THE SUPREME COURT OF FLORIDA

CASE NO.: SC11-1908

SHAHLA M. RABIE CORTEZ,

Petitioner,
v.

PALACE RESORTS, INC.,
PALACE RESORTS, LLC.,
& TRADCO, LTD. INC.,

Respondents.
_____/

# AMICUS CURIAE BRIEF OF THE FLORIDA JUSTICE ASSOCIATION

Joel S. Perwin, P.A.
169 E. Flagler Street
Alfred I. Dupont Bldg., Suite 1422
Miami, FL 33131
Tel: (305) 779-6090
Fax: (305) 779-6095

By: Joel S. Perwin
Fla. Bar No. 316814

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Cases

**Other Authorities**

## I.
## INTRODUCTION

The Florida Justice Association (FJA), formerly the Academy of Florida Trial Lawyers, is a statewide organization committed to the rights of Florida's citizens to access to our courts. The instant Petition implicates that interest at its core, because it challenges a trial court's ruling, affirmed by the District Court of Appeal, dismissing the instant case for *forum non conveniens* (*f.n.c.*), not merely in favor of another U.S. state, but in favor of a foreign country. The Plaintiff was literally denied access to our courts.

## II.
## SUMMARY OF ARGUMENT

It is doubtful that either the Petitioner or any amicus curiae could improve upon the thoughtful and scholarly dissenting opinion of Judge Rothenberg in this case. *See Cortez v. Palace Holdings, S.A. De. C.V.*, 66 So. 3d 959, 964-73 (Fla. 3d DCA 2011) (Rothenberg, J., dissenting). Nor would it provide significant assistance for the FJA to attempt to replicate that detailed analysis of both the underlying facts and the full array of factors relevant to the *f.n.c.* analysis. Instead, we believe that it would be useful to attempt to place the District Court's analysis into a larger context--of the federal courts' administration of the doctrine of *foreign non conveniens*, which is the standard adopted by this Court in *Kinney*

*Systems, Inc. v. Continental Ins. Co.*, 674 So. 2d 86 (Fla. 1996). It is respectfully submitted that although this Court adopted the federal due process standard in *Kinney*, the Florida appellate courts have persistently narrowed and tightened it, increasingly closing the courthouse doors to cases brought by or against Florida and United States residents. The instant case is an extreme example. It illustrates how far some appellate decisions have departed from the origins and proper applications of the doctrine of *forum non conveniens*.

## III.
## ARGUMENT

*A. The Appropriate Standard.* The most important point to make about the District Court's decision is that the court perceived its function, and that of the trial court, to be a determination of the "best" place to bring this action (our quotations). The District Court sanctioned an evaluation of the relevant *f.n.c.* factors by placing them on a scale balancing the two forums implicated, and then choosing whichever forum tips the scales in its direction, however slightly.

The District Court did not leave that conclusion to inference. It said, 66 So. 3d at 961: "Our review of the complaint and affidavits demonstrates that, based on the test set forth in *Kinney*, Mexico is a more convenient forum to litigate the lawsuit than Florida." And it said, *id*. at 963: "Even with deference to the

Plaintiff's choice of forum, the private interest factors weigh more heavily in favor of proceeding against the defendants in Mexico." The court's entire undertaking was to balance the contacts with one forum against the other's, and decide which one was a "better" place to bring the lawsuit (our quotations). That formulation of the issue was fundamentally incorrect.

The body of federal law adopted in *Kinney* thoroughly undermines the analytical construct adopted by the District Court. When a plaintiff secures personal jurisdiction over a defendant in the proper venue, that plaintiff has the *right* to choose his forum. He is not required to "choose the optimal forum . . . ." *Ravelo Monegro v. Rosa*, 211 F.3d 509, 514 (9th Cir. 2000), *cert. denied sub nom. San Francisco Baseball Associates, L.P. v. Ravelo Monegro*, 531 U.S. 1112 (2001). When a plaintiff satisfies the requisites of jurisdiction and venue, in all but the most extreme circumstances, his choice "should rarely be disturbed . . . ." *SME Racks, Inc. v. Sistemas Mecanicos Para Electronica, S.A.*, 382 F.3d 1097, 1101 (11th Cir. 2004), *citing Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). *See Del Monte Fresh Produce Co. v. Dole Food Co., Inc.*, 136 F. Supp. 2d 1271, 1276 (S.D. Fla. 2001).

For this reason, the plaintiff's right to choose his forum "is more than just one factor that the court must consider." *Pain v. United Technologies Corp.,* 637 F.2d

775, 783 (D.C. Cir. 1980), *cert. denied,* 454 U.S. 1128 (1981). Rather, it carries a "strong presumption" of correctness.[1] This is especially true of an American plaintiff, who has a presumptive right to a U.S. forum.[2]

Against this backdrop, a motion to dismiss for *forum non conveniens* should be granted only in "exceptional circumstances," *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 504 (1947), *quoted in SME Racks*, 382 F.3d at 1100--that is, only when the court is "thoroughly convinced that material injustice is manifest . . . ."[3] Such a

---

[1] *Macedo v. Boeing Co.*, 693 F.2d 683, 688 (7th Cir. 1982). *See Piper Aircraft Co. v. Reyno,* 454 U.S. 235, 255 (1981); *Koster v. (American) Lumbermens Mutual Casualty Co.,* 330 U.S. 518 (1947); *Gulf Oil v. Gilbert,* 330 U.S. at 508; *La Seguridad v. Transytur Line,* 707 F.2d 1304 1307 (11th Cir. 1983); *Sun Trust Bank v. Sun Internat'l Hotels, Ltd.*, 184 F. Supp. 2d 1246, 1262 (S.D. Fla. 2001).

[2]"When plaintiffs are residents of the United States, the Eleventh Circuit has mandated that a district court 'require positive evidence of unusually extreme circumstances and should be thoroughly convinced that material injustice is manifest before exercising any discretion as may exist to deny a U.S. citizen access to the courts of this country.'" *Villeda Aldana v. Fresh Del Monte Produce, Inc.*, 2007 WL 3054986, *3 (S.D. Fla. Oct. 16, 2007), *aff'd*, 578 F.3d 1283 (11th Cir. 2009), *quoting SME Racks*, 382 F.3d at 1101-02. *Accord, Esfeld v. Costa Crociere, S.P.A.*, 289 F.3d 1300, 1305 (11th Cir. 2002); *Reid-Walen v. Hansen*, 933 F.2d 1390, 1396 (8th Cir. 1991); *La Seguridad v. Transytur Line*, 707 F.2d 1304, 1307 (11th Cir. 1983); *Ward v. Kerzner Internat'l Hotels Ltd.*, 2005 WL 2456191, * 2 (S.D. Fla. March 30, 2005).

[3]*Burt v. Isthmus Dev. Co.*, 218 F.2d 353, 357 (5th Cir.), *cert. denied*, 349 U.S. 922 (1955), *quoted in SME Racks*, 382 F.3d at 1100, *and La Seguridad*, 707 F.2d at 1308 n. 7. *Accord, Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996); *Ravelo Monegro v. Rosa*, 211 F.3d 509, 514 (9th Cir. 2000), *cert. denied sub nom. San Francisco Baseball Associates, L.P. v. Ravelo Monegro*, 531 U.S. 1112 (2001); *Reid-Walen v. Hansen*, 933 F.2d 1390, 1395 (8th Cir. 1991); *Tramp Oil and Marine*

standard is "rarely" satisfied, *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981), and satisfaction of the moving party's burden of proof[4] is especially difficult when the defendant is "moving to dismiss in favor of a foreign court . . . ." 15 C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* §3828 at 291-92 (2nd ed. 1986). In such cases, *all United States contacts*--not only those with the forum state--are aggregated against the defendant's proposal.[5] In looking only to Florida contacts, the District Court's decision in the instance case directly violated that rule.

---

*Ltd.* v. M/V Mermaid I, 743 F.2d 48, 52 (1st Cir. 1984); *Manu Internat'l, S.A. v. Avon Products, Inc.*, 641 F.2d 62, 65 (2d Cir. 1981); *Founding Church of Scientology of Washington, D.C. v. Verlag*, 536 F.2d 429 (D.C. Cir. 1976); *Hoffman v. Goberman*, 420 F.2d 423, 426 (3d Cir. 1970); *Burt v. Isthmus Dev. Co.*, 218 F.2d 353, 357 (5th Cir.), *cert. denied*, 349 U.S. 922 (1955); *Sun Trust Bank v. Sun Internat'l Hotels, Ltd.*, 184 F. Supp. 2d 1246, 1263 (S.D. Fla. 2001).

[4]The Defendant has the burden "as to all elements of the *forum non conveniens* analysis." *Lacey v. Cessna Aircraft Co.*, 862 F.2d 38, 43-44 (3rd Cir. 1988). *Accord, SME Racks*,382 F.3d at 1100; *Northrup King Co. v. Compania Productora Semillas Algondoneras Selectas, S.A.*, 51 F.3d 1383, 1390 (8th Cir. 1995); *Rivendell Forest Products, Ltd. v. Canadian Pacific Ltd.*, 2 F.3d 990, 993 (10th Cir. 1993); *Contact Lumber Co. v. P.T. Moges Shipping Co., Ltd*., 918 F.2d 1446, 1449 (9th Cir. 1990).

[5]*See Wilson v. Island Seas Investments, Ltd.*, 590 F.3d 1264, 1271 (11th Cir. 2009); *SME Racks*, 382 F.3d. at 1104; *DiRienzo v. Philip Services Corp.*, 294 F.3d 21, 28 (2nd Cir.), *cert. denied sub nom. Deloitte & Touche LLP v. DiRienzo*, 537 U.S. 1028 (2002); *Howe v. Goldcorp. Investments, Ltd.*, 946 F.2d 944, 945-46, 951-53 (1st Cir. 1991) (Breyer, J.), *cert. denied*, 502 U.S. 1095 (1992); *Mercier v. Sheraton Internat'l, Inc.*, 935 F.2d 419, 429 (1st Cir. 1991); *Reid-Walen v. Hansen*, 933 F.2d at 1394; 5_fe10df23d151*Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1246 (7th Cir. 1990), *cert. denied*, 499 U.S. 947 (1991); *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d 339, 344 (8th Cir. 1983), *cert. denied*, 464 U.S. 1042 (1984); *Macedo*

*See Esfeld v. Costa Crociere, S.P.A.*, 289 F.3d 1300, 1313 (11th Cir. 2002) (declining to give *res judicata* effect to an *f.n.c.* dismissal approved by the Third District Court of Appeal of Florida, because that court looked only to Florida contacts, while the federal standard looks to all U.S. contacts).

The foregoing discussion defines the broad parameters for adjudicating the *f.n.c.* motion, reflecting the underlying principles at stake. The failure to administer the *f.n.c.* standard through that lens, instead "focusing only on factors related to the practical problems" of trying the case, is error. *SME Racks*, 382 F. 3d at 1103. *Accord, Ravelo Monegro v. Rosa*, 211 F.3d at 514. Yet that is *exactly* what the District Court did in this case. It undertook to balance the various relevant factors uninformed by any of the principles noted above, and held that "Mexico is the more convenient forum." 66 So. 3d at 963.

*B. Illustrating Proper Application of the Federal Standard.* As we said, it would not make sense to replicate here a point-by-point discussion of the numerous factors relevant to the *f.n.c.* analysis, as against the evidence of record. However, by isolating a few of those factors, we can illustrate the District Court's departure from the appropriate standard.

*1. The Defendant's Place of Business*. We have emphasized the

---

*v. Boeing Co.*, 693 F.2d 683, 690 (7th Cir. 1982).

importance of the Plaintiff's U.S. residence and choice of forum. Also important is the *defendant's* residence. Here we have U.S. Defendants with their worldwide base of operations in Florida--their "operational, managerial, and marketing center for the Place Resorts Group," 66 So. 3d at 965 (Rothenberg, J., dissenting) (a fact that they lied about repeatedly)--who nevertheless contend that it would be more convenient for them to litigate somewhere else. American defendants complain about forum shopping (which in fact is the plaintiff's *lawful prerogative*), but never acknowledge their own forum shopping in seeking to remove a case from their home base. "The fact that the defendants are located in this country is one indication that it would be less burdensome for the defendants to defend suit in this country than it would be for [the plaintiff] to litigate in a foreign country." *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d at 346, *citing Founding Church of Scientology of Washington, D.C. v. Verlag*, 536 F.2d 429, 435 (D.C. Cir. 1976) (defendants in this country "have in effect signified their willingness to be sued in American courts"). In such circumstances, the defendant's is a "strange argument," *Gulf Oil Corp. v. Gilbert*, 330 U.S. at 510. *See Cardoso v. FPB Bank*, 879 So. 2d 1247, 1250 (Fla. 3d DCA 2004) ("both puzzling and strange"). "It is, as Alice said, 'curiouser and curiouser.'" *Lony v. E.I. DuPont de Nemours & Co.*, 935 F.2d 604, 608 (3d Cir.

1991).[6] Even with a foreign defendant, "[t]he deference accorded the plaintiff's choice of forum is enhanced when the plaintiff has chosen a forum in which the defendant maintains a substantial presence . . . ." *Mercier v. Sheraton Internat'l, Inc.*, 981 F.2d 1345, 1354 (1st Cir. 1992), *cert. denied*, 508 U.S. 912 (1993). In the instant case, we have a U.S. Plaintiff and U.S. Defendants based in Florida, who run the entire Mexican operation out of Florida. Contrary to the District Court's holding, under the proper standards, this case calls for *maximum* deference to the Plaintiff's choice of forum.

*2. Evaluating the Difficulties of Litigating in the Alternative Forum.* By definition, given the standard for adjudicating the *f.n.c.* motion, a defendant cannot satisfy its heavy burden if the relevant factors are "in equipoise or

[6]*Accord, Peregrine Myanmar Ltd. v. Segal*, 89 F.3d 41, 46 (2d Cir. 1996) (strong presumption for forum, "especially if the defendant resides" there); *Lony v. E.I. Dupont de Nemours & Co.*, 935 F.2d 604, 608-09 (3d Cir. 1991); *Reid-Walen v. Hansen*, 933 F.2d at 1395; *Lony v. E.I. Dupont de Nemours & Co.*, 886 F.2d 628, 634 (3d Cir. 1989); *Manu Internat'l, S.A. v. Avon Products, Inc.*, 641 F.2d 62, 67 (2d Cir. 1981); *Pain v. United Technologies Corp.*, 637 F.2d 775, 794 (D.C. Cir. 1980) (f.n.c. doctrine is not an excuse for "reverse forum shopping" by defendant), *cert. denied*, 454 U.S. 1128 (1981); 977f_45_7d87216f5489*Schertenleib v. Traum*, 589 F.2d 1156, 1164 (2d Cir. 1978) (defendant's residence weighs heavily against dismissal); *Fiacco v. United Technologies Corp.*, 524 F. Supp. 858, 862 (S.D.N.Y.) (court can consider that American defendant's motion reflects its "value judgment that it will be advantageous for it to have damages assessed in [foreign] courts rather than American courts"), *mandamus denied*, 671 F.2d 492 (2d Cir.1981), *cert. denied*, 456 U.S. 976 (1982); *Dorman v. Emerson Electric Co.*, 789 F. Supp. 296, 297 (E.D. Mo. 1992) (defendant's protest "greatly discounted")

near equipoise." *La Seguridad v. Transytur Line*, 707 F.2d 1304, 1307 (11th Cir. 1983). *Accord, SME Racks*, 382 F.3d at 1101; *Chan Tse Ming v. Cordis Corp.*, 704 F. Supp. 217, 219 (S.D. Fla. 1989) ("[W]ith regard to evidence generally, it must be noted that the inconvenience runs both ways"). The *f.n.c.* analysis is not an excuse for imposing on the courts of other countries a set of difficulties roughly equivalent to those which the forum court would encounter in keeping the case.[7] The contacts must be so concentrated in the alternative forum that keeping it here would cause "vexation and oppression to the defendant" which "far outweigh the plaintiff's

[7] *See Nowak v. Tak How Investments, Ltd.*, 94 F.3d 708, 720 (1st Cir. 1996), *cert. denied*, 520 U.S. 1155 (1997) (any difficulty in joining third parties would be equally applicable to plaintiffs if the case were transferred); *Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 260 (11th Cir. 1996) (transfer would "merely shift inconvenience from the defendants to the plaintiff"); *Reid-Walen v. Hansen*, 933 F.2d at 1397 ("In whichever forum the case is tried, witnesses will have to travel or testify by deposition. If the suit is brought in the U.S., the parties will not have compulsory process over any Jamaican witnesses. By the same token, if the suit is brought in Jamaica, the parties will lack compulsory process over American witnesses"); *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d at 342-43 (witnesses in both places); *Macedo v. Boeing Co.*, 693 F.2d 683, 690 (7th Cir. 1982) (plaintiff would have to translate numerous documents if case moved); *Founding Church of Scientology of Washington, D.C. v. Verlag*, 536 F.2d 429, 436 (D.C. Cir. 1976) (risk of not securing live testimony equally applicable to both forums); *Del Monte Fresh Produce Co. v. Dole Food Co., Inc.*, 136 F. Supp. 2d at 1279 ("[N]o matter where trial is held, witnesses will be inconvenienced"; *Complaint of Maritima Aragua, S.A.*, 823 F. Supp. 143, 148-49 (S.D.N.Y. 1993) ("[T]ransferring the case to London does not solve the problem of compulsory process from other nations, and creates new problems of witnesses unwilling to travel from Venezuela or the United States").

convenience." *Kamel v. Hill-Rom Co., Inc.*, 108 F.3d 799, 802 (7th Cir. 1997).[8]

For this reason, obviously any difficulties of litigating this case in Mexico are important considerations. Yet the District Court dismissed any such considerations, because they did not undermine its holding that Mexico is a minimally adequate forum. That, however, was only the beginning of the analysis.

Even if the alternative forum is adequate, difficulties in litigating there may so frustrate the litigation that they preclude dismissal.[9] Thus, difficulties with pre-

---

[8]*See Koster v. (American) Lumbermens Mutual Casualty Co.*, 330 U.S. 518, 524 (1947) ("oppressiveness and vexation . . . out of all proportion to plaintiff's convenience"); *SME Racks*, 382 F.3d at 508; *DiRienzo v. Philip Services Corp.*, 294 F.3d 21, 30 (2nd Cir.), *cert. denied sub nom. Deloitte & Touche LLP*, 537 U.S. 1028 (2002); *Leon v. Million Air, Inc.*, 251 F.3d 1305, 1315 (11th Cir. 2001) (*quoting Piper Aircraft*, 454 U.S. at 241); *Reid-Walen v. Hansen*, 933 F.2d at 1394; *Baris v. Sulpicio Lines, Inc.*, 932 F.2d 1540, 1551 & n. 14 (5th Cir.), *cert. denied*, 502 U.S. 963 (1991) ("unequivocal"); *Lony E.I. DuPont de Nemours & Co.*, 886 F.2d 628, 635 (3rd Cir. 1989); *Lehman v. Humphrey Cayman, Ltd.*, 713 F.2d at 342; *La Seguridad v. Transytur Line*, 707 F.2d at 1308 n. 7 ("unusually extreme circumstances"; "thoroughly convinced that material injustice is manifest"); *Macedo v. Boeing Co.*, 693 F.2d 683, 688 (7th Cir. 1982); *Doe v. Sun Internat'l Hotels, Ltd.*, 20 F. Supp. 2d 1328, 1330 (S.D. Fla. 1998) This strict standard should be taken seriously. The reality is that the overwhelming majority of cases dismissed for forum non conveniens never again see the light of day. *See* Robertson, *Forum Non Conveniens in America and England: "A Rather Fantastic Fiction,"* 103 U. Tex. Quarterly L. Rev. 398, 419-20 (July 1987) (only 3 of 85 dismissed cases were later tried in foreign forum).

[9]*See Bhatnagar v. Surrendra Overseas, Ltd.*, 52 F.3d 1220, 1222, 1226-28 (3d Cir. 1995) (extreme delays in alternative forum can mean that there is "no remedy at all"); *Reid-Walen v. Hansen*, 933 F.2d 1390, 1401 (8th Cir. 1991) (procedural barriers "would leave [the plaintiff] with no practical and realistic alternative forum"); *Lacey v. Cessna Aircraft Co.*, 932 F.2d 170, 182 (3d Cir. 1991) ("barriers

trial discovery weigh against the transfer. *See Lo Ka Chun v. Lo To*, 858 F.2d 1564, 1566 (11th Cir. 1988); *Woods v. Nova Companies Belize Ltd.*, 739 So. 2d 617 622 (Fla. 4th DCA 1999), *review denied*, 766 So. 2d 222 (Fla. 2000).[10] Moreover, even if the plaintiffs and their witnesses can make the trip to the alternative forum, the moving party must show that they would not face significant impediments.[11] As the

---

to obtaining access to essential sources of proof"); *Irish National Ins. Co., Ltd. v. Aer Lingus Teoranta*, 739 F.2d 90 (2d Cir. 1984); *Peabody Holding Co., Inc. v. Costain Group PLC*, 808 F. Supp. 1425, 1433 (E.D. Mo. 1992); *Dorman v. Emerson Elec. Co.*, 789 F. Supp. 296, 298 (E.D. Mo. 1992) ("procedural and practical barriers"). *Compare Honduras Aircraft Registry Ltd. v. Government of Honduras*, 883 F. Supp. 685, 690 (S.D. Fla. 1995) (motion succeeds in part because the plaintiffs "have pointed to no legal obstacles that would deny them redress in Honduran courts"), *aff'd in relevant part, vacated in part on other grounds*, 119 F.3d 1530, 1538 (11th Cir. 1997), *cert. denied*, 524 U.S. 952 (1998).

[10]Any complaint about the difficulty of compulsory process in the forum must be balanced against the fact that in the proposed alternative jurisdiction, "the parties will lack compulsory process over United States witnesses and evidence." *Del Monte Fresh Produce Co. v. Dole Food Co., Inc.*, 136 F. Supp. 2d 1271, 1279 (S.D. Fla. 2001).

[11]*See Macedo v. Boeing Co.*, 693 F.2d 683, 690 (7th Cir. 1982) (no contingency fees, requirement of cost deposit, and the cost of translations; "Expense alone might well deprive [the plaintiffs] in reality, of an alternative forum"); *Doe v. Sun Internat'l, Ltd.*, 20 F. Supp. 2d at 1330 ("In the Bahamas the plaintiff would not be entitled to a jury trial and she would be unable to obtain a lawyer on a contingency fee basis. It is undisputed that the eighteen-year old plaintiff does not have the financial ability to bring a lawsuit in the Bahamas. Thus for all practical purposes, the plaintiff would be unable to maintain a lawsuit in the Bahamas"). *Accord*, *Murray v. British Broadcasting Corp.*, 81 F.3d 287, 292 (2nd Cir. 1996); *Reid-Walen v. Hansen*, 933 F.2d 1390, 1399 (8th Cir. 1991); *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d e1239, 1246 (7th Cir. 1990), *cert. denied*, 499 U.S. 947 (1991); *Kryvicky v. Scandinavian Airlines System*, 807 F.2d 514, 517 (6th Cir.

cases cited in footnote 11 make clear, that includes the absence of contingency fee contracts in the alternative forum. In *Magnin v. Teledyne Continental Motors*, 91 F.3d 1424, 1430 (11th Cir. 1996), the court suggested that having to pay a lawyer in the alternative forum was not a significant factor. *See also Morse v. Sun Internat'l Hotels, Ltd.*, 2001 WL 34874967 (S.D. Fla. Feb. 26), *aff'd*, 277 F.3d 1379 (11th Cir. 2001). However, in *Wilson v. Island Seas Investments, Ltd.*, 590 F.3d 1264, 1271-72 (11th Cir. 2009), the same court clarified that although financial hardship should not be considered in relation to the *adequacy* of the forum, it *should* be considered in appraising the convenience of litigating there. The court reversed in part because of the District Court's failure to do so.

Here the practical reality is inescapable--indeed, uncontroverted–that the financial burden of litigating in Mexico would be dispositive. The case could not be brought. How can it be said that the "convenience of the parties" favors dismissal when dismissal will *kill the case*? Obviously this is a *highly* relevant factor. To suggest otherwise is pure denial.

*3. Interests of the Alternative Forums.* The same standards apply in analyzing the interests of the alternative forums. It is not enough that the proposed

---

1986); *Irish National Ins. Co., Ltd. v. Aer Lingus Teoranta,* 739 F.2d 90, 91 (2nd Cir. 1984); *Lehman v. Humphrey Cayman Ltd.*, 713 F.2d at 345-46; *Lugones v. Sandals Resorts, Inc.*, 875 F. Supp. 821, 824 (S.D. Fla. 1995).

alternative forum has an interest. It must be an *overwhelming* interest. Of course the place of the injury has an interest. However, here the United States also has an interest, and to the extent that it matters (as noted, the relevant forum is the United States) Florida does as well. One obvious U.S. interest is in "providing its own citizens with a forum to seek redress for injuries caused by foreign defendants." *Ward v. Kerzner Internat'l Hotels Ltd.*, 2005 WL 2456191, * 5, *citing Sun Trust Bank*, 184 F. Supp. 2d at 1266. There can also be no doubt of the U.S. interest in the safety of a facility run by U.S. companies out of the U.S., that utilize the U.S. market in numerous ways to target, solicit and serve American clients (and then lie about it repeatedly). In almost every way, this facility is using the United States to recruit Americans to an unsafe place, and to service that facility.[12] Here too, the District Court simply counted contacts, ignored all U.S. contacts outside of Florida, and decided that Mexico had a greater interest in this controversy. That was not the proper standard.

In light of the foregoing, it is clear that the District Court did not apply the correct standard to either its own or to the trial court's evaluation of the evidence.

[12]*See Reid-Walen v. Hansen,* 933 F.2d at 1400; *Lony v. E.I. DuPont de Nemours & Co.*, 886 F.2d at 642; *Lehman v. Humphrey Cayman Ltd.*, 713 F.2d at 343-44; *Prevision Integral de Servicios Funerarios, S.A. v. Kraft,* 94 F. Supp. 2d 771, 781 (W.D. Tex. 2000); *Chan Tse Ming v. Cordis Corp.*, 704 F. Supp. 217, 220 (S.D. Fla. 1989).

As noted at the outset, the District Court purported to determine the "best" place to bring this action (our quotations), giving virtually no deference to the Plaintiff's right to choose her forum. It found that "Mexico is a more convenient forum," 66 So. 3d at 961--that the relevant "public interest factors weigh more heavily in favor of proceeding against the defendants in Mexico." *Id*. at 963.

Applying that standard was legal error. It departed significantly from the cited decisions administering the federal *forum non conveniens* standard, which this Court adopted in *Kinney*.

## IV.
## CONCLUSION

For the reasons stated, the decision of the District Court should be disapproved.

Respectfully submitted,

Joel S. Perwin, P.A.
169 E. Flagler Street/ Suite 1422
Miami, FL 33131
Tel: (305) 779-6090/Fax: (305) 779-6095

By:_____
Joel S. Perwin
Fla. Bar No.: 316814

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. mail upon all counsel on the attached Service List on this 13th day of April, 2012.

By:_____
Joel S. Perwin
Fla. Bar No.: 316814

## CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that this computer-generated Brief is in compliance with the font requirements of Rule 9.210(a)(2), Fla. R. App. P. as submitted in Times New Roman 14-point.

By:_____
Joel S. Perwin
Fla. Bar No: 316814

## SERVICE LIST

Michael Diaz, Jr.
Carlos F. Gonzalez, Esq.
Gary E. Davidson, Esq.
Diaz Reus & Targ, LLP
2600 Miami Tower
100 S.E. Second Street
Miami, FL 33131

Ricardo J. Cata, Esq.
Ronnie Guillen, Esq.
Wilson, Elser, et al.
3800 Miami Tower
100 S.E. Second Street
Miami, FL 33131