IN THE SUPREME COURT OF FLORIDA
STATE OF FLORIDA

KINNEY SYSTEM, INC.

Petitioner,

vs.

THE CONTINENTAL INSURANCE COMPANY,

Respondent.

_____/

CASE NO. 84,329

BRIEF OF AMICUS CURIAE THE FLORIDA CHAMBER OF COMMERCE

IN SUPPORT OF PETITIONER KINNEY SYSTEM, INC.
ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL
CASE NUMBER: 93-2854

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STATEMENT OF THE CASE AND FACTS

On or about October 21, 1994 the Florida Chamber of Commerce ("The Florida Chamber"), requested permission to file an Amicus Curiae Brief in this matter. On October 24, 1994, this Court granted the Florida Chamber's request.

The Florida Chamber is the largest state chamber of commerce in the nation with over 12,000 members. Since its inception over 75 years ago, the Florida Chamber has been the leading public advocate on issues that affect Florida businesses. The Florida Chamber is grateful for the opportunity to present this Court with an Amicus Brief and encourages this Court to join other courts throughout the country in allowing a corporate resident to invoke the doctrine of *forum non conveniens*.

This case commenced upon the filing of a breach of contract claim by Respondent, The Continental Insurance Company ("Continental"), against Petitioner, Kinney System, Inc. ("Kinney"), in the Circuit Court for Broward County, Florida.

Continental is a New Hampshire corporation with its principal place of business in New Jersey (R.1). Kinney is a Delaware corporation with its principal place of business in New York (R.1, 56). Both Kinney and Continental have conducted business in the State of Florida (R.1, 17, 80). Continental has a claims office in Fort Lauderdale and Kinney has a regional office and operates parking garages in Dade County. Continental is registered to do

business in Florida. A dispute exists as to whether the cause of action accrued in the State of Florida.

Kinney's claim was for payment allegedly due under a Workers' Compensation and Employers Liability Insurance policy. (R.1-4). Kinney filed a motion to dismiss the action based upon a doctrine of *forum non conveniens*. (R.52). The trial court granted the motion. The order of dismissal was reversed on appeal. Continental Ins. Co. v. Kinney System, Inc., 19 Fla. L. Weekly D1792 (Fla. 4th DCA Aug. 24, 1994).

The Fourth District Court of Appeal reversed the trial court's order of dismissal, compelled to follow existing precedent. Specifically, the Court noted that "[t]he established law in Florida is that a court has discretion to apply the doctrine of *forum non conveniens* only in those cases in which both parties to the action are non-residents of Florida and the cause of action arose outside Florida." Houston v. Caldwell, 359 So.2d 858, 861 (Fla. 1978); Adams v. Seaboard Coast Line R.R., 224 So.2d 797, 801 (Fla. 1st DCA 1969) (emphasis in original). Continental Ins. Co., at D1792.

The Court found that Continental was, and Kinney may have been, a Florida resident for *forum non conveniens* purposes in accordance with National Aircraft Serv., Inc. v. New York Airlines, Inc., 489 So.2d 38 (Fla. 4th DCA 1986). In National Aircraft Serv., Inc., the Fourth District Court of Appeal recognized that a foreign corporation licensed to do business in Florida and with a principal place of business in Florida is a resident of Florida

and, therefore, unable to dismiss a case based upon the doctrine of *forum non conveniens*.

The Court then acknowledged conflict with the Third District Court of Appeal which defines a foreign corporation as a resident of Florida only if the foreign corporation has its principal place of business in Florida. National Rifle Ass'n of America v. Linotype Co., 591 So.2d 1021 (Fla. 3d DCA 1991).

The Fourth District Court of Appeal did not, however, stop at acknowledging the conflict between the district courts in determining the proper definition of a corporate resident for *forum non conveniens* purposes. Rather, the Court certified the following question as one of great public importance:

> Is a trial court precluded from dismissing an action on the basis of *forum non conveniens* where one of the parties is a foreign corporation that:
>
> (a) is doing business in Florida?
> (b) is registered to do business in Florida?
> (c) has its principal place of business in Florida?

The Florida Chamber urges this Court to answer the question and all of its sub-parts in the negative. The Florida Chamber further requests that this Court also provide that domestic corporations may successfully invoke the doctrine of *forum non conveniens*, when appropriate. If this Court rules as suggested by the Florida Chamber, Florida will no longer stand alone in precluding only its residents from invoking *forum non conveniens*.

SUMMARY OF THE ARGUMENT

Florida is the one jurisdiction that recognizes the doctrine of *forum non conveniens*, yet limits its application to instances in which both parties to an action are nonresidents of Florida and the cause of action arose outside Florida.

Florida's position is directly contrary to the federal doctrine of *forum non conveniens* which requires an approach balancing a number of private and public interests, and with enough flexibility that no one factor (such as residency) controls.

Florida residents are suffering as a result of Florida's refusal to allow a resident defendant to invoke *forum non conveniens*. Cases abound wherein corporations located in Florida are forced to defend actions involving foreign plaintiffs claiming to have suffered injury in a foreign land. Corporations with their principal place of business in Florida are further prejudiced in that they are precluded from removing a case to a federal court which recognizes the doctrine of *forum non conveniens*.

This Court has the inherent power to invoke the doctrine of *forum non conveniens*. Florida's current statutory scheme only governs the transfer of cases within Florida, just as the United States Code only governs the trasnfer of cases to other district courts within the United States. Federal courts routinely dismiss cases that should have been brought in foreign lands and Florida courts are also free to dismiss a case that should have been brought in a more appropriate state or nation, as required.

This Court should answer the question certified as one of great public importance, and all of its sub-parts, in the negative, and further provide that domestic corporations may invoke the doctrine of *forum non conveniens*.

ARGUMENT

1. FLORIDA SHOULD NOT PRECLUDE A CORPORATE RESIDENT FROM INVOKING THE DOCTRINE OF *FORUM NON CONVENIENS*

a. The *Forum Non Conveniens* Doctrine

Forum non conveniens is the discretionary power of a court to decline jurisdiction when the convenience of the parties and ends of justice would be better served if action were brought and tried in another forum. Black's Law Dictionary 655 (6th ed. 1990). The doctrine appears to have originated and developed in Scotland. Braucher, The Inconvenient Federal Forum, 60 Harv. L. Rev. 908, 909 (1947). The doctrine, however, is relatively new to the United States.

Forum non conveniens was established in this country in the 1947 Supreme Court decisions of Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947); and Koster v. Lumbermens Mut. Casualty Co., 330 U.S. 518 (1947). In Gilbert, the United States Supreme Court pronounced that *forum non conveniens* could not be invoked unless the trial court first determines that an adequate alternate forum exists. Id. at 506. The Court then instructed trial courts to weigh the various private interests of the litigants, as well as the public's

interest, in order to determine whether the doctrine of *forum non conveniens* is applicable. Id. at 508-509.

In evaluating the private interests of the litigants, courts are instructed to consider the following factors: (i) the relative ease of access to sources of proof; (ii) availability of compulsory process for attendance of unwilling witnesses; (iii) the cost of attaining willing witnesses; (iv) possibility of viewing the premises, if viewing would be appropriate; (v) enforceability of a judgement is one is obtained; and (vi) all the practical problems that make trial of the case easy, expeditious and inexpensive.

In evaluating the public interest, trial judges were instructed to consider: (i) the administrative difficulties resulting from court congestion; (ii) the local interest in having localized controversy decided locally; and (iii) the judicial interest in adjudicating a case in a forum that is at home with the law that must govern the action and the avoidance of unnecessary problems of conflict of laws, or the application of foreign laws. The Court specifically refused to identify any specific circumstance or fact that would mandate a court to refuse to invoke *forum non conveniens*. Id.

One year following the Gilbert decision, *forum non conveniens*, as it pertains to the transfer of a case from one United States District Court to another, was codified. 28 U.S.C. § 1404(a).

The next major pronouncement from the United States Supreme Court concerning *forum non conveniens* occurred in the case of Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981). Reyno reaffirmed the

principles set forth in Gilbert. The Court warned that to place emphasis on any one factor would cause the doctrine to lose its valuable flexibility. Id. at 249-250.

b. Only Florida precludes a corporate resident from invoking the doctrine of *forum non conveniens*

Florida is among the vast majority of jurisdictions, forty-two, that has adopted *forum non conveniens*.[1] Generally, Florida

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1. Alabama, See Ala. Code § 6-5-430; Alaska, See Crowson v. Sealaska Corp., 705 P.2d 905 (Alaska 1985); Arizona, See Cal Fed Partners v. Heers, 751 P.2d 561 (Ariz. Ct. App. 1987); Arkansas, Ark. Code Ann. § 16-4-101; California, See Cal. Civ. Proc. § 410-30 (West 1994); Colorado, See McDonnell-Douglas Corp. v. Lohn, 557 P.2d 373 (Colo. 1976); Connecticut, See Miller v. United Technologies Corp., 515 A.2d 390 (Conn. Super. Ct. 1986); Delaware, See Miller v. Phillips Petroleum Co. Norway, 537 A.2d 190 (Del. 1988); The District of Columbia, See D.C. Code Ann. § 13-425; Florida, See Armadora Naval Dominicana, S.A. v. Garcia, 478 So.2d 873 (Fla. 3d DCA 1985); Hawaii, See Harbrecht v. Harrison, 38 Haw. 206 (Haw. 1948); Illinois, See McClain v. Illinois Central Gulf R.R., 520 N.E. 2d 368 (Ill. 1988); Indiana, See Ind. Code Ann. Ind. R. Trial Proc. 4.4 (West 1994); Iowa, See Silversmith v. Kenosha Auto Transp., 301 N.W. 2d 725 (Iowa 1981); Kansas, See Volt Delta Resources, Inc. v. Devine, 740 P.2d 1089 (Kan. 1987); Kentucky, See Carter v. Netherton, 302 S.W.2d 382 (Ky. 1957); Maine, See Field Indus., Inc. v. D.J. Williams, Inc., 470 A.2d 1266 (Me. 1984); Maryland, See Johnson v. G.D. Searle & Co., 552 A.2d 29 (Md. 1989); Massachusetts, See Mass. Gen. Laws Ann. ch 223A, § 5 (West 1994); Michigan, See Cray v. General Motors Corp., 207 N.W. 2d 393 (Mich. 1973); Minnesota, See Bergquist v. Medtronic, Inc., 379 N.W.2d 508 (Minn. 1986); Mississippi, See Shewbrooks v. A.C. and S., Inc., 529 So. 2d 557 (Miss. 1988); Missouri, See Besse v. Missouri Pacific R.R., 721 S.W.2d 740 (Mo. 1986), cert. denied, 481 U.S. 1016 (1987); Nebraska, See Qualley v. Chrysler Credit Corp., 217 N.W. 2d 914 (Neb. 1974); Nevada, See Payne v. Eighth Judicial District Court, County of Clark, 626 P.2d 1278 (Nev. 1981); New Hampshire, See Digital Equipment Corp. v. Int'l Digital Systems Corp., 540 A.2d 1230 (N.H. 1988); New Jersey, See Civic Southern Factors Corp. v. Bonat, 322 A.2d 436 (N.J. 1974); New Mexico, See Buckner v. Buckner, 622 P.2d 242 (N.M. 1981); New York, See N.Y. Civ. Prac. L. & R. 327 (McKinney (continued...)

courts apply the parameters and tests as set forth in Gilbert in determining whether to invoke the doctrine of *forum non conveniens*. Southern Ry. v. Bowling, 129 So. 2d 433, 434 (Fla. 3d DCA 1961); Armadora Naval Dominicana, S.A. v. Garcia, 478 So. 2d 873 (Fla. 3d DCA 1985). However, Florida is unique in holding that *forum non conveniens* cannot be invoked by a Florida resident even though the cause of action arose outside of the state of Florida. Houston v. Caldwell, 359 So. 2d 858, 859-60 (Fla. 1978); Seaboard Coast Line

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1.(...continued)
1994); North Carolina, See N.C. Gen. Stat. § 1-75.12; North Dakota, See N.D. R. Civ. P. 4; Ohio, See Chambers v. Merrell-Dow Pharmaceuticals, Inc., 519 N.E. 2d 370 (Ohio 1988); Oklahoma, See Groendyke Transport, Inc. v. Cook, 594 P.2d 369 (Okla. 1979); Oregon, See C.O.W., Inc. v. Motor Vehicles Division, Oregon Department of Transportation, 586 P.2d 107 (Or. 1978); Pennsylvania, See 42 Pa. Cons. Stat. Ann. § 5322(e) (1994); South Carolina, See Braten Apparel Corp. v. Bankers Trust Corp., 259 S.E. 2d 110 (S.C. 1979); Tennessee, See Zurick v. Inman, 426 S.W. 2d 767 (Tenn. 1968); Texas, See Tex. Civ. Prac. & Rem. Code § 71-051 (West 1994); Utah, See Kish v. Wright, 562 P.2d 625 (Utah 1977); Vermont, See Burrington v. Ashland Oil Co., 356 A.2d 506 (Vt. 1976); Washington, See Johnson v. Spider Staging Corp., 555 P.2d 997 (Wash. 1976); West Virginia, See Norfolk and Western Ry. Co. v. Tsapis, 400 S.E. 2d 239 (W. Va. 1990); and Wisconsin, See Wis. Stat. Ann. § 801-63 (1994). Of all of the states which have addressed the issue, only one state, Georgia, has refused to adopt the doctrine in any form. See, Smith v. Board of Regents of Univ. Sys. of Georgia, 302 S.E. 2d 124 (Ga. 1983). Louisiana has adopted a limited version of forum non conveniens. See La. Code Civ. Proc. Ann. art. 123 (West 1994). Montana has rejected the doctrine in litigation under the Federal Employees Liability Act. See State en rel Burlington Northern R.R. v. District Court of the Eighth Judicial Dist., County of Cascade, 746 P.2d 1077 (Mont. 1987). The remaining states have not ruled on the applicability of forum non conveniens.

R.R. v. Swain, 362 So. 2d 17, 18 (Fla. 1978).[2] Florida's approach is therefore directly contrary to the United States Supreme Court warning not to give special credence to any one factor.

In the federal judiciary, and states that have adopted the federal doctrine of *forum non conveniens*, the fact that a defendant resides in the forum is one of many factors to be considered by the courts. Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981). Federal courts and states that have adopted the federal doctrine of *forum non conveniens* have often granted motions based on *forum non conveniens* to residents of the forum state. See, e.g., Watson v. Merrell Dow Pharmaceuticals, Inc., 769 F.2d 354 (6th Cir. 1985); Stangvik v. Shiley, Inc., 819 P.2d 14 (Cal. 1991)(en banc); Silver v. Great Am. Ins. Co., 278 N.E. 2d 619 (N.Y. 1972). This approach to residency follows the flexible approach of Gilbert.

c. Corporate residents of Florida are suffering from their inability to invoke the doctrine of *forum non conveniens*.

Corporate residents of Florida are improperly forced to defend any suit filed against them by foreign claimants in state courts. As a result, one commentator notes that Florida, Texas and Louisiana are the best possible alternative sites for a foreign

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2. The Third District Court of Appeal defines a corporate resident for forum non conveniens purposes as one with a principle place of business in Florida. National Aircraft Serv., Inc. v. New York Airlines, Inc., 489 So. 2d 38 (Fla. 4th DCA 1986). The Fourth District Court of Appeal defines a corporate resident for purposes of forum non conveniens as one that conducts business here or is registered to do business in Florida. National Rifle Ass'n of America v. Linotype Co., 591 So.2d 1021 (Fla. 3d DCA 1991).

litigant to file a negligence action. Eugene J. Silva, Practical Views on Stemming the Tide of Foreign Plaintiffs and Concluding Mid-Atlantic Settlements, 28 Tex. Int'l L. J. 479 (1993).[3]

Florida courts are replete with cases that, under the federal doctrine of *forum non conveniens*, may belong elsewhere. Piper Aircraft Corp. v. Schwendemann, 578 So.2d 319 (Fla. 3d DCA 1991), exemplifies the problems faced by corporate residents of this state. Piper Aircraft involves a claim for damages arising out of an airplane crash in Munich, Germany. The accident killed 12 Germans and injured 27 Germans. Defendant, Piper Aircraft Corp., fortuitously moved its corporate headquarters from Pennsylvania to Florida after the accident. The Third District Court of Appeal affirmed the trial court's refusal to dismiss the case on grounds of *forum non conveniens* due solely to the fact that Piper Aircraft Corp. maintained its principal place of business in Florida. Thus, the court was precluded from considering the private and public interests as enunciated in Gilbert. As a result of its move, Piper was forced to defend a claim involving German residents, Plaintiffs, witnesses and law in Dade County, Florida.

Murdoch v. A.P. Green Indus., Inc., 603 So.2d 655 (Fla. 3d DCA 1992), is yet another example of a case filed in Florida that belongs elsewhere. The Murdochs filed a personal injury claim in Dade County, Florida. Numerous asbestos manufacturers were named

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3. Texas no longer has this dubious distinction, since its legislature recently adopted a statute that coincides with the federal doctrine of forum non conveniens. See Tex. Civ. Prac. & Rem. Code § 71-051 (West 1994).

as defendants. The injuries occurred in North Carolina. The Murdochs reside out of state.[4] One of the numerous defendant corporations maintained its principal place of business in Florida. The trial court granted Defendants' motion to dismiss on the doctrine of *forum non conveniens*. The Third District Court of Appeal reversed the order of dismissal finding that it was inappropriate for the trial court to dismiss the case since at least one defendant was a corporate resident of Florida. Id. at 655. Thus, the citizens of Florida may pay for a trial involving out of state plaintiffs who allegedly suffered injuries outside of Florida.

A recent outgrowth of the Murdoch case was reported in the Miami Herald on June 15, 1994. As reported in the Miami Herald, and as set forth in the court file in Galotti v. Owens-Corning Fiberglas Corp., in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, Case No. 93-23982(42), a Dade County jury recently awarded damages in the amount of $6.25 million to a New Hampshire resident who was exposed to asbestos in Massachusetts. Damages were awarded against the then only remaining defendant, Owens-Corning Fiberglas Corp., a Delaware

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4. The place of injury and residency of the plaintiffs are set forth in Appellant's Brief filed in the Third District Court of Appeal.

corporation with its principal place of business in Ohio.[5] The trial lasted for two weeks, at extensive cost to local taxpayers.

Asbestos filings in Florida are exploding. In Dade County Circuit Court, a separate section - 42 - was opened to handle asbestos cases. From 1991 through September 30, 1994, a total of 2,516 cases have been filed in section 42. All the cases fall within the case of In re: Asbestos Litigation, in the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida, Case No. 91-80,000(42). The vast majority of the claimants whose residence are known, like Mr. Murdoch, are out of state residents allegedly injured out of state. The vast majority of defendants are neither Florida corporations nor headquartered in Florida. The

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5. The Galottis' claims were originally filed against 13 defendants. Of the 13 defendant, only one, W.R. Grace & Co. - Conn., had its principal place of business in Florida. None of the named defendants are Florida corporations. The other initial corporate defendants were as follows: Asbestos Claims Management Corp. f/k/a National Gypsum Co, a Delaware corporation with its principal place of business in North Carolina; A.W. Chesterton, a Massachusetts corporation with its principal place of business in Massachusetts; the Anchor Packing Co., a Delaware corporation with its principal place of business in New York; Flexitallic, Inc., a Delaware corporation with its principal place of business in Texas; GAF Corp., a Delaware corporation with its principal place of business in New Jersey; Georgia Pacific Corp., a Georgia corporation with its principal place of business in Georgia; Dresser Industries, a Delaware corporation with its principal place of business in Texas; Pittsburgh Corning Corp., a Pennsylvania corporation with its principal place of business in Pennsylvania; United States Minerals Products Co., a New Jersey corporation with its principal place of business in New Jersey; Riley Stoker Corp., a Massachussets corporation with its principal place of business in Massachusetts; and W.R. Grace and Co. - Conn., a Connecticut corporation with its principal place of business in Florida.

trial dockets consist of ten cases per week. Trial is to occur no less than six months after the date the last defendant is served.

Broward County is also swamped with asbestos cases, which also involving numerous out of state claimants who were allegedly injured in other states. Like Dade, Broward County has set up a separate case, entitled In re: Asbestos Litigation, in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, Case No. is 92-90000, to dispose of the flood of asbestos case.[6]

The case of Sibaja v. Dow Chemical Co., 757 F.2d 1215 (11th Cir. 1985), is an example of massive foreign claims filed in Florida that belong elsewhere. This case involves a claim by fifty-eight Costa Rican workers who claim to have been sterilized by the defendants, Dow Chemical Co. and Shell Oil Co. Both defendants are multinational companies that conduct business in Florida. The injury incurred in Costa Rica. Predictably, the case was instituted in Florida state court. The case was removed to federal court.

Had defendants been unable to remove the case, this complex mass tort case, with no connection to Florida and governed by Costa Rican law, would have been litigated to its merits in state court.

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6. Since 1991, all asbestos personal injury cases in Broward County have been filed under filing code 0801 or 0802. In that timeframe, a total of 152 cases have been filed under code 0801, and total of 700 cases have been filed under code 0802. These cases are handled just as the Dade County cases.

Id. at 1219.[7] In Federal Court the case was dismissed in accordance with the federal doctrine of *forum non conveniens*.[8] The primary issue before the court was whether the district court should apply the federal formula for *forum non conveniens* or Florida law. The court determined that the district court properly applied the federal formulation, held that Costa Rica was a more appropriate forum for this litigation, and ordered the case dismissed.

The prohibition against Florida corporate residents from invoking the doctrine of *forum non conveniens* is negatively impacting resident businesses. Piper Aircraft Corp. and W.R. Grace & Co. are only two of many businesses suffering from the inability to invoke the doctrine of *forum non conveniens*.

Corporate residents of Florida are at a competitive disadvantage, and Florida efforts to recruit business are, therefore, hampered. Florida judges are forced to deal with

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7. If either Shell Oil Co. or Dow Chemical Co. maintained its principal place of business in Florida, then the case would not be subject to removal, and the Florida state court would be burdened with this massive tort case, with no connection to Florida. See, e.g., McKay By and Through McKay v. Boyd Constr. Co., 769 F.2d 1084 (5th Cir. 1985). (A defendant sued in the State in which it maintains its principal place of business cannot remove the matter to Federal Court). See also 28 U.S.C. § 1441.

8. Shell Oil and Dow Chemical's involvement in this case alone could create enough of a disincentive to those companies to move to Florida, realizing that if their principal place of business were in Florida, the claim involving 58 Costa Rican workers, and Costa Rican law would have to proceed in the state court in Florida.

increasingly complex choice of law issues on a recurring basis. Florida citizens are paying for trials that belong elsewhere and serving as jurors to hear disputes arising in foreign lands. The people of Florida face delay in the resolution of their disputes while out of state litigants consume precious court time.[9]

Many commentators have warned of adverse consequences for jurisdictions that refuse to adopt the federal *forum non conveniens* doctrine. Louisiana does not follow the federal formulation of *forum non conveniens*. A commentator properly warned "[i]f Louisiana remains as one of the few welcome centers inviting foreign plaintiffs to try foreign causes of action in the United States, its efforts at business development ... are bound to suffer." Adrian G. Duplantier, Louisiana: A Forum Conveniens Vel Non, 48 La. L. Rev. 761, 787 (1988). A Texas commentator warns that his state's then refusal to recognize *forum non conveniens* would result in harassment of resident defendants. Marc C. Mayfield, Casenote, Dow Chemical Company v. Alfaro: Aiding the Decline of the Alternative Forum, 14 Hous. J. Int'l L. 213 (1991).[10]

Courts have also opined that resident businesses will suffer a competitive disadvantage if they are forced to defend all

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9. On November 10, 1994, the Miami Herald, Broward Edition, featured an article entitled "Most Lawsuits Become Legal Labyrinths." The article pointed out that the average time from filing a civil lawsuit to trial in Florida was 3 years, 2 months.

10. Texas recently adopted the doctrine of forum non conveniens legislatively. See n.3 infra.

lawsuits involving extraterritorial injuries. Cf. Frazier v. St. Jude Medical, Inc., 609 F.Supp. 1129, 1131-1132, (D. Minn. 1985); (Minnesota must ensure that its corporations have access to adequate procedures to defend themselves); Kaiser Found. Health Plan v. Rose, 583 A.2d 156, 159 (D.C. 1990). (District of Columbia has interest in ensuring that its corporate citizens are not treated more harshly than other corporations.)

At one time, corporate residents of New York were precluded from invoking the doctrine of *forum non conveniens*. In overruling prior precedent, the New York Court of Appeals noted:

> Further thought persuades us that our current rule - which prohibits the doctrine of Forum non conveniens from being invoked if one of the parties is a New York resident - should be relaxed. Its application should turn on considerations of justice, fairness and convenience and not solely on the residence of one of the parties. Although such residence is, of course, an important factor to be considered, Forum non conveniens relief should be granted when it plainly appears that New York is an inconvenient forum and that another is available which will best serve the ends of justice and the convenience of the parties. The great advantage of the doctrine - its flexibility based on the facts and circumstances of a particular case - is severely, if not completely, undercut when our courts are prevented from applying it solely because one of the parties is a New York resident or corporation.

Silver v. Great Am. Ins. Co., 278 N.E. 2d 619, 621 (N.Y. 1972).

This Court may wonder exactly who is benefiting by this State's failure to allow its corporate residents to invoke the doctrine of *forum non conveniens*. Justice Hecht, dissenting in the case of Dow Chemical Co. v. Alfaro, 786 S.W. 2d 674, 707 (Tex.

1990), cert. denied, 498 U.S. 1024 (1991), answered the identical question by responding, "A few lawyers, obviously." The time is ripe for this Court to abolish a court mandated prohibition against corporate residents from invoking the doctrine of *forum non conveniens*.

d. The location of a corporation's principal place of business should not preclude it from invoking the doctrine of *forum non conveniens*

Equitable and practical considerations mandate that this Court allow corporations with their principal place of business in Florida, whether domestic or foreign, to invoke the doctrine of *forum non conveniens*.

A finding that corporations headquartered in Florida may not invoke *forum non conveniens* will severely impede this state's quest to attract multinational corporations. Moreover, the realities of modern commerce dictate that this Court no longer consider a corporation's principal place of business as a determinative factor in its *forum non conveniens* analysis. After all, "what may at first glance appear to be a defendant's home may upon closer inspection have no close connection with the defendant's business operations. Modern economic life demands that 'home' be broadly defined . . . [t]he reality of modern economic life is that multi-nationals have multiple 'homes'." William L. Reynolds, The Proper Forum for a Suit: Transnational *Forum Non Conveniens* and Countersuit Injunctions in the Federal Courts, 70 Tex. L. Rev. 1663, 1695 (1992). No rational basis exists to require a

corporation headquartered in Florida, in all instances, to defend in Florida claims by foreigners arising in foreign lands with foreign witnesses.

A ruling that foreign corporations doing business in Florida and corporations registered to do business in Florida may invoke the doctrine of *forum non conveniens,* but corporations with their principal place of business may not, will unfairly prejudice corporations that choose to locate in Florida. This will leave corporations with their principal place of business in Florida in the untenable position of being unable to invoke the doctrine of *forum non conveniens* in state court, and unable to remove the action to federal court where *forum non conveniens* is recognized. See infra n.7.

Similarly, although the question presented to this Court does not address whether domestic corporations should be able to invoke the doctrine of *forum non conveniens,* certainly a Florida corporation should be allowed to invoke the doctrine of *forum non conveniens.*

2. THIS COURT HAS THE INHERENT POWER TO ADOPT THE FEDERAL FORMULATION OF *FORUM NON CONVENIENS*

This Court possesses the inherent power to invoke the doctrine of *forum non conveniens.* Sibaja v. Dow Chemical Co., 757 F.2d 1215 (11th Cir. 1985). In the federal judiciary, the doctrine of *forum non conveniens* was created judicially, not legislatively. Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947). It was only after the Gilbert decision that the United States Congress passed section

1404(a) of the Judicial Code, which governs the transfer of actions when a more appropriate forum was another district court.[11]

Although 28 U.S.C. § 1404(a) governs the transfer of actions based upon *forum non conveniens,* the enactment of the statute did not preclude the dismissal of an action when the more appropriate forum is a foreign nation. See, e.g., In re: Union Carbide Corp. Gas Plant Disaster at Bhopal, India in December 1984, 809 F.2d 195 (2d Cir. 1987).[12] Moreover, a court can premise the dismissal of an action upon certain conditions. For example, in Union Carbide, the Court's dismissal of the action was premised upon an agreement by Union Carbide to submit to the jurisdiction of court in India and to waive statute of limitations defenses. In Reyno, the Court notes that a dismiss conditioned upon an agreement to produce documents in the United States may be appropriate. Id. at 257. Courts throughout the United States have heeded this suggestion. See, e.g., Watson v. Merrell Dow Pharmaceuticals, Inc., 769 F. 2d

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11. 28 U.S.C. § 1404(a) provides:
For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

12. The Second Circuit Court of Appeals dismissed thousands of personal injury claims brought by residents of India. Union Carbide has its principal place of business in New York. Had New York not abandoned its prior law which precluded a resident defendant from raising a forum non conveniens defense, the thousands of claims by residents of India could have been maintained in state court in New York. Should any tort claim, massive or otherwise occur in a foreign country, and include a corporation with its principal place of business in Florida, as a defendant, a circuit court in Florida will lack the necessary discretion to evaluate whether Florida is the appropriate forum.

354 (6th Cir. 1985) (dismissal upon agreement to make documents and witnesses available in the United Kingdom).

In Florida, just as in the federal judiciary, the doctrine of *forum non conveniens* is a court created doctrine. See, e.g., Greyhound Corp. v. Rosart, 124 So. 2d 708 (Fla. 3d DCA 1960); Atlantic Coast Line R.R. v. Ganey, 125 So. 2d 576 (Fla. 3d DCA 1960). The Florida legislature, like the United States Congress, then enacted legislation to govern the transfer of an action when a more appropriate forum was another court within the jurisdiction of the legislative body.[13] Thus, like federal courts, there is no legislative pronouncement precluding this court from exercising its inherent power to dismiss a case when the transfer of a case is beyond this court's abilitites.

In Houston v. Caldwell, 359 So.2d 858 (Fla. 1978) , this Court was hesitant to authorize the dismissal of a case when a more appropriate forum was another state due to the lack of its statutory authority to transfer a suit to another state. This lack of statutory authority should no longer concern this Court. Rather, this Court should follow the lead of other jurisdictions and authorize dismissal of a case when a more appropriate forum exists outside of the confines of the statutory authority to transfer a case, i.e. another state or nation.

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13. Section 47.122, enacted in 1969, provides that "for the convenience of the parties or witnesses or in the interest of justice, any court of record may transfer any civil action to any other court of record in which it might have been brought".

CONCLUSION

For the foregoing reasons, Amicus Curiae, the Florida Chamber of Commerce, respectfully requests that this Honorable Court reverse the Fourth District Court of Appeal's reversal of the trial court, answer the certified question of great public importance, and all of its sub-parts, in the negative; overrule the cases of Houston v. Caldwell, 359 So.2d 858, (Fla. 1978); and Seaboard Coast Line R.R. v. Swain, 362 So.2d 17 (Fla. 1978), and further provide that all foreign or domestic corporations sued in Florida may invoke the doctrine of *forum non conveniens*.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by United States Mail on November 11, 1994, to:

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