FORUM NON CONVENIENS IN FOREIGN AIR CARRIER LITIGATION:
A SUSTAINED RESPONSE TO AN EVOLVING PLAINTIFFS’ STRATEGY

By

Alan H. Collier

Regardless of where an airplane crash occurs – be it a runway in Taiwan or in the airspace over Germany – plaintiffs’ lawyers will inevitably counsel their international clients to bring claims in the United States, regardless of the situs of the accident or even plaintiffs’ residence.

Traditionally, the common law doctrine of *forum non conveniens* has offered American aviation companies protection from claims based on international air crashes filed by foreign plaintiffs in the United States. High verdicts, the right to a jury and fewer restrictions on evidence, however, are all strong incentives to find a way to litigate in America. Plaintiffs will aggressively attempt to avoid the doctrine through any means possible, including bringing suit against U.S. airlines, manufacturers and other entities even though their connection to the accident may be tenuous. Where a defendant can demonstrate that the matter is more sensibly litigated elsewhere – typically the situs of the accident or the plaintiffs’ place of residence – courts will often enforce the *forum non* doctrine, even though the damages may be less, or the relief available different, than in the U.S.

Recent trends among plaintiffs indicate a continuing determination to find a U.S. venue to hear complaints arising from international airplane crashes with little or no U.S. interest involved. Such attempts include asserting claims against U.S.-based defendants who have little or no connection to the crash. Members of marketing-alliances have been sued for the alleged actions of other members, although the alleged tort had nothing to do with the marketing agreement.

Creative plaintiffs’ lawyers have also filed identical claims by identical plaintiffs against identical defendants in several different jurisdictions at the state-level, hoping to avoid federal jurisdiction, thereby avoiding the multi-district litigation system with the hope that they will be more successful in having jurisdiction stick somewhere in the United States, preferably in the State Court system.

The doctrine of *forum non conveniens* continues to be an effective, though still imperfect, defense against claims brought in inappropriate or irrelevant jurisdictions. In order for the effectiveness of the doctrine to continue, however, it must continue to be

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1 Many thanks to Los Angeles office summer associate Bridget Fitzpatrick from Pepperdine University School of Law for her invaluable assistance in the research and preparation of this article.

2 Litigation recently commenced in the United States arising out of the 1 July 2002 mid-air collision on of a DHL cargo flight and a Bashkirian Airways charter flight with 69 persons on board (none of which are American) over Germany has been filed against the TCAS manufacturers in at least five different U.S. State Courts including New York, New Jersey, California, Washington and Florida.
utilized flexibly and in a manner that is responsive to the evolving character of plaintiff’s attempts to obtain U.S. jurisdiction for international claims.

How do Plaintiffs secure jurisdiction in the United States?

After an international aircraft accident occurs, a plaintiff’s counsel will typically consider several jurisdictions before determining where to bring suit. Sometimes, the decedent, an heir or a representative will reside in a favorable jurisdiction, which makes the selection of the forum simple. If unfavorable however, plaintiffs’ lawyers will often look through extended family (grandparents, aunts, uncles, cousins and other possible dependents) to find someone with a favorable residency or citizenry status. If a plaintiffs’ lawyer finds that neither the decedent nor any heir or possible representative have such favorable residency or status, the search often turns to the incorporation or “residency” status of possible defendants. Candidates for suit include airlines, parts manufacturers, repair shops and other entities with potentially strong connections to the United States, even though their connection to the accident may be slight or even totally absent.

For example, plaintiffs have recently gone so far as to sue U.S.-based marketing-partners of a foreign-based airline after one of the airline’s flights crashed. On October 31, 2000, Singapore Airlines Flight 006 crashed as it approached take-off speed at Chiang Kai Shek Airport in Taiwan. The plane was on the wrong runway -- closed and under construction -- and was attempting to depart in typhoon-level winds. Tragically, the plane crashed into heavy equipment, causing the death of many on board, and injuring numerous others.

Liability against the airline seemed clear, and the plaintiffs sued the carrier, Singapore Airlines, in the United States. In many cases, the United States had jurisdiction over the airline pursuant to the Warsaw Convention’s Article 28, rendering moot any potential forum non argument. However, some of the claims did not qualify for Article 28 jurisdiction, leaving certain plaintiffs without U.S. jurisdiction against the culpable carrier, and creating a potential argument for dismissal of their claims against other defendants under the forum non doctrine. Foreseeing this problem, a number of the plaintiffs also named United Airlines and the Star Alliance as defendants. These plaintiffs claimed that United Airlines and the Star Alliance were in a partnership with Singapore Airlines with regard to the subject flight, that revenue from the flight was shared with United and Star, and that by naming them, Warsaw jurisdiction existed in the U.S.

The U.S. District Court in Los Angeles rejected the plaintiffs’ argument and dismissed these claims, finding that neither United nor the Star Alliance was a “carrier”

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3 United Airlines (the U.S. carrier participant in the Alliance) and the Star Alliance (a collaborative marketing network created by United and consisting of approximately 15 independent airlines) are domiciled in the United States; therefore, jurisdiction would be proper under Warsaw if they were good faith defendants.
or its “agent” so as to attach *Warsaw* jurisdiction. Being left without Article 28 jurisdiction in the U.S. in a number of cases, the plaintiffs also brought suit in California against the U.S.-based Boeing Company and Goodrich Corporation alleging defects in the aircraft’s escape system, emergency lighting, and intercom system. Neither of these manufacturers resides in California, nor did the accident have any substantive connections to California other than that it was the place of destination of the ill-fated flight that never got off the ground in Taipei.

Following the dismissal of Singapore Airlines upon its *Motion to Dismiss* for lack of *Warsaw Convention* Treaty jurisdiction, the Federal Court dismissed the cases against Boeing and Goodrich on *forum non* grounds, noting that the contacts with the United States were, at best, tenuous, particularly after considering the slight likelihood of success on the merits against the two U.S. based manufacturers.⁴ The plane ran into heavy machinery at take-off speed, broke in half and caught on fire, rendering it unlikely that liability against these manufacturers would be established. Therefore, the Court found, the convenience of litigating the matter in California – in which neither the plaintiffs nor any of the defendants resided -- was outweighed by the convenience of litigating it in Taiwan, where the accident occurred, or in Singapore, where many of the decedents and/or heirs and representatives were residents.

Furthermore, in the non-*Warsaw* cases litigated in the Los Angeles Superior Court (involving the 14 cabin crew and passengers with round-trip tickets from Taiwan which is not a *Warsaw* signatory), the judge also ordered dismissal pursuant to *forum non conveniens* in favor of both the carrier and the manufacturer defendants. While ultimately unsuccessful, plaintiffs’ efforts illustrate the continued creativity and determination of air disaster litigants in pursuing the United States as the forum for their foreign-based claims.

**Why do Plaintiffs want their claims heard in the United States?**

In order for a *forum non conveniens* motion to succeed, a defendant must demonstrate that there is an “adequate alternative forum” that is more convenient and sensible to litigate the matter. Although such a forum often exists, plaintiffs continue to attempt to find a forum in the United States, which may be less convenient for, and far from the homes of, their clients.

The United States’ legal system offers options and possibilities to plaintiffs that many other nations’ legal systems do not. For example, the United States has a jury system which is often unregulated as to the amount of damages that are recoverable. In addition to awarding lost wages and medical expenses, juries can also award damages for past and future pain and suffering. Punitive damages are also permitted in some circumstances, which can significantly exceed the level of compensatory damages, creating a strong incentive for plaintiffs’ lawyers to litigate in the U.S.

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⁴ The Court initially denied Boeing and Goodrich’s *forum non* motions, but reversed itself on reconsideration following Singapore Airline’s acceptance of liability in the Warsaw cases with U.S. Treaty jurisdiction.
The United States also allows plaintiffs’ attorneys to be paid on a contingency basis. In many other jurisdictions throughout Europe, Asia and South America, attorney’s fees are charged against the losing party. This can be a strong disincentive to file claims where a favorable outcome is not relatively certain.

Similarly, the extent of discovery is much greater in the United States than in many other jurisdictions. This alone is often reason enough for plaintiffs’ lawyers to choose an American forum, when possible, allowing them access to documents and information they may be otherwise unable to obtain. Plaintiffs’ efforts to obtain a U.S. forum often result in a substantial pay off when successful. Once in the American jury system, plaintiffs can be awarded high amounts for both compensatory, general and, in certain cases, punitive damages.

SilkAir Flight 185 crashed into the Musi River near Palembang, Indonesia on December 19, 1997, killing everyone on board—104 passengers and crew. Following the rejection of the defense’s forum non argument in Seattle Federal Court, and after a group of plaintiffs were able to obtain California State Court jurisdiction by naming two California defendants with only tangential connection to the case (who were later dismissed), the first SilkAir 185 case went to trial in Los Angeles Superior Court on 24 May 2004 against the only remaining defendant who did not settle. On 6 July 2004, the jury awarded the foreign survivors of three foreign decedents (two Singaporeans and one Scottish citizen) $43.6 million (U.S.). Over 80 death cases are still pending in Seattle Federal Court and the Los Angeles Superior Court as of the writing of this article. Similarly, two adult survivors of parents in the SQ 006 crash in Taipei Taiwan (discussed above) obtained a verdict of $15 Million (U.S.) against Singapore Airlines in Federal Court in Los Angeles. Many other cases have settled for undisclosed sums, after it was determined that the litigation was to go forward in the U.S., and not Singapore or Taiwan, which both have legal systems which allow for far lower recoveries. These examples are by no means unique.

These are stark results when compared to similar cases prosecuted in foreign jurisdictions. In Lueck v. Sundstrand, the Court considered a case arising from the crash of Ansett Flight 703 near Palmerston North, New Zealand, killing four people and injuring 14 others. Except for one American citizen on the flight, all of the passengers and crew were citizens of New Zealand. The plaintiffs alleged that the Ground Proximity Warning System (GPWS) failed, and brought a products liability action against the

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6 For example, in 1994, a Texas jury awarded $8,100,000 to seven plaintiffs, all citizens of Mexico, for pain and suffering resulting from injuries sustained in a helicopter that crashed in the State of Jalisco, Mexico. The award did not include damages for lost earnings or medical expenses. Punitive damages are also awarded in aviation cases. In another case arising out of an allegedly defective pilot seat, Cassoutt v. Cessna Aircraft Co., the jury awarded the plaintiffs $80 million in compensatory damages, and $400 million in punitive damages against Cessna. No. 91-2939-CA-01, 2001 WL 34030829 (Fla. Cir. Ct. Aug. 15, 2001).

7 Lueck v. Sundstrand Corp., 236 F.3d 1137 (9th Cir. 2001).
Canadian plane manufacturer and the American manufacturers of the GPWS and radio altimeter in the Federal District Court of Arizona.

The defendants argued that the lawsuit should be dismissed on *forum non conveniens* grounds, claiming that New Zealand provided a remedy and was a more convenient forum. Plaintiffs argued that New Zealand was an inadequate forum as it bars civil tort claims for damages, leaving them without a remedy in tort. The Ninth Circuit reviewed the remedy provided, describing it as a scheme that provides compensation on a no-fault basis to persons injured in an accident. Under New Zealand’s 1972 Accident Compensation Act (as amended in 1992), the plaintiffs were only entitled to a modest level of benefits, including compensation for eighty percent of the claimant’s former salary, but capped at $1,179(N.Z.)\(^8\) per week for the duration of the disability, and a quarterly allowance based on the degree of the claimant’s disability.

Despite the limited recovery available in New Zealand, the Court of Appeal affirmed the dismissal of plaintiffs’ claims on *forum non conveniens* grounds. It held that although the plaintiffs could not sue in New Zealand alleging products liability, the Accident Compensation System provided an “adequate alternative” remedy. New Zealand was thus an acceptable forum for the plaintiff’s grievances, even though they might not be able to recover the exact amount of damages they could obtain in the U.S.

**How can the *forum non* doctrine protect a defendant?**

A defendant will prevail on a *forum non* motion if it can show that: (1) there is an adequate alternative forum; and (2) that a balance of private and public interests weighs more favorably to that alternative forum.

1. **Adequate alternative forum**

There is a presumption in favor of the plaintiff’s choice of forum, but when the plaintiff is foreign, that presumption is lessened.\(^9\) Even U.S. plaintiffs do not have an ‘indefeasible right of access’ to American courts, so while the existence of an American plaintiff is considered by courts in a *forum non conveniens* analysis, it is not a guarantee of a U.S. forum.\(^10\)

In addition, a plaintiff may not defeat a *forum non conveniens* motion “merely by showing that the substantive law that would be applied in the alternative forum is less

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\(^8\) $1,179 in N.Z. currency is equivalent to $742 in U.S. currency at an exchange rate of $1.59 (rate at the time of writing this article).

\(^9\) *Piper v. Reyno*, 454 U.S. 235, 255 (1981). (stating that “[b]ecause 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.”).

\(^10\) In re Air Crash over the Taiwan Straits, p. 18, U.S.D.C., Central District (Order issued by Judge Morrow on June 21, 2004) (quoting *Pain v. United Technologies Corp.*, 637 F.2d 775, 798 (D.C. Cir. 1980)).
favorable to the plaintiffs than that of the present forum."\textsuperscript{11} If courts were allowed to consider unfavorable changes in law, then dismissal would not be appropriate even when the chosen forum is inconvenient.\textsuperscript{12} Such a result would nullify the purpose of the doctrine. However, an unfavorable change in law is given weight if the remedy provided by the alternative forum is “so clearly inadequate or unsatisfactory that it is no remedy at all.”\textsuperscript{13}

2. Public and private interests

Even assuming an adequate alternative forum, courts will only grant a \textit{forum non} motion if a balance of the various private and public interests favor that forum. Private interest factors to be considered include the ease of access to sources of proof; whether unwilling witnesses can be compelled to testify; the expense of transporting witnesses to trial; and “all other practical problems that make trial of a case easy, expeditious and inexpensive.”

The public interest factors to be considered include the existence of court congestion; the local interest in the lawsuit; the interest of having the trial in the forum whose law will govern the case; the avoidance of having the court apply foreign law; and the burden of jury duty on citizens unrelated to the events of the lawsuit. Where the private and public interest factors do not indicate that the trial should be held in the alternative forum, the plaintiff’s choice will likely remain intact.\textsuperscript{14} If these factors indicate a different jurisdiction is more appropriate and convenient, courts will not hesitate to dismiss the case.

3. Conditional dismissal

A court’s dismissal will sometimes be subject to certain conditions, such as consent to the jurisdiction of the alternative forum, a tolling of applicable statutes of limitation for a certain period to allow re-filing, and an agreement to pay damages awarded by the foreign court. Because damages awarded by foreign courts are often minimal and significantly less than would be awarded in the U.S., some defendants may even agree to liability as a subject of dismissal to an alternative forum, because the damages available for such liability may be small.

For example, in the litigation brought in Los Angeles arising out of the China Air Flight CI611 crash en route to Taipei, Taiwan on 25 May 2002, defendants’ \textit{forum non} motion was granted after they stipulated that they would fully compensate plaintiffs in any other non-U.S. country, based on the law of the decedent’s domicile. The defendants argued that with this stipulation, the private interest factors overwhelmingly favored

\textsuperscript{11} \textit{Piper}, 454 U.S. at 250.

\textsuperscript{12} \textit{Id.} at 249.

\textsuperscript{13} \textit{Id.} at 254.

\textsuperscript{14} \textit{Lueck}, 236 F.3d at 1145.
Taiwan. Regardless of the defendants offer to stipulate to liability, the court concluded that the private interest factors weighed in favor of trial in Taiwan. However, the Court stated that with the stipulation, “the result is even clearer,” and that a stipulation acceding to liability clarifies and strengthens the balance of the forum non factors.\textsuperscript{15}

On that basis, the Court granted the forum non conveniens motion, avoiding the costs and delay of trial so that the parties could focus on the computation of damages which, under the law of the adequate alternative forum were much smaller than were available from a U.S. forum.

There is no guarantee of success of a forum non motion, however, even when the defendant agrees to fairly rigorous conditions of dismissal. For instance, in In re Air Crash off Long Island New York (TWA 800), defendants TWA and Boeing told the court that if it dismissed the actions brought by French citizens,\textsuperscript{16} neither would contest liability for full compensatory damages in the courts of France. The defendants argued that – because all damages evidence was in France -- by agreeing not to contest liability, there was no need for a trial in the United States. The court disagreed, opining “[d]efendants’ motion is a well-crafted attempt to avoid some of the more obvious legal barriers to a motion to dismiss on forum non conveniens grounds.”\textsuperscript{17}

The court found that France was an adequate alternative forum, and that the private interest factors were a “wash.” The public interest factors, however, strongly favored the United States as the proper forum. The court noted that the subject crash occurred 8 nautical miles off of New York’s coast, and that it was not aware of “a single case, arising from a catastrophic event that happened in United States territory, that was dismissed on forum non conveniens grounds in order to be re-filed in a foreign nation.” Thus, even if a defendant concedes liability, courts may allow a plaintiff to litigate in a U.S. forum where a private/public interest analysis favors that forum.

**How are plaintiffs fighting forum non motions?**

Not surprisingly, plaintiffs are determined to maintain their choice of forum and proceed aggressively and creatively to do so, including not only the traditional attacks on an alternative forum, or the various private and public interest factors, but also by relying on the applicability of the Warsaw Convention and its jurisdictional provisions.

1. **Traditional arguments**

In response to forum non conveniens motions, plaintiffs will typically attack both the proposed alternative forum and argue that the private and public interest factors are in their favor.

\textsuperscript{15} In re Air Crash over the Taiwan Strait, (tentative order issued June 21, 2004).

\textsuperscript{16} There were both French and American citizens on board the flight – the defendants moved only to dismiss the French citizen’s actions on forum non conveniens.

\textsuperscript{17} In re Air Crash off Long Island, New York, 65 F. Supp. 2d 207, 210 (S.D.N.Y. 1999).
In *Aerolineas Argentinas v. Gimenez*, plaintiffs challenged the adequacy of Argentina as an alternative forum. The plaintiff contended the plaintiffs would have to pay a judicial tax equivalent to 3% of the amount claimed—over $12 Million in that case—to file suit in Argentina. In addition, discovery in Argentina was far more limited than in the U.S.

The trial court held that Argentina was not an adequate forum because of the cost of litigating there. The appeals court disagreed, noting that the plaintiffs sued other defendants in Argentina, and only thereafter chose to sue the U.S. defendant in Florida. The court therefore concluded that the “adequacy of the Argentinean forum is evident from the plaintiffs’ own conduct in filing…suits against [co-defendant] in Argentina.” While the plaintiffs might have to reduce their damages demand to lower the filing fee, the court found a dismissal for *forum non conveniens* to be justified.

A different conclusion was reached in the *Silk Air Flight 185* litigation, *In re Air Crash Disaster Near Palembang*, which ultimately allowed the plaintiffs access to a U.S. forum. There, the plane was destined for Singapore and most of the passengers were Singaporean or Indonesian, with only 5 Americans on board. The plaintiffs sued the aircraft manufacturer (Boeing), who claimed that the pilot intentionally crashed the plane. Prior to the other manufacturing defendants’ involvement in the litigation, Boeing filed for dismissal pursuant to *forum non*. Plaintiffs argued that pertinent evidence regarding the manufacture and maintenance of the aircraft was in the United States and that this case involved allegations regarding the 737 rudder control mechanism which has been extensively investigated by Boeing and the FAA. The defense argued that an investigation into the potential suicide was in Singapore, SilkAir was not amenable to suit in the United States, and the damages evidence was primarily located outside of the U.S. Boeing proposed either Indonesia or Singapore as an adequate alternative forum, and the court held that both were acceptable.

However, when weighing the private interest factors, the court found that they did not support dismissal. Instead, the court found that the public factors favored retention of the case in the U.S., noting that “[a]t least three of the crash victims…were United States citizens. Granting [defendant]’s motion, then, would effectively deny United States citizens access to United States courts.” The court also held that the local connection to the dispute was “substantial,” because defendant was a large employer in Washington, the court’s locale.

2. Applicability and impact of the Warsaw/Montreal Convention

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Both the *Warsaw Convention* of 1929 and the *Montreal Convention* of 1999 (effective November 4, 2003) apply to the international carriage of persons by air. Pursuant to these Conventions, a carrier can be found liable for damages sustained in case of death or bodily injury where the accident that caused the injury happened either on the aircraft or while embarking or disembarking. The Conventions apply only to a carrier and its agents and there are limits as to the types of damages recoverable -- punitive and exemplary damages are not allowed under either Convention.

The *Warsaw Convention* provides four jurisdictional bases wherein the plaintiff may file suit: (1) where the carrier is domiciled, (2) where the carrier has its principal place of business, (3) where the contract was made, and (4) the place of destination. The *Montreal Convention* has those same four jurisdictional bases, plus a fifth -- the passenger’s principal or permanent residence at the time of the accident.

If either of these conventions is applicable, recent air disaster decisions have held that the case cannot be dismissed on *forum non conveniens* grounds. For example, in *Hosaka v. United Airlines*, plaintiffs sued United Airlines due to injuries resulting from turbulence on a flight from Tokyo to Hawaii. United argued that the action should be dismissed on the basis of *forum non conveniens* -- arguing for Japan as an alternative forum. The District Court granted the motion but the Ninth Circuit reversed, noting that the plaintiffs had properly brought their claims in the United States under the *Warsaw Convention*. The court held that the jurisdictional bases listed in *Warsaw* preempted the federal courts’ discretionary power to dismiss an action based on *forum non conveniens*.

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20 The *Warsaw Convention* is an international treaty ratified in 1934 by President Franklin Delano Roosevelt with the consent of the U.S. Senate. The *Montreal Convention* required 30 signatures for ratification – the United States was the thirtieth country to ratify the Convention, which entered into force on November 4, 2003. Devendra Pradhan, *The Fifth Jurisdiction Under The Montreal Liability Convention: Wandering American or Wandering Everybody?*, 68 J. AIR. L. & COM. 717 (2003). Article 55 of the *Montreal Convention* states that the Montreal Convention shall prevail over rules in the Warsaw Convention. However, the Warsaw Convention would apply to accidents occurring prior to November 4, 2003.


22 *Warsaw Convention*, Art. 28(1).


24 *Hosaka v. United Airlines*, Inc., 305 F.3d 989 (9th Cir. 2002).

25 The Warsaw Convention applied in this case because the accident was on December 29, 1997, before the Montreal Convention was ratified.

26 *Hosaka*, 305 F.3d at 993.

27 *But see In re Air Crash Disaster Near New Orleans, Louisiana*, 821 F.2d 1147, 1161-62 (5th Cir. 1987) (stating “[w]e are of the opinion that article 28(1) [of the Warsaw Convention, which lists the jurisdictional bases] offers an injured passenger or his representative four forums in which a suit for damages may be brought. The party initiating the action enjoys the prerogative of choosing between these possible national forums but that selection is not inviolate. That choice is then subject to the procedural requirements and
The circumstances of a plaintiffs’ group that includes both Warsaw and non-Warsaw plaintiffs were addressed in a recent case, *In re Air Crash over the Taiwan Strait* arising from the crash of CI611 en route to Taipei, Taiwan on May 25, 2002, which killed all 225 persons on board (111 of which were Taiwanese, with only 5 Americans aboard). The plaintiffs sued Boeing, the manufacturer, and China Airlines, the carrier. Only 3 of 124 cases brought before the District Court were governed by Warsaw. The court dismissed the non-Warsaw cases on grounds of *forum non conveniens*, but under *Hosaka*, retained the Warsaw cases.

The Court agreed that the Warsaw cases weighed slightly in favor of retaining the non-Warsaw cases, but questioned whether the Warsaw cases would actually be litigated; China Airlines agreed to waive the applicable Warsaw liability limit, so the plaintiffs could recover full compensatory damages from the carrier. Although that waiver did not affect the plaintiff’s right to sue Boeing, the possibility that a small number of plaintiffs could sue Boeing did not warrant retention of the non-Warsaw cases.

Thus, although courts will retain Warsaw cases according to *Hosaka*, defendants can still pursue *forum non conveniens* motions for non-Warsaw cases resulting from the same crash, even though at least two different forums may ultimately preside over the various cases.

**Looking Forward**

With the continued threat of high value verdicts, broad discovery and certainty of recovery of judgments, plaintiffs will likely continue to seek creative means of obtaining access to U.S. forums. The doctrine of *forum non conveniens* continues to be a viable means of minimizing foreign-based litigation that should be properly pursued in a jurisdiction other than the U.S.

Because plaintiffs continue to be aggressive and creative -- suing marketing partners and U.S. entities with little or no potential liability -- U.S. companies must be similarly aggressive in their defense, filing *forum non* motions early in litigation. For aviation accidents that occur outside of the U.S., and that involve mostly foreign passengers, courts are willing to consider, and often grant, a fair and reasonable *forum non* motion that offers the court an appropriate alternative forum and which, considering a fair balance of both private and public interests, demonstrates that the foreign forum is more convenient and appropriate.

devices that are part of that forum's internal laws…We simply do not believe that the United States through adherence to the Convention has meant to forfeit such a valuable procedural tool as the doctrine of forum non conveniens.”).