Law & Litigation News

Forum Non Conveniens: Recent Changes in Texas Law and Strategic Considerations

Forum non conveniens motions are a powerful tool for defending lawsuits with little or no connection to Texas. Effective June 16, 2015, the Texas Legislature has made it more likely that wrongful death and survival actions brought in Texas by foreign plaintiffs will be dismissed on forum non conveniens grounds. However, there are several factors to consider before moving for dismissal to a foreign court. In some instances, it will be preferable to continue litigating in Texas rather than seeking a dismissal that could lead to litigation in a problematic foreign jurisdiction.

Sources of Forum Non Conveniens Law

Neither the federal nor Texas venue statutes permit a court to transfer a lawsuit to the courts of a foreign nation or other state. Instead, the doctrine of forum non conveniens permits a court to decline to exercise jurisdiction, even when there is jurisdiction over the parties and claims and the venue is proper.

In Texas state court actions, a motion to dismiss on forum non conveniens grounds is based on the common law when the lawsuit does not arise out of a wrongful death or survival action. If a plaintiff is not a legal resident of Texas and has asserted a claim for personal injury or death, a defendant may file a motion to stay or dismiss based on the grounds codified at Texas Civil Practice and Remedies Code § 71.051 (b).

Texas courts “regularly consider United States Supreme Court precedent in both … common law and statutory forum non conveniens cases.” Quixtar Inc. v. Signature Mgmt. Team, LLC, 315 S.W.3d 28, 32. (Tex. 2010). In deciding if the case should be dismissed, a court must first identify another forum that can hear the case. The party seeking dismissal has the burden of showing that the proposed alternative forum is both available and adequate to hear the dispute.
Once a determination is made that there is an adequate alternative forum, the court weighs several public and private interest factors to determine whether forum non conveniens dismissal is appropriate.

**Recent Statutory Changes**

The Texas forum non conveniens statute, which applies to wrongful death and survival actions, provides:

> If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this section applies would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action. In determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens, the court shall consider whether:

1. an alternate forum exists in which the claim or action may be tried;
2. the alternate forum provides an adequate remedy;
3. maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;
4. the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff’s claim;
5. the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum, which shall include consideration of the extent to which an injury or death resulted from acts or omissions that occurred in this state; and
6. the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

An exception in the statute states that a court may not dismiss or stay claims on forum non conveniens grounds if the plaintiff is a legal resident of Texas. *Id. § 71.051 (e).* The Texas Supreme Court construed the definition of “plaintiff” in the previous version of the statute to permit a trial court to exercise its discretion to allow an entire case to remain in Texas if at least one of the plaintiffs was a Texas resident, even if the forum non conveniens doctrine would otherwise favor dismissal. Applying this exception, the Texas Supreme Court declined to dismiss wrongful death claims on forum non conveniens grounds in *In re Ford Motor Company.*, 442 S.W.3d 265 (Tex. 2014). *In re Ford Motor Company* arose out of a car accident in Mexico. Both the driver, who was killed, and his brother, who was injured, were Mexican nationals. The driver’s estate was being administered in Hidalgo County, Texas. The driver’s minor daughter, a legal resident of Texas, filed suit in Hidalgo County. Since “at least one of the beneficiaries is a legal resident of Texas” the Supreme Court upheld the trial court’s decision to permit all claims – even those filed by Mexican nationals against a Mexican defendant – to remain in Texas.

In response to *In Re Ford Motor Company*, the Texas Legislature amended the Texas resident exception. The current version of the statute, effective for claims filed after June 16, 2015 states:

The court may not stay or dismiss a plaintiff’s claim … if the plaintiff is a legal resident of this state or a derivative claimant of a legal resident of this state. The determination of whether a claim may be stayed or dismissed … shall be made with respect to each plaintiff without regard to whether the claim of any other plaintiff may be stayed or dismissed … and without regard to a plaintiff’s country of citizenship or national origin….  

**TEX. CIV. PRAC. & REM. CODE § 71.051(e).**

**Is Dismissal to a Foreign Court the Best Option?**

The decision to pursue forum non conveniens dismissal is often driven by the lower limits of liability or higher standards of culpability required under the laws of foreign countries. This benefit to the defendant can be outweighed by other factors, such as the inconvenience and expense of litigating in a foreign country, the perception of
unfavorable treatment of an American company, unfamiliarity with the foreign legal system, and lack of a relationship with a foreign lawyer to serve as counsel. In some cases, however, the inability of the parties to access evidence and subpoena witnesses and documents weighs in favor of seeking discretionary dismissal.

Some of the strategic benefits of a forum non conveniens dismissal can be realized using other procedural tools. For example, when foreign laws limit recovery to a specified class of persons, cap damages at a certain amount, or require a more stringent threshold for liability, a defendant can file a motion to have the Texas court apply foreign law. See e.g., TEX. R. EVID. 203.

The relative speed and efficiency in which cases can be decided is an important consideration as well. Under the new amendments to the Texas statute, a court can now dismiss claims of some plaintiffs on forum non conveniens grounds, while retaining jurisdiction over others. If the same accident is litigated in two different forums, the resulting increase in costs and evidentiary difficulties may outweigh the benefits of having only some claims dismissed.