Civil Procedure: Forum Non Conveniens—Convenience or Conniving?
Paulownia Plantations De Panama Corp. V. Rajamannan

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CIVIL PROCEDURE: FORUM NON CONVENIENS—CONVENIENCE OR CONNIVING?

PAULOWNIA PLANTATIONS DE PANAMA CORP. V. RAJAMANNAN

Carrie L. Weber†

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“Forum non conveniens is a doctrine in crisis.”

I. INTRODUCTION

Litigation involving foreign parties has expanded with the global economy, and with it has come heightened use of the forum non conveniens doctrine. The purpose of the doctrine is to ensure that disputes are resolved in the most convenient forum, and that defendants are not unduly vexed by being sued in inconvenient settings. The doctrine gives defendants the right to move for dismissal on the grounds that another forum would be more appropriate to resolve their dispute. As use of the doctrine has expanded, so has confusion over its application, leading to a complicated trail of decisions across the United States, and ample amounts of commentary on the doctrine, much of it negative.

While some commentators believe the doctrine is an essential tool, clearing the clutter of American courtrooms, others see it as a violation of international comity, or a defense tactic allowing U.S. corporations to avoid liability for their actions. Forum non conveniens has been labeled a “connivance to avoid corporate accountability” and called everything from “a crazy quilt” to...
“unconstitutional” to a “final bastion to new sources of easy money [for foreign plaintiffs].” The only thing most commentators seem to clearly agree on is that nothing about the doctrine is clear. Both state and federal courts continue to analyze the standards haphazardly, attempting to balance justice with the growing presence of foreign plaintiffs in U.S. courts. Some foreign plaintiffs may be looking for “easy money,” while others have truly meritorious claims against American citizens and corporations.

The Minnesota Supreme Court most recently analyzed the doctrine in Paulownia Plantations De Panama Corp. v. Rajamannan, in which an Australian investment group sued a Minnesota resident and his corporations for breach of contract. The contracts in question revolved around an investment agreement involving a tree plantation in Panama. The defendants moved to dismiss the case on the grounds of forum non conveniens, asserting that the case would be more properly decided in Panama. Despite the fact that over two years of discovery had been completed, the motion was granted. By dismissing the case, the court sent a message to potential foreign plaintiffs that their choice of forum will be given little deference, and that local defendants will not need to answer to foreign parties in their home court.

This note outlines the far-reaching history of the forum non conveniens doctrine, touching on Latin America’s aversion to the law, and then discusses the current haphazard state of the doctrine. Next, it presents the relevant procedural history of

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8. Stein, supra note 5, at 785 (“[F]orum non conveniens decisions tend to be a mechanical litany of the seminal Supreme Court language followed by a summary conclusion. The result has been a crazy quilt of ad hoc, capricious, and inconsistent decisions.”).
9. Lear, supra note 1, at 1152, 1159.
12. See Gordon, supra note 10, at 146.
13. 793 N.W.2d 128, 130-31 (Minn. 2009).
14. Id.
15. Id. at 131.
16. Id. at 131, 133.
17. See infra Part II.
Paulownia and examines the Minnesota Supreme Court’s decision, followed by an analysis of its reasoning. The note reasons that the forum non conveniens doctrine has not expanded with changing global realities and that congressional intervention may be welcome to remedy confusion and inconsistency in the law’s application. Finally, this note concludes that the court’s decision in Paulownia unfairly prejudiced the foreign plaintiff by giving too little deference to its choice of forum, and turned a blind eye to the defendants’ delay in filing their motion to dismiss for forum non conveniens.

II. HISTORY

A. From Scotland to America

The earliest evidence of the doctrine of forum non conveniens places its origin in Scotland in the eighteenth century, where it was originally called forum non competens. Scottish courts created the doctrine to counterbalance arrestment ad fundandum jurisdiction, which was used to attach and seize foreign assets, forcing foreign citizens into Scotland’s courts. Much of the present day doctrine in the United States has its roots in early Scottish decisions. Early cases in Scotland left much discretion to the courts in granting dismissals, not even requiring that an alternative forum be available to hear the dismissed suit. That requirement, now present in the American common law, was adopted in Scotland in 1892. In Sim v. Robinow, Lord Kinnear stated:

The plea [for staying proceedings on the ground of forum non conveniens] can never be sustained unless the

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18. See infra Part III.
19. See infra Part IV.
20. See infra Part IV.
21. See infra Part V.
22. See Robert Braucher, The Inconvenient Federal Forum, 60 HARV. L. REV. 908, 909 (1947) (discussing the history and current state of forum non conveniens in American law). By the nineteenth century, the term forum non conveniens replaced forum non competens. Id.
25. Id. at 459–60.
26. Id.
court is satisfied that there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of all the parties and for the ends of justice. 27

That case was the start of more uniform forum non conveniens decisions in Scotland. 28

In the United States there were a few early nineteenth-century decisions in which trial courts utilized their discretion to refuse jurisdiction; however, the term “forum non conveniens” was not a part of American legalese until almost a century later. 29 The earliest applications of the doctrine were in admiralty suits between foreign parties and suits between citizens of different states. 30 In 1932, the U.S. Supreme Court extended the boundary of forum non conveniens beyond admiralty disputes. 31 By 1941, Justice Frankfurter was referring to forum non conveniens as “‘a manifestation of a civilized judicial system . . . firmly embedded in our law.’” 32

Since then, courts across the United States have grappled with various nuances of the doctrine, attempting to balance considerations of convenience and justice. In state courts, forum non conveniens is primarily used to dismiss litigation between U.S. citizens to a different state. 33 Federal cases predominantly involve U.S. corporations or citizens moving to dismiss suits brought against them by foreign plaintiffs, hoping to have the case tried in the foreign country or not at all. 34

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27. Id. at 459 (quoting Sim v. Robinow, 19 R. 665, 668 (Scot.)).
28. See id. at 459–60.
29. Edward L. Barrett, Jr., The Doctrine of Forum Non Conveniens, 35 CALIF. L. REV. 380, 388 (1947) (identifying the first use of the term in a Columbia Law Review article from 1929); see also Paxton Blair, The Doctrine of Forum Non Conveniens in Anglo-American Law, 29 COLUM. L. REV. 1, 23 (1929) (recognizing American courts had been applying the doctrine of forum non conveniens by exercising their power to deny jurisdiction for matters of convenience).
32. Braucher, supra note 22, at 908.
33. See Samuels, supra note 11, at 1066.
34. For representative federal cases, see In re Union Carbide Corp. Gas Plant Disaster, 899 F.2d 195 (2d Cir. 1987); Aguinda v. Texaco, Inc., 945 F. Supp. 625 (S.D.N.Y. 1996).
B. Roots of the Current Common Law Analysis

The current steps of analysis involved in a motion to dismiss for forum non conveniens stem from two 1947 Supreme Court cases. In *Koster v. American Lumbermens Mutual Casualty Co.*, the Court took the position that a plaintiff's choice of forum should rarely be disturbed. 35 The Court held, however, that when there is an alternative forum with jurisdiction over both parties the court could dismiss the case. 36 Dismissal was only appropriate if trying the case in the plaintiff's chosen forum would be an undue burden on the defendant. 37 In *Gulf Oil Corp. v. Gilbert*, the Court identified specific private and public interest factors to be considered during analysis. 38 These factors are discussed further in Parts II.D. and IV.C of this note.

In 1981, the Court decided *Piper Aircraft Co. v. Reyno*, which expanded the common law by adding that dismissal is not improper even when the alternative forum may have less favorable law for the plaintiff. 39 Importantly, *Piper Aircraft* also established that a foreign plaintiff's choice of forum deserves less deference. 40 The doctrine was purposely fluid, giving freedom to courts to weigh the factors as they see fit. 41 This flexibility has made for a history of confusing and irreconcilable decisions across the United States, leaving some commentators calling for clarity from Congress. 42

36. Id. at 551.
37. Id. at 524–26. The decision famously discusses a plaintiff's attempt to oppress and vex a defendant by choosing an inconvenient forum.
38. 330 U.S. 501, 508–09 (1947). In a strong dissent to the *Gulf Oil* decision, Justice Black called for Congress to codify the already mottled application of the forum non conveniens doctrine. Id. at 517 (Black, J., dissenting) (“Whether the doctrine of forum non conveniens is good or bad, I should wait for Congress to adopt it.”). Congress did so shortly after in 28 U.S.C. § 1404, allowing for transfer of a federal case to another federal court that had original jurisdiction over all parties. 28 U.S.C. § 1404 (2011). Section 1404 does not apply to defendants using the doctrine to force a dismissal in order to litigate in a foreign jurisdiction, leaving parties in such situations at the whim of common law. See id. For further discussion of the action taken by Congress, see infra Part IV.E.
40. Id. at 255–56.
41. Id. at 249–50 (noting that previous decisions have repeatedly emphasized a need for flexibility).
42. Lear, supra note 1, at 1207 (“The federal forum non conveniens doctrine now dwells in the congressional realm. The time has come for the Court to retreat to constitutionally defensible ground and abandon forum non conveniens to congressional rule.”); Samuels, supra note 11, at 1112 (“If Congress wants to limit access to American courts for foreign parties in tort or other particular types of cases, it can do so legislatively . . . . The courts should not be using their powers to
C. Forum Non Conveniens and Latin America

Many countries in Latin America have expressed a concern that forum non conveniens is being used to keep their citizens out of American courts. The doctrine has even been called illegal by one commentator, Henry Saint Dahl, who opines that dismissing Latin American citizens from U.S. courts on this ground violates international treaties.

Dahl also explains two other legal forces in Latin America that continue to create confusion in U.S. courts. The legal systems in many Latin American countries embrace the doctrine of preemptive jurisdiction, meaning that once a lawsuit has been started in a particular forum, jurisdiction is extinguished in any other forum that may have been available. Some countries, including Panama, have created laws that codify the doctrine of preemptive jurisdiction. Because an alternative forum must be available for any court to grant a forum non conveniens dismissal, these laws were designed to eliminate plaintiffs’ home countries as available forums, allowing them to remain in U.S. courts. The laws are commonly referred to as “blocking statutes.” The effect these laws have had on the analysis of an adequate alternative forum has added to the inconsistency of forum non conveniens decisions. Some courts have held that preemptive jurisdiction laws effectively make a country unavailable, precluding dismissal.

make those kinds of policy choices.”).

43. See Henry Saint Dahl, Forum Non Conveniens, Latin America and Blocking Statutes, 35 U. MIAMI INTER-AM. L. REV. 21, 21 (2003) (suggesting that Latin American countries find forum non conveniens illegal, and that many of them have passed laws attempting to stop the United States from using the doctrine in cases involving Latin American citizens).
44. Id. at 30–31.
45. See generally Dahl, supra note 43 (discussing preemptive jurisdiction and blocking statutes).
46. Id. at 28–29.
47. Id. at 22 (listing Ecuador, Guatemala, Dominica, and Nicaragua as countries with various types of blocking statutes); see also Jennifer L. Woulfe, Note, Where Forum Non Conveniens and Preemptive Jurisdiction Collide: An Analytical Look at Latin American Preemptive Jurisdiction Laws in the United States, 30 ST. LOUIS U. PUB. L. REV. 171, 174 (2010) (acknowledging blocking statutes in Panama, Costa Rica, and Ecuador). Indeed, many of these statutes are modeled after a Model Law promulgated by Latin American Parliament. Woulfe, supra, at 175.
49. Id.
50. Many courts have concluded these laws prevent jurisdiction in the Latin American countries that have adopted them. See Martinez v. Dow Chem. Co., 219 F. Supp. 2d 719, 741 (E.D. La. 2002) (holding that Costa Rica and Honduras were unavailable as forums); In re Bridgestone/Firestone, Inc., 190 F. Supp. 2d 1125,
Others have taken a strong stance, noting that they will not allow foreign law to dictate what occurs in U.S. courtrooms, effectively ignoring the “blocking statutes.”

Many of the forum non conveniens decisions involving Latin American countries have been concentrated in the Southern United States, particularly in Texas. Its proximity to Latin America, and the frequency of business ventures crossing country lines, has made the region a popular place for Latin American citizens to file lawsuits. Courts have dealt with the doctrine less frequently in the Midwest.

D. The Evolution of Forum Non Conveniens in Minnesota

In the region surrounding Minnesota, forum non conveniens is often applied to shift custody cases involving Native American children to tribal courts, or to move civil cases just across state lines. While some state courts routinely decide forum non conveniens motions, other states are not often called upon to apply the doctrine. For example, North Dakota adopted some of the analysis factors as recently as 2009.

Early Minnesota cases involving the doctrine centered on suits

1156 (S.D. Ind. 2002) (holding that Venezuela was unavailable as a forum).
51. *See* Morales v. Ford Motor Co., 313 F. Supp. 2d 672, 676 (S.D. Tex. 2004) (rejecting the plaintiff’s argument that its choice of the United States as a forum effectively extinguished jurisdiction in its home country of Venezuela, and noting that such a construction of the doctrine of forum non conveniens would lead to “unilateralism amount[ing] to an utter abrogation of the . . . doctrine”); Aguinaga v. Texaco, Inc., 142 F. Supp. 2d 534, 553–54 (S.D.N.Y. 2001) (holding that cases dismissed on forum non conveniens grounds in the United States would not be barred from Ecuador, which has a law similar to the Panamanian provision at issue in *Paulownia Plantations De Panama Corp. v. Rajamannan*, 793 N.W.2d 128 (Minn. 2009)).
52. *See* Dow Chem. Co. v. Castro Alvaro, 786 S.W.2d 674, 684 (Tex. 1990) (“Texas has generated more case law concerning venue than the other forty-nine states combined . . . .”).
53. *Id.* at 690 (Phillips, C.J., dissenting) (“[O]ur courts have traditionally attracted a number of actions originating in foreign jurisdictions.”).
56. Compare Vicknair v. Phelps Dodge Indus., Inc., 767 N.W.2d 171, 176 (N.D. 2009) (noting that the North Dakota Supreme Court “has addressed the forum non conveniens doctrine” only on “limited occasions”), with *Dow Chem. Co.*, 786 S.W.2d at 684 (“Texas has generated more law concerning venue than the other forty-nine states combined . . . .”).
57. *Vicknair*, 767 N.W.2d at 179 (adopting the criteria that a case may be dismissed on a forum non conveniens motion only if an alternative forum is available).
against railroad corporations.\footnote{See, e.g., Johnson v. Chi., Burlington & Quincy R.R. Co., 243 Minn. 58, 66 N.W.2d 763 (1954); Millen v. Great N. Ry. Co., 243 Minn. 81, 66 N.W.2d 777 (1954); Hoch v. Byram, 180 Minn. 298, 230 N.W. 823 (1930).} Minnesota was viewed as a prime location to file personal injury suits against railroad corporations after an early holding that the courts had no right to refuse to hear such cases.\footnote{Barrett, supra note 29, at 382 n.13; see also Herrick v. Minneapolis & St. Louis Ry. Co., 31 Minn. 11, 15, 16 N.W. 413, 414 (1883) (“To justify a court in refusing to enforce a right of action which accrued under the law of another state . . it must appear that . . the enforcement of it would be prejudicial to the general interests of our own citizens.”).} As a result, by 1923, over one thousand pending personal injury cases in Minnesota involved nonresident plaintiffs suing railroad companies that did not even operate in the state.\footnote{Barrett, supra note 29, at 382 n.13. Interestingly, damages sought in those cases topped $25 million. Id.}

In \textit{Hague v. Allstate Insurance Co.}, decided in 1978, Minnesota adopted the U.S. Supreme Court’s public and private analysis factors from \textit{Gulf Oil}.\footnote{289 N.W.2d 43, 46 (Minn. 1978).} In \textit{Bergquist v. Medtronic}, decided in 1986, the \textit{Piper Aircraft} decision was adopted into Minnesota law.\footnote{379 N.W.2d 508, 512 (Minn. 1986).} \textit{Bergquist} involved a Swedish citizen who had heart surgery in Sweden and was implanted with a Medtronic heart valve.\footnote{Id. at 510.} The patient later died from a heart attack.\footnote{Id. at 510–14.} The district court granted the defendant’s motion to dismiss for forum non conveniens, and the Minnesota Supreme Court affirmed, finding the case would be more appropriately resolved in Sweden.\footnote{Id. at 512.} It was the first case in the state to consider a forum non conveniens motion involving a foreign plaintiff.\footnote{See id.}

The full analysis in deciding a motion to dismiss for forum non conveniens in Minnesota involves two distinct steps.\footnote{Id. (adopting the \textit{Piper Aircraft} rule into the Minnesota forum non conveniens analysis).} The first is to determine whether there is an alternative forum that is both available and adequate to hear the case.\footnote{Adopting the \textit{Piper Aircraft} rule into the Minnesota forum non conveniens analysis. A forum is available and adequate if it has jurisdiction over all the parties, and the plaintiff would have an effective remedy in the alternative forum. Paulownia Plantations De Pan. Corp. v. Rajamannan, 793 N.W.2d 128, 134 (Minn. 2009).} If so, the court will then balance pertinent public and private factors to determine whether
to grant dismissal. Private factors include, but are not limited to: the nature of the allegations; the ease of access to sources of proof; the ability to obtain attendance of willing witnesses; the possibility of viewing the premises, if necessary; and the enforceability of the judgment.

Public factors include, but are not limited to: congestion of the courts; the burden to a jury with no connection to the case; and an interest in having local issues decided locally. If an alternative forum is available and adequate, the court has discretion to permit dismissal based on their analysis of the various public and private factors. If the plaintiff is foreign, its choice of forum deserves less deference.

III. CASE DESCRIPTION

A. Factual Background

Ambrose Harry Rajamannan and his wife were both residents of Anoka County, Minnesota. Rajamannan was the founder of Agro-K, an international fertilizer marketing company. During business visits to Panama, Rajamannan developed an interest in commercially growing paulownia trees and developed two corporations in Panama, Perla Verde Service Corporation (PVSC) and Perla Verda S.A., to further this goal. Rajamannan had several discussions with an Australian businessman, Robert Shepherd, about the project. Shepherd united with other Australian investors to form Paulownia Plantations De Panama Corp. (PPP) for the specific purpose of supporting Rajamannan’s commercial growing operations in Panama. On March 12, 1999, PPP entered into two contracts with PVSC, with an agreement that all investment funds would be wire-transferred to Agro-K’s accounts.
in Minnesota. The parties’ understanding was that Rajamannan would then disperse the funds to PVSC as needed.

By May 2002, the plantation had failed, and Rajamannan was no longer maintaining the trees. In August 2005, PPP brought suit in Anoka County District Court against Rajamannan, his wife, Agro-K, PVSC, and Perla Verde S.A., alleging breach of contract, fraud, unjust enrichment, and conversion. Rajamannan and the other defendants filed their answers, each asserting the affirmative defense of forum non conveniens. Discovery continued for over twenty-eight months and in May 2007 the defendants finally moved to dismiss for forum non conveniens.

B. Lower Court Decisions

The district court granted the defendants’ motion to dismiss, concluding that Panama was an adequate and available forum for the case, and that neither Panamanian Assembly Law No. 32, Ch. 4, Section 2, Article 1421-J, nor the doctrine of preemptive jurisdiction would prevent Panama from accepting jurisdiction over the case. The district court also found that both the relevant public and private factors involved in the analysis favored dismissal. In its analysis of the private factors, the district court found that although the defendants did not provide a detailed witness list, Panamanian witnesses would likely be necessary. It

79. Id.
80. Id.
81. Id.
82. Id. Specifically, they claimed that Rajamannan used their investment funds for purposes other than the commercial growing operation, and that the failure of the crops was due to PVSC’s failure to maintain the farming operations. Id.
83. Id.
84. Id. Defendants waived any defenses based on lack of jurisdiction, and consented to jurisdiction in Panama as part of their motion. Id.
85. Id. at 133. “Article 1421-J stated: ‘Lawsuits filed in the country as a consequence of a forum non convenience judgment from a foreign court, do not generate national jurisdiction. Accordingly, they must be rejected sua sponte for lack of jurisdiction because of constitutional reasons or due to the rules of preemptive jurisdiction.’” Id. at 132. Article 1421-J was enacted after PPP filed its initial complaint, but before the district court considered the forum non conveniens motion. Id. It was later abrogated for a short time between February and June 2008, before being reinstated with slightly different wording, but the same effect. Id. at 132 n.6. The supreme court, due to its deferential standard of review, relied on the original version. Id.
86. Id. at 137–38.
87. Id. at 138.
further concluded that since the plaintiffs would be required to travel to attend trial in either forum, the private factors weighed in favor of dismissal. 88 The district court also found that the public factors weighed in favor of dismissal, noting the connection to Panama was stronger than to Minnesota. 89 The dismissal was conditioned on Panama’s acceptance of the case. 90

The Minnesota Court of Appeals reversed the decision, concluding that Panama was not an available forum. 91 The court relied on the express language of Panamanian Article 1421-J, which states that claims previously dismissed for forum non conveniens will be rejected by the Panamanian courts for lack of jurisdiction. 92 Because of the plain language of the article, the court concluded that dismissal for forum non conveniens was improper. 93

C. Minnesota Supreme Court Decision

The Minnesota Supreme Court granted the defendants’ petition for review, reversed the court of appeals, and affirmed the district court’s opinion. 94 The court first analyzed the disputed existence of an available and adequate forum in Panama. 95 It found that jurisdiction was available, rejecting PPP’s argument that Article 1421-J unambiguously prevented jurisdiction and concluding that the doctrine of preemptive jurisdiction would also not prevent Panamanian courts from accepting the case. 96 The court instead concluded that since the purpose of Article 1421-J was to protect Panamanian citizens’ cases from being dismissed, and the plaintiffs here were not Panamanian, the Panamanian courts would likely not reject the case. 97 The court also found that

88. Id.
89. Id. at 138–39.
90. Id. at 133, 139. Dismissal was also conditioned on the defendants’ consent to Panamanian jurisdiction, their waiver of any statute of limitation defenses, and their agreement to satisfy any Panamanian judgment. Id. at 133. If any of the conditions were not met, PPP could re-open the case in Anoka County District Court. Id.
92. Id. at 908.
93. Id. at 909.
94. Paulownia, 793 N.W.2d at 133, 139.
95. Id. at 133.
96. Id. at 135.
97. Paulownia, 793 N.W.2d at 135. The court relied on a law review article written by PPP’s own expert witness, Henry Saint Dahl, which explained that the reason Latin American countries enact blocking statutes is to protect their own
Panama was an adequate forum, despite PPP’s argument that the Panamanian judicial system contained weaknesses not found in the United States. Finally, the court weighed the public and private factors necessary in a forum non conveniens analysis. Public factors that largely influenced the court’s decision were Panama’s interest in resolving the controversy itself, and the case’s tenuous connection to Minnesota, effectively burdening the local courts with a foreign dispute. Private factors included the difficulty of conducting a trial in Minnesota when relevant witnesses and evidence were likely located in Panama. Another consideration was that the generally strong presumption in favor of a plaintiff’s choice of forum did not apply with the same force when the plaintiff is foreign. The court concluded that both the relevant public and private factors weighed in favor of granting the defendants’ motion to dismiss.

Finding no error or abuse of discretion by the district court, the Minnesota Supreme Court reversed the court of appeals, handing down its decision on November 5, 2009.

IV. ANALYSIS

A. The Availability and Adequacy of a Panamanian Forum

The Minnesota Supreme Court concluded that Panama was both an available and an adequate forum. While there are conflicting decisions on the same issue across the United States, other decisions provide more useful clues regarding the availability

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98. Id. at 136–37. The court found the differences in the judicial systems did not rise to the level of denying PPP an effective remedy. Id. at 137; see Bergquist v. Medtronic, Inc., 379 N.W.2d 508, 511 (Minn. 1986) (applying the forum non conveniens analysis in a wrongful death action).

99. Id. at 137–38. Prevalent in the court’s decision was the fact that the contracts had been executed in Panama, so some application of Panama law was likely necessary to resolve the case. See id.

100. Id.

101. Id.

102. Id. at 137.

103. Id. at 139.

104. Id.

105. Id. at 136–37.

and adequacy of Panama as a forum. For example, in *Scotts Co. v. Hacienda Loma Linda*, a lawsuit dismissed from Florida courts was subsequently refused in the Panamanian courts.\textsuperscript{107} The case was denied in Panama on two grounds that the Minnesota court decided would not apply in *Paulownia*:

Three business days later, and without considering any pleading or response filed by Scotts, the Panamanian court entered a decision declining jurisdiction on two grounds. First, the court found that the 2006 blocking statute, Article 1421-J . . . “requires Panamanian judges to reject outright any action arising from the application of forum non conveniens.” Second, that court applied the principle of “preventive jurisdiction,” relying on decisional law “ruling that a Panamanian Circuit Court Judge must ‘disqualify’ himself from hearing the case for lack of jurisdiction, since the foreign Court had been given jurisdiction over same.”\textsuperscript{108}

The plaintiff’s dismissal from Florida court had been conditioned on Panama’s acceptance of the case.\textsuperscript{109} However, after being turned away in Panama, and attempting to return to Florida to re-open its case, Hacienda Loma Linda was again dismissed.\textsuperscript{110} The Florida court reasoned that the company had essentially asked Panama not to accept its claim because it had disclosed the fact that it had been dismissed from U.S. courts.\textsuperscript{111} The Florida court also concluded that it would not be bound by laws in Panama that were enacted simply to make the courts there “unavailable” to its own citizens in these situations.\textsuperscript{112}

This Florida decision highlights the frustration many southern states are feeling over an influx of foreign plaintiffs. The court opined that Florida “simply cannot become a courthouse for the entire world” and that if Panama wanted to “turn away its own citizen’s lawsuit for damages suffered in that very country . . . it is difficult to understand why Florida’s courts should devote resources to the matter.”\textsuperscript{113}

\textsuperscript{107} 2 So. 3d 1013, 1015 (Fla. Dist. Ct. App. 2008).
\textsuperscript{108} Id. at 1015.
\textsuperscript{109} Id.
\textsuperscript{110} Id. at 1017.
\textsuperscript{111} Id. (“The record . . . indicates that Hacienda’s ‘appeal’ in Panama was not in good faith, but was instead on its face an intentional effort to obtain an affirmation of the dismissal as further support for reinstatement of the original case in Florida.”)
\textsuperscript{112} Id. at 1016–17.
\textsuperscript{113} Id. at 1016, 1018. In an interesting empirical study, it was discovered that
This sentiment reflects a concern that citizens of Latin American countries who are unhappy with their own judicial system should focus on reforms of those dysfunctional judiciaries so that the United States would not be burdened with their claims. Some commentators even believe that by accepting foreign plaintiffs into U.S. courts, countries with weaker judiciaries have less motivation to reform.

Regardless of the condition of foreign judicial systems, the fact remains that in order for a foreign plaintiff to file a lawsuit in the United States, the defendant must be amenable to suit here. In other words, the case must have some connection to the United States. Many of the cases filed by foreign plaintiffs involve products liability, wrongful death, or personal injury claims brought against companies that manufacture products causing harm in the plaintiffs' home countries. Most foreign plaintiffs are not asking U.S. courts to resolve simple contract or tort disputes between two citizens of the foreign country. Still, the connections to the United States are not always strong, leaving some judges to wonder "[w]hy none of these countries seems to have a court system their own governments have confidence in.

In Paulownia, there are two key differences distinguishing this plaintiff from most foreign plaintiffs in forum non conveniens cases. The plaintiff was not from the country that provided an

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U.S. judges are around twenty-six percent more likely to dismiss a case for forum non conveniens when the alternative forum is in a country considered to be a liberal democracy. See Whytock, supra note 2, at 525.

114. See Gordon, supra note 10, at 174–75 (criticizing a Latin American commentator on the subject and identifying several areas of judicial procedure that "beg for reform in Latin America").

115. See Carney, supra note 23, at 457–58 ("[I]t is in the U.S. interest to encourage the development of the capacity of less developed countries' legal and tort regimes.").


118. Republic of Bolivia v. Phillip Morris Cos., 39 F. Supp. 2d 1008, 1009 (S.D. Tex. 1999) (ordering transfer of a case filed by Bolivia to recover health care costs it allegedly incurred treating illnesses its residents suffered as a result of tobacco use). In a rather humorous opinion, Judge Kent continues his musings over why Bolivia may have chosen to bring a lawsuit in his court: "The Court seriously doubts whether Brazoria County has ever seen a live Bolivian . . . even on the Discovery Channel." Id.
alternative forum (i.e., not Panamanian) and could not have obtained an enforceable judgment in its home jurisdiction. The Minnesota Supreme Court’s decision used the plaintiff’s status as a non-Panamanian corporation to rationalize its conclusion that Article 1421-J and the doctrine of preemptive jurisdiction would not preclude the case from being tried in Panama, as those legal measures were designed to protect Panamanian citizens.

The court’s affirmative decision of availability and adequacy was conditioned on Panama’s acceptance of the case, purportedly protecting PPP’s claim. As illustrated in Scotts, however, not even this safeguard is a guaranteed protection for the lawsuit, as the plaintiff there had a similar condition, yet was still denied access to Florida courts. Since its dismissal, no lawsuit against any defendant in the Paulownia case has been filed in Panama or elsewhere, leaving the issue of Panama’s acceptance unresolved.

As discussed in Part II.C of this note, there are two schools of thought on laws similar to Article 1421-J. Some U.S. courts take the position that “blocking statutes” and the doctrine of preemptive jurisdiction make foreign courts unavailable. Other courts essentially disregard the foreign laws, as Texas, New York, and Florida have done. Here, the Minnesota Supreme Court avoided that conflict by simply concluding that Article 1421-J would not apply retroactively to a case filed before its inception.

119. Even assuming Australia would have had jurisdiction over the defendant in this case, PPP would have had to utilize the U.S. courts to enforce any judgment obtained there. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 (1971).


121. Id. at 135, 139.


123. E-mail from Aaron Scott, lawyer for defendant Rajamannan, to author (Aug. 2, 2011, 16:08 CST) (on file with author).


125. See, e.g., Morales v. Ford Motor Co., 313 F. Supp. 2d 672, 676 (S.D. Tex. 2004) (rejecting the plaintiffs’ argument that their choice of the United States as a forum effectively extinguished jurisdiction in their home country of Venezuela, and noting that such a construction of the doctrine of forum non conveniens would lead to “unilateralism amount[ing] to an utter abrogation of the . . . doctrine”); Aguinda v. Texaco, Inc., 142 F. Supp. 2d 534, 554 (S.D.N.Y. 2001) (holding that cases dismissed on forum non conveniens grounds in the United States would not be barred from Ecuador, which has a similar law to Article 1421-J); Scotts Co., 2 So. 3d 1013 at 1015–18.

126. Paulownia, 793 N.W.2d at 135.
states become faced with such challenges, however, the effect of “blocking statutes” may be one question that is best settled by congressional clarification.

B. The Plaintiff’s Legally Valid Forum Selection

 Having decided that Panama would be an available and adequate forum for the Australian plaintiffs, the supreme court continued its analysis. According to Paulownia, a foreign plaintiff’s choice of forum deserves less deference because “[w]hen the plaintiff is foreign and has not chosen the home forum, the assumption of convenience is less reasonable.” Neither Vanuatu (PPP’s place of incorporation) nor Australia was an adequate forum in this case, leaving PPP with no home-forum option. Faced with a choice of the United States or Panama, it is logical that PPP would file suit in the United States, especially because the defendant resided in Minnesota.

Federal courts have recognized that the degree of deference given to a foreign plaintiff’s choice of forum should depend on the presence of legally legitimate reasons for its choice, including, as in this case, the necessity of suing in a forum that has jurisdiction over the defendant. Given the unavailability of the plaintiff’s home forum, providing them with legally valid reasons for choosing Minnesota as a forum, PPP’s choice deserved more deference than the dismissive sentence it received in the opinion.

A recent Louisiana federal court decision discussed the same issue at length, concluded that a foreign plaintiff choosing a U.S. forum was no more “unscrupulous” than a citizen plaintiff choosing to bring a lawsuit in federal court instead of state court or vice versa. The defendants in Canales Martinez v. Dow Chemical Co.

127. Id. at 137 (emphasis added). Several decisions have noted that the reduced deference should not be relinquished to zero deference, considering dismissal for forum non conveniens an “exception rather than the rule.” Lony v. E.I. Du Pont de Nemours & Co., 935 F.2d 604, 609 (3d Cir. 1991).
128. See supra note 119 and accompanying text.
129. PPP’s motive for suing in the United States was likely not forum shopping per se, but merely a rational party making a rational decision to file suit in the country they felt would more adequately resolve their claim. For a discussion of the practicalities of plaintiffs choosing forums most advantageous to them, see generally John Fellas, Strategy in International Litigation, 14 ILSA J. INT’L & COMP. L. 317 (2008).
130. Factors such as undue inconvenience or expense to the defendant weigh in favor of dismissal. See Irarorri v. United Techs. Corp., 274 F.3d 65, 72 (2d Cir. 2001); Lony, 935 F.2d at 609–16.
asserted that the Costa Rican plaintiff was attempting to “shamefully [exploit] procedural technicalities in an exercise of rank forum-shopping,” yet the decision calls this argument “weak.”\textsuperscript{132} The court notes that litigants frequently select among several jurisdictions, and that “[t]he existence of these choices not only permits but indeed invites counsel in an adversary system, seeking to serve his client’s interests, to select the forum that he considers most receptive to his cause.”\textsuperscript{133} It is not difficult to imagine the reasons the plaintiff in \textit{Paulownia} may have chosen the U.S. judicial system over that of Panama. Despite complaints of burdened and backlogged dockets, U.S. litigants enjoy a stable and equitable judiciary not found in some parts of the world.\textsuperscript{134} The fact that the plaintiff in \textit{Paulownia} transferred the money it was attempting to recover to a Minnesota bank reinforces the fact that its choice of Minnesota as a forum was legally valid.

C. Weighing the Public and Private Factors

The Minnesota Supreme Court failed to give due weight to two critical factors in its analysis of the public and private factors respectively: (1) Minnesota’s connection to the case, and (2) the defendants’ delay in filing their motion to dismiss. Omitting these factors led to an imbalance in the court’s analysis of the public and private factors and, ultimately, an unfairly prejudicial result for a foreign plaintiff with legally valid reasons for filing a lawsuit in Minnesota.

1. Public Factors

A looming concern in the debate about forum non conveniens is that local citizens have no connection, and therefore little interest, in being called upon to resolve disputes that occur in a

\textsuperscript{132} \textit{Id.} at 732–33.

\textsuperscript{133} \textit{Id.} at 733 (quoting \textit{McCuin v. Tex. Power & Light Co.}, 714 F.2d 1255, 1261 (5th Cir. 1983)).

foreign country. This is a valid concern, especially in light of many cases where the connection to the United States is much more tenuous than in *Paulownia*. Here, the plantations may have been located in Panama, but two key pieces of the puzzle were at home in Minnesota: the defendant and the plaintiff’s money. The defendant was a citizen of Anoka County. He arguably had neighbors and community ties there, as well as an incorporated business in Minnesota. These considerations have weighed heavily in other courts’ decisions refusing dismissal, even when the court would be called upon to resolve a tricky question of foreign law.

The connectivity of the new global economy ensures that transactions occurring in one country will inevitably affect people in different countries and even different continents. The same technology that allows for this globalization also makes it easier for courts to obtain testimony from foreign witnesses, or learn the laws of a foreign nation. Technology also makes it easier for a jury to comprehend a scenario that may have taken place far from home. In essence, U.S. courts have been and will continue to be called upon to apply some foreign law. Forum non conveniens cannot be a catchall to dispose of this sometimes arduous task.

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136. *See* Paulownia Plantations De Pan. Corp. v. Rajamannan, 793 N.W.2d 128, 130 (Minn. 2009) (noting that the parties arranged for the plaintiff’s money to be wired to the defendants’ home bank in Anoka County).
137. *Id.*
139. Prevision Integral de Servicios Funerarios, S.A. v. Kraft, 94 F. Supp. 2d 771, 782 (W.D. Tex. 2000) (“[T]hese Parties are members of the community; they live here; they spend money here; and they may someday serve as jurors in this community. Consequently, the Court finds that this forum is not unrelated to the controversy . . . .”); Sydow v. Acheson & Co., 81 F. Supp. 2d 758, 770 (S.D. Tex. 2000) (“The State of Texas has a keen interest in the disposition of cases involving one of its own citizens or corporate entities . . . .”).
140. *See* Dow Chem. Co. v. Castro Alfaro, 786 S.W.2d 674, 684 (Tex. 1990) (“Advances in transportation and communications technology have rendered the private factors largely irrelevant . . . .”).
141. *Id.*
142. For a discussion of how the use of foreign law in American courts has changed, see Davies, *supra* note 11, at 354–55.
In its discussion of the relevant public factors, the Minnesota Supreme Court held that the district court correctly concluded that the public interest factors weighed heavily in favor of dismissal. Factoring strongly in its decision was the reality that Panamanian law would need to be applied to resolve the dispute. The *Piper Aircraft* forum non conveniens analysis, which was adopted by Minnesota courts, stresses that the need to apply foreign law alone does not warrant dismissal. The Tenth Circuit summarized this interpretation of *Piper Aircraft* nicely:

We understand *Piper Aircraft* to require a district court to deny dismissal and apply foreign law, rather than dismiss the action, unless there are more than *de minimis* advantages to trying a case in a foreign forum. It is difficult to conceive of a case applying foreign law in which the foreign jurisdiction did not have some minor interest in the litigation, or in which the foreign jurisdiction was not the location of some sources of proof. . . . If the mere fact that American law does not control were sufficient to sustain a dismissal, our review would be only of the choice-of-law issue. This is contrary to *Piper Aircraft*.

Simply, the need to apply some foreign law should not be dispositive. The court was fully briefed on Panamanian laws as part of the forum non conveniens motion, illustrating the relative ease of obtaining such knowledge. Experts from both sides provided the court with a summary of preemptive jurisdiction and predictions about how Panamanian law would apply in this case.

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144. *Id.*
148. *Id.*
150. *Id.; see also Paulownia,* 793 N.W.2d at 151–33 (discussing the expert affidavits at length); *Prevision Integral de Servicios Funerarios, S.A.* v. Kraft, 94 F. Supp. 2d 771, 781 (W.D. Tex. 2000) (“[A]lthough Defendant repeatedly points
Through the same method, the court could have gathered basic Panamanian law as it applied to the business contracts created by the parties.

In addition to the necessity of applying Panamanian law in resolving the case, the court also concluded that Panama has a greater interest in the case than Minnesota because it involves “the integrity of Panamanian legal, corporate, and community institutions.” Along the same vein, the plaintiff here has alleged that a member of a Minnesota “community” and owner of a Minnesota “corporation” has used a Minnesota financial “institution” to commit fraud and breach a business contract. Arguably, Minnesota had interests similar to Panama’s in the outcome of the case. The idea that local corporations effectively avoid lawsuits through the use of forum non conveniens has disturbed judges and commentators alike.

Despite Panama’s obvious connection to the case, there is also a discernible connection to Minnesota. Citizens of the state have an interest in the actions of corporations and residents that call Minnesota home, even if the effects of those actions do not immediately manifest themselves in the confines of the community.

2. Private Factors

The moving party bears the burden of proving that another forum would be more convenient. The court here held that the
burden had been met, despite the fact that defendants did not provide a “detailed witness list” of Panamanian witnesses that would be needed for trial. Nonetheless, the court concluded that such witnesses were “likely to be necessary” because all of the growing operations were located in Panama. Plaintiffs argued that the nature of the fraud allegations placed the heart of the case in Minnesota, because all of the relevant financial information and records would be located there. Either way, travel costs, translation, and foreign witnesses were likely to be necessary to resolve the case in either Minnesota or Panama. However, the advancement of technology greatly diminishes the impracticality of many of the private concerns set out in *Gulf Oil*, decided in 1947. Modern communication has allowed many concerns, such as the jury being able to “view the premises,” to become non-issues.

The court’s discussion of the private factors here was brief. Notably absent was any acknowledgment of the burden placed on the plaintiffs—facing dismissal after more than two years of discovery.

Other jurisdictions have taken undue delay more seriously. Certain courts even consider the timeliness of a defendant’s motion to dismiss as an additional private factor to be weighed during analysis.

The Minnesota Supreme Court gave little weight to the defendants’ twenty-eight month delay in filing their forum non conveniens motion, relegating its discussion of that matter to a footnote. The decision essentially gives future defendants wide berth to bring a forum non conveniens motion as long as it is originally cited as an affirmative defense in their answer. Though the necessity to conduct some discovery prior to invoking the doctrine is widely recognized, similar cases in other jurisdictions have found as little as a seven month delay to be unfairly

156. *Paulownia*, 793 N.W.2d at 138.
157. *Id.*
158. *Id.*
160. *Id.*
162. *See id.* at 131.
163. *See Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 836 (5th Cir. 1993); *In re Air Crash Disaster Near New Orleans, La.*, 821 F.2d 1147, 1165 (5th Cir. 1987); *Prevision Integral de Servicios Funerarios, S.A. v. Kraft*, 94 F. Supp. 2d 771, 780 (W.D. Tex. 2000).
164. *Paulownia*, 793 N.W.2d at 138 n.9.
165. *See id.*
prejudicial to plaintiffs.\textsuperscript{166} Texas has even incorporated a six month time limit to bring a forum non conveniens motion to dismiss in its state statutes.\textsuperscript{167} The longer litigation continues before a motion, the more dismissal is at odds with the very purpose of the doctrine itself—to promote convenience.\textsuperscript{168}

Looming in the background of such considerations is the idea that a defendant may use forum non conveniens to his or her advantage in a form of reverse forum-shopping.\textsuperscript{169} Even the earliest commentators alluded to the potential for defendants to use the doctrine to their advantage, noting, “[w]e should not expect forum non conveniens to be a judicial favorite; courts are properly more reluctant than defendants to view delay, uncertainty, and confusion as weapons in the arsenal of justice.”\textsuperscript{170}

3. Conclusion

In light of Minnesota’s own connection to the case, the plaintiff’s legally valid reasons for choosing the state as a forum, and the defendants’ delay in filing their motion to dismiss, the Minnesota Supreme Court’s analysis of the relevant public and private factors involved in \textit{Paulownia} tipped unfairly against PPP, creating a hostile environment for future foreign plaintiffs. Practically speaking, multinational corporations headquartered in

\begin{itemize}
  \item \textsuperscript{166} See \textit{Kraft}, 94 F. Supp. 2d at 780; see also \textit{Van Cauwenberghe v. Biard}, 486 U.S. 517, 528 (1988) (“[T]he district court generally becomes entangled in the merits of the underlying dispute.”); \textit{Piper Aircraft Co. v. Reyno}, 454 U.S. 235, 241 (1981) (noting that limited discovery would be necessary before the disposition of a forum non conveniens motion); \textit{In re Air Crash Disaster}, 821 F.2d at 1165 (“[A] defendant must assert a motion . . . within a reasonable time after the facts or circumstances which serve as the basis for the motion have developed and become known . . . .”). Other cases also note that the issue should be decided early in the litigation, highlighting that the very purposes of the doctrine: convenience and efficiency, are put in jeopardy when parties expend money and time on trial preparation only to face dismissal. See \textit{Lony v. E.I. Du Pont de Nemours & Co.}, 935 F.2d 604, 613–14 (3d Cir. 1991).
  \item \textsuperscript{167} \textit{Tex. Civ. Prac. & Rem. Code} § 71.051 (2011). The statute provides that the motion must be brought within 180 days of the time required for filing a motion to transfer venue of the claim or action. \textit{Id.} § 71.051(d). That time is before or at the time the defendant serves his or her answer. \textit{Id.} § 15.063.
  \item \textsuperscript{168} See \textit{Lony}, 935 F.2d at 614 (“The forum non conveniens doctrine is grounded in concern for the costs that must be expended in litigation and the convenience of the parties.”).
  \item \textsuperscript{169} See \textit{Iragorri v. United Techs. Corp.}, 274 F.3d 65, 74–75 (2d Cir. 2001) (noting that courts should be aware of defendants who move for dismissal under forum non conveniens not for convenience sake, but with a forum-shopping motive).
  \item \textsuperscript{170} Braucher, \textit{supra} note 22, at 931.
\end{itemize}
Minnesota will not have to answer in state courts for injuries they may have caused outside of the state, if they utilize forum non conveniens as a defense tactic. The fate of cases dismissed for forum non conveniens is not historically favorable to plaintiffs; thus, the Paulownia decision may deter future frivolous lawsuits while simultaneously preventing meritorious claims against Minnesota citizens and corporations.  

D. Post-Dismissal Realities

A clear majority of cases dismissed on forum non conveniens motions never go further. The reality of why parties choose not to pursue their cases in new forums is not clear. Plaintiffs without the resources or the stamina to file another lawsuit may simply give up. Others may have come to the United States because of a lack of confidence in their own country’s judicial system. In these cases, a second lawsuit seems futile. Plaintiffs who choose to re-file their cases elsewhere may be faced with corrupt, inefficient courts or inadequate compensation for their injuries. Whether the case is re-filed or not, a forum non conveniens dismissal is often a victory for the defendant. This reality further justifies the call for congressional clarification of the forum non conveniens doctrine.

E. Intervention from Congress?

In 1948, shortly after the Gulf Oil decision, Congress enacted 28 U.S.C. § 1404, showing its willingness to clarify jurisdictional
issues.\textsuperscript{175} Under \$ 1404, defendants can ask for a transfer of venue to a more convenient federal district court than where the plaintiff originally filed suit.\textsuperscript{176} Although related, the U.S. Supreme Court made clear that \$ 1404 did more than codify the common law doctrine of forum non conveniens.\textsuperscript{177} A key difference is that forum non conveniens allows defendants to ask for outright dismissal, as opposed to a transfer of venue.\textsuperscript{178} The factors involved in analyzing defendants’ requests are nearly identical, with the theme of convenience strongly influencing decisions, as well as deference to a plaintiff’s choice of forum and judicial economy.\textsuperscript{179} However, change of venue is meant to be granted more freely than under the “stringent requirements” of forum non conveniens.\textsuperscript{180} Similar forum shopping motives for both the moving and nonmoving party are discussed in cases considering \$ 1404 motions.\textsuperscript{181} The protection of plaintiffs’ rights is also considered, with the U.S. Supreme Court even noting that a party should not

\textsuperscript{175} 28 U.S.C. \$ 1404 (2011).
\textsuperscript{176} See id. \$ 1404(b).
\textsuperscript{177} The Court noted:

The forum non conveniens doctrine is quite different from \[s\]ection 1404(a). That doctrine involves the dismissal of a case because the forum chosen by the plaintiff is so completely inappropriate and inconvenient that it is better to stop the litigation in the place where brought and let it start all over again somewhere else. It is quite naturally subject to careful limitation for it not only denies the plaintiff the generally accorded privilege of bringing an action where he chooses, but makes it possible for him to lose out completely, through the running of the statute of limitations in the forum finally deemed appropriate. Section 1404(a) avoids this latter danger. Its words should be considered for what they say, not with preconceived limitations derived from the forum non conveniens doctrine.

Norwood v. Kirkpatrick, 349 U.S. 29, 31 (1955) (quoting All States Freight, Inc. v. Modarelli, 196 F.2d 1010, 1011 (3d Cir. 1952)). Not all the Justices agreed with this decision, with Justice Clark and Justice Douglas delivering a dissent to the Norwood opinion. Id. at 33 (Clark, J., dissenting).

\textsuperscript{178} Id. at 40–41.
\textsuperscript{180} Norwood, 349 U.S. at 32.
\textsuperscript{181} Alexander, 2007 WL 518859, at *4.
“get a change of law as a bonus for a change of venue.”  

As foreign plaintiffs are filing suit in U.S. courts with more regularity, and the doctrine of forum non conveniens is being applied by U.S. courts more often, perhaps it is time for Congress to intervene once again. The doctrine is meant to promote judicial convenience and economy, but conflicting decisions and uncertainty arguably lead only to more litigation. Congressional clarification could help alleviate the important question of when foreign plaintiffs will be welcome in U.S. courts.

Many members of the legal community recognize that the doctrine’s expanded application has muddied the waters for foreign plaintiffs, and have joined the call for congressional clarity. The recognition that uncertainty only leads to further docket-burdening litigation cannot be ignored. The question of when foreign plaintiffs should be allowed to pursue claims against American corporations or citizens in the United States, and when they should be required to obtain remedies in their home countries, does not come with an easy answer. Weighty questions of policy factor into the decision, including corporate accountability, human rights, and judicial economy.

However, without uniformity in the application of the doctrine, large multinational corporations (or small ones, as in *Paulownia*) have a monumental advantage over their foreign counterparts. Just as in *Gulf Oil*, changing times have called for changing policies. Consequently, congressional clarification and intervention would again be welcome.


184. See Davies, *supra* note 11, at 384 (noting that many courts state vague factors, which make forum non conveniens cases unpredictable); Lear, *supra* note 1, at 1152 (“[T]he Court has long acknowledged that much of its inherent authority is subject to partial or complete legislative control.”); Samuels, *supra* note 11, at 1059–60 (discussing the lack of predictability as to a court’s jurisdiction when a foreign plaintiff is involved).

185. See Whytock, *supra* note 2, at 531–32 (discussing legal policy implications of anti-forum shopping reform); Laird M. Street, Comment, *U.S. Exports Banned for Domestic Use, but Exported to Third World Countries*, 6 INT’L TRADE L.J. 95, 98 (1980-81) (“There is a sense of outrage on the part of many poor countries where citizens are the most vulnerable to exports of hazardous drugs, pesticides and food products.” (citation omitted)).

186. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 517 (Black, J., dissenting) (“I
V. CONCLUSION

While the forum non conveniens doctrine remains a useful tool to prevent the United States from becoming the “courthouse of the entire world,”\(^{187}\) it should be remembered that it was meant to be used sparingly, in that rare circumstance when the burden to the defendant and local court is substantial.\(^{186}\) Current case law reflects that the doctrine is being used more as a plug to keep foreign plaintiffs out of U.S. courts than a filter to stop only truly harassing lawsuits.

By failing to address the legally legitimate reasons PPP had for choosing Minnesota as a forum, and granting an untimely motion to dismiss, the Minnesota Supreme Court has established a defendant-friendly precedent for Minnesota.

Until state and federal legislatures choose to clarify forum non conveniens, future American defendants will continue to benefit, and foreign plaintiffs should proceed with caution when filing lawsuits in U.S. courts.

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\(^{188}\) See Gulf Oil, 330 U.S. at 504 (suggesting that courts have the power to refuse jurisdiction in “exceptional” circumstances).