitioner,
v.
Gaynell REYNO, Personal Representative of the Estate of William Fehilly, et al.
HARTZELL PROPELLER, INC., Petitioner,
v.
Gaynell REYNO, Personal Representative of the Estate of William Fehilly, et al.
Nos. 80–848, 80–883.

Argued Oct. 14, 1981.

Decided Dec. 8, 1981.

Rehearing Denied Jan. 25, 1982.

See 455 U.S. 928, 102 S.Ct. 1296.

Opinion

Justice MARSHALL delivered the opinion of the Court.

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 F.2d 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 ***239** 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 shortly 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-death ***240** 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 ****258** 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 U.S.C. § 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 ***241** Hartzell and transferred the case to the Middle District of Pennsylvania. Respondent then properly served process on Hartzell.

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 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947), and its companion case, *Koster v. Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 67 S.Ct. 828, 91 L.Ed. 1067 (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, 67 S.Ct., at 831–832. 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*, 330 U.S. at 508–509, 67 S.Ct., at 843.[6]

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 ****259** 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, manufacture, 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." ***243** *Id.*, 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; ****260** that it would be unfair to burden citizens with jury duty when the Middle District ***244** 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 District 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," 639 F.2d, at 162.[9] Finally, the court stated that resolution of the suit ***245** 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. Goberman*, 420 F.2d 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]

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 F.2d, at 163–164 (footnote omitted) (quoting *DeMateos v. Texaco, Inc.*, 562 F.2d 895, 899 (CA3 1977), cert. denied, 435 U.S. 904, 98 S.Ct. 1449, 55 L.Ed.2d 494 (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.

We granted certiorari in these cases to consider the questions they raise concerning the proper application of the doctrine of *forum non conveniens.* 450 U.S. 909, 101 S.Ct. 1346, 67 L.Ed.2d 333 (1981).[12]

II

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 U.S. 413, 52 S.Ct. 413, 76 L.Ed. 837 (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 ****262** that dismissal was inappropriate because Canadian laws were less favorable to them. This Court nonetheless affirmed:

> "We have no occasion to enquire by what law the rights of the parties are governed, as we are of the opinion ***248** 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, 52 S.Ct., at 414, quoting *Charter Shipping Co. v. Bowring, Jones & Tidy*, 281 U.S. 515, 517, 50 S.Ct. 400, 414, 74 L.Ed. 1008 (1930).

The Court further stated that "[t]here was no basis for the contention that the District Court abused its discretion." 285 U.S., at 423, 52 S.Ct., at 415–16.

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, ***249** 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*, the Court refused to identify specific circumstances "which will justify or require either grant or denial of remedy." 330 U.S., at 508, 67 S.Ct., at 843. 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. ****263** "That is one, but only one, factor which may show convenience." 330 U.S., at 527, 67 S.Ct., at 833. And in *Williams v. Green Bay & Western R. Co.*, 326 U.S. 549, 557, 66 S.Ct. 284, 288, 90 L.Ed. 311 (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 ***250** 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 U.S.App.D.C. 229, 248–249, 637 F.2d 775, 794–795 (1980); *Fitzgerald v. Texaco, Inc.*, 521 F.2d 448, 453 (CA2 1975), cert. denied, 423 U.S. 1052, 96 S.Ct. 781, 46 L.Ed.2d 641 (1976); *Anastasiadis v. S.S. Little John*, 346 F.2d 281, 283 (CA5 1965), cert. denied, 384 U.S. 920, 86 S.Ct. 1368, 16 L.Ed.2d 440 (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 ***251** *Fitzgerald 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 jurisdictions. 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 U.S., at 509, 67 S.Ct., at 843.

Upholding the decision of the Court of Appeals would result in other practical problems. At least where the foreign plaintiff named an American manufacturer ****264** as defendant,[17] a court could not dismiss the case on grounds of *forum non* ***252** *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]

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 U.S. 612, 84 S.Ct. 805, 11 L.Ed.2d 945 (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 F.2d, at 164, and n. 51 (citing *DeMateos v. Texaco, Inc.*, 562 F.2d, 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, H.R.Rep. No. 308, 80th Cong., 1st Sess., A132 (1947); H.R.Rep. No. 2646, 79th Cong., 2d Sess., A127 (1946), it was intended to be a revision rather than a codification of the common law. ****265** *Norwood v. Kirkpatrick*, 349 U.S. 29, 75 S.Ct.

544, 99 L.Ed. 789 (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, 75 S.Ct., at 546.

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 U.S., at 613, 84 S.Ct., at 807–08.[20] Emphasizing the remedial ***254** 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, 84 S.Ct., at 812. The statute was designed as a "federal housekeeping measure," allowing easy change of venue within a unified federal system. *Id.*, at 613, 84 S.Ct., at 807–08. 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]

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 ***255** 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

The District Court acknowledged that there is ordinarily a strong presumption in ****266** 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.

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 U.S., at 524, 67 S.Ct., at 831–832.[23] When the home forum has ***256** 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]

B

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 U.S., at 511–512, 67 S.Ct., at 844–845; *Koster*, 330 U.S., at 531, 67 S.Ct., at 835. 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, ****267** 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 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 ***258** 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 informationwas ***259** 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 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 ****268** 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 F.2d, 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)

The District Court's review of the factors relating to the public interest was also reasonable. On the basis of its ***260** 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 U.S., at 509, 67 S.Ct., at 843. 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 ***261** American court is likely to be insignificant. 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

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. ****269** Thus, the judgment of the Court of Appeals is

Reversed.

[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 U.S., at 508, 67 S.Ct., at 843. 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, 67 S.Ct., at 843.

[8] Under *Klaxon v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (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 U.S.C. § 1404(a), it must apply the choice-of-law rules of the State from which the case was transferred. *Van Dusen v. Barrack*, 376 U.S. 612, 84 S.Ct. 805, 11 L.Ed.2d 945 (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 contacts" 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.

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.

[19] 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 F.2d 754, 757 (CA2) (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), cert. dism'd by stipulation,

348 U.S. 801, 75 S.Ct. 17, 99 L.Ed. 633 (1954).

[22] 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 U.S., at 506–507, 67 S.Ct., at 842. 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 F.R.D. 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).

[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.