

When the Forum Conveniens Can Be “Convinced” to Refuse the Case

Roger Alford at *Opinio juris* has an interesting post on a recent American case where an American court declined jurisdiction based on *forum non conveniens*, but found out during the appeal that the foreign court had itself declined jurisdiction. As a consequence, the alternative available forum had disappeared, and it seemed like the American court would have to finally take jurisdiction. The question arose, however, whether the foreign decision had been obtained fraudulently, that is by corrupting the foreign judges, and how this should influence the American decision on jurisdiction.

The case was one of many suits filed in American courts against Ford and Bridgestone after some Bridgestone tires installed on Ford Explorers exploded. Many of these accidents had occurred in the United States, but four occurred in Mexico. Three of them involved U.S. residents, but one involved José Samuel Manéz-Reyes, a “*Mexican soccer professional of some note*”, as the U.S. Court of Appeals put it.

The 700 actions were transferred to a single district court in Indiana. The defendants sought a dismissal of the four cases connected to Mexico on the ground of *forum non conveniens*. The court granted the motion only for Manéz-Reyes (that is, for the family, the player died in the accident).

The Manéz-Reyes family appealed before the U.S. Court of appeals for the 7th Circuit. But before the case was heard, they also sued Ford and Bridgestone in Mexico, where a first instance court of the state of Morelos declined jurisdiction. The Mexican judgment was shortly after confirmed by an Auxiliary Chamber of the Supreme Court of the State of Morelos. So, when the U.S. Court appeals made its decision, the circumstances had changed. The theoretical availability of the forum conveniens had turned into an actual unavailability.

The availability of the alternative forum is a condition of the U.S. doctrine of *forum non conveniens*. Here, it seemed that it was not the case anymore. However, the U.S. Court of appeals agreed with the defendants that there were reasons to be suspicious about what had happened in Mexico. First,

the plaintiffs had not petitioned the court of the place of accident (Veracruz), but another Mexican court, which was the court of the domicile of the plaintiffs. Second, the defendants had not been informed of the proceedings and had not been heard by the Mexican court. Moreover, it seems that the Mexican court had not been informed of the on-going U.S. proceedings. In a judgment of 24 August 2005, the U.S. Court of appeals remanded the case to the U.S. first instance court so that it could investigate the circumstances of the Mexican proceedings.

The District Court found that the Mexican judgment has been procured in bad faith. The Mexican lawyer of the plaintiff had used family connections and had ex parte contacts with the Mexican judge in order to ensure that the Mexican court would decline jurisdiction. The U.S. Court held that, as a consequence, the Mexican judgment declining jurisdiction should not be recognized, and confirmed its first judgment to dismiss the Manez-Reyes litigation on the ground of *forum non conveniens*. The Court then moved on to sanction the plaintiff's lawyers.

One could argue that the jurisdictional sanction of the parties' behaviour was a bit harsh. What they did in Mexico was certainly not right, but this does not change the fact that the tire of the car had exploded, and that the victim died as a result. The U.S. District Court dealt with the issue by leaving its doors open. It reaffirmed its decision to dismiss the case on the ground of *forum non conveniens* "without prejudice". As the Court of appeals explained in its judgment of 11 July 2008, this means that although the U.S. Court dismissed the case, the plaintiffs are free to refile if they so wish, including in a U.S. Court and as the case may be, before the same court. In other words, should a Mexican court decline jurisdiction after proceedings in good faith, the plaintiffs could come back to the a U.S. court and argue that it should reexamine its jurisdiction in the light of the new circumstances.