Florida Journal of International Law

Volume 10 | Issue 2 Article 8

June 1995

Should Florida Be a "Courthouse for the World?": The Florida Doctrine of Forum Non Conveniens and Foreign Plaintiffs (Kinney v. Continental Insurance Co., 674 So. 2d 86 (Fla. 1996))

Christine Russell

SHOULD FLORIDA BE A "COURTHOUSE FOR THE WORLD?": THE FLORIDA DOCTRINE OF FORUM NON CONVENIENS AND FOREIGN PLAINTIFFS

Kinney v. Continental Insurance Co. 674 So. 2d 86 (Fla. 1996)

*Christine Russell***

I. STATEMENT OF THE CASE AND FACTS

Respondent, Continental Insurance Co., a New Hampshire corporation with its principal place of business in New Jersey, brought a Florida breach of contract action against Kinney System, Inc. a Delaware corporation with its principal place of business in New York.[1] Continental Insurance brought suit in Florida on the grounds that both companies were licensed to do business in the state.[2] The petitioner moved to dismiss, and the trial court

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* *Editor's Note:* This comment was selected as the best comment for Fall 1996.

** This comment is dedicated to my parents.

1. Kinney Sys., Inc. v. Continental Ins. Co., 674 So. 2d 86, 87 (Fla. 1996).

2. *Id.* The Florida Supreme Court noted a discrepancy between the Florida Third and Fourth District Courts of Appeal as to what constitutes corporate residency. *Id.* "[T]he Third District has held that, for purposes of Florida's forum non conveniens doctrine, corporate residency is determined by the corporation's principal place of business." *Id.* (citing National Rifle Ass'n v. Linotype Co., 591 So. 2d 1021 (Fla. 3d Dist. Ct. App. 1991). However, the Fourth District took the more lenient view "that forum non conveniens does not apply where

dismissed the action on the basis of forum non conveniens.[3] The Florida Fourth District Court of Appeal reversed, finding that the trial court had no discretion to apply the doctrine when at least one party was licensed to do business in Florida.[4] The Supreme Court of Florida granted certiori, reversed the judgment of the Court of Appeal, and HELD, the Florida doctrine of forum non conveniens, which precludes dismissal if either party resides in Florida, is overruled and replaced by the federal doctrine,[5] which requires only that residency be considered, but is not necessarily definitive as to whether a cause of action should be dismissed on the basis of forum non conveniens.[6]

II. THE HISTORY OF FORUM NON CONVENIENS

The common law doctrine of forum non conveniens allows courts with proper jurisdiction and venue over a cause of action to dismiss a case that

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one of the corporate parties to the action is 'licensed to do business in Florida, with a place of business in Florida.' " *Id.* (quoting National Aircraft Serv., Inc. v. New York Airlines, Inc., 489 So. 2d 38, 39 (Fla. 4th Dist. Ct. App. 1986)). Since the instant case was filed in the Fourth District, it was irrelevant that neither corporation had its principle place of business in Florida. *See id.*

3. *Id.*

4. *Id.* In an attempt to resolve the conflict between the district courts, the Florida Supreme Court noted that the Fourth District Court of Appeals had certified the following question to be of extreme importance to the public:

> 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?

Id. (quoting Continental Ins. Co. v. Kinney Sys., Inc., 641 So. 2d 195, 197 (Fla. 4th DCA 1994)). The Florida Supreme Court answered all three questions in the negative. *Id.* at 93 (stating that "[e]ven the fact that a corporation has its principal place of business in Florida does not necessarily preclude application of the doctrine of forum non conveniens. Instead, the trial court should gauge the situation using the balance of conveniences approach").

5. *Id.* at 93. The court stated that the factors to be considered in a four-step analysis under the federal doctrine are:

> (1) . . . whether an adequate alternative forum exists which possesses jurisdiction over the whole case, (2) . . . consider[ation] [of] all relevant factors of *private* interest, weighing in the balance a strong presumption against disturbing plaintiffs' initial forum choice, (3) . . . determin[ing] whether or not factors of *public* interest tip the balance in favor of a trial in [another] forum, [and] (4) . . . [an assurance] that the plaintiffs can reinstate their suit in the alternative forum without undue inconvenience or prejudice.

Id. at 90 (citing Pain v. United Tech. Corp., 637 F.2d 775, 784-85 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 1128 (1981)) (alteration in original).

6. *Id.* at 93.

might be "fairly or more conveniently litigated elsewhere."[7] Throughout both English and U.S. legal history, the doctrine has sought to balance the interest of effective court administration against the rights of litigants,[8] while discouraging plaintiffs from shopping for the best forum.[9]

A. Gulf Oil Corp. v. Gilbert: *The Supreme Court Application in the Federal Courts*

Fifty years ago, in *Gulf Oil Corp. v. Gilbert*,[10] the Supreme Court affirmed the inherent power of federal district courts to dismiss a case under the doctrine of forum non conveniens.[11] In *Gilbert*, the plaintiff sued Gulf Oil Corporation for approximately US$400,000 in damages, which had resulted from the defendant's negligent delivery of oil to the plaintiff's business.[12] The plaintiff and most of the witnesses were residents of Virginia, and though the accident occurred in Lynchburg, Virginia, the plaintiff brought suit in New York.[13] The district court dismissed the action on the basis of forum non conveniens,[14] and the court of appeals reversed.[15]

In upholding the district court's discretion in dismissing the case, the Supreme Court outlined the factors to be weighed when applying forum non conveniens.[16] First, the Court noted that, as a prerequisite, an alternative forum must be available to the plaintiff.[17] Second, the Court stated that courts should thereafter consider the private interests of the litigant.[18] It stated:

> Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling

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7. *Id.* at 87.

8. *See* Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 504-08 (1947) (describing the history of the Anglo-American common law doctrine of forum non conveniens).

9. *Kinney*, 674 So. 2d at 87 (stating that this is "a concern of special importance in the international context").

10. *Gilbert*, 330 U.S. at 501.

11. *Id.*

12. *Id.* at 502-03.

13. *Id.* at 503-04. The plaintiff brought suit in a New York District Court on the ground that the defendant did business in New York. *Id.* at 504. The plaintiff did not allege that the location offered any convenience to himself. *Id.* at 509-10. Instead, he alleged that a provincial local jury in Virginia would be less likely to understand a suit for so large an amount as would a New York jury. *Id.* at 510.

14. *Id.* at 503 (citing Gilbert v. Gulf Oil Corp., 62 F. Supp. 291 (S.D.N.Y. 1945)).

15. *Id.* (citing Gilbert v. Gulf Oil Corp., 153 F.2d 883 (2d Cir. 1946)).

16. *Id.* at 508-09.

17. *Id.* at 506-07.

18. *Id.* at 508.

> [witnesses], and the cost of obtaining attendance of willing[] witnesses; possibility of view of premises. . .; and all other practical problems that make trial of a case easy, expeditious and inexpensive.[19]

The Court maintained that a plaintiff's choice of forum seldom should be changed unless the plaintiff's selection inflicts unnecessary expense and inconvenience upon the defendant.[20] In such cases, the balance may tip in favor of an alternative forum.[21]

Third, the Court stated that if the parties' private interests are equivalent, the courts should next consider the public interest.[22] The Court recognized that "[a]dministrative difficulties . . . [often occur] when litigation is piled up" in places other than its source,[23] and that jury duty should not be imposed upon a community that has no connection with the case.[24] The Court further reasoned that for diversity purposes, federal courts should avoid conflict of laws questions whenever possible.[25] These cases should be tried in those jurisdictions that are familiar with the applicable state law.[26] Because these factors had been properly considered by the district court, the *Gilbert* Court affirmed the district court's discretion in applying forum non conveniens.[27]

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19. *Id.*
20. *Id.* at 508.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* at 508-09.
25. *Id.* at 509.
26. *Id.* Applying these considerations in *Gilbert*, the Court gave significant weight to the fact that "not only the plaintiff, but every person who participated in the acts charged to be negligent resides in or near Lynchburg." *Id.* at 511. It further stated that many witnesses could not be compelled to attend, and the New York District Court would face the inconvenience of applying unfamiliar Virginia law. *Id.* at 511-12.
27. *Id.* at 512; *see also* Linda J. Silberman, *Developments in Jurisdiction and Forum Non Conveniens in International Litigation: Thoughts on Reform and a Proposal for a Uniform Standard*, 28 TEX. INT'L L.J. 501, 516 (1993). Silberman notes that forum non conveniens has special significance with regard to foreign plaintiffs seeking to sue U.S. multinational companies for actions that occur outside of the United States. *Id.* Foreign plaintiffs often select U.S. courts due to advantages that are often unavailable in a foreign forum, such as civil juries, the opportunity for broad discovery, easier and quicker access to courts and lawyers, and an absence of automatic cost shifting to the losing party. *Id.* However, at both the federal and state levels, actions are often dismissed on the basis of forum non conveniens where foreign plaintiffs wish to sue for actions that occur outside of the United States and involve foreign witnesses. *Id.* at 517-22.

B. Houston v. Caldwell: *The Florida Supreme Court Application in Florida Courts*

Almost thirty years later, in *Houston v. Caldwell*,[28] the Florida Supreme Court addressed how forum non conveniens should be applied in Florida cases.[29] Though many states chose to follow the federal model outlined in *Gilbert*, the Florida Supreme Court held that "[w]here one of the parties to a lawsuit is a resident of Florida, . . . [the] trial court [did not] have the discretion to dismiss the action by applying the doctrine of forum non conveniens."[30] In *Houston*, the plaintiff sued Caldwell, a resident of Florida, for injuries resulting from an automobile collision that had occurred in North Carolina.[31] The plaintiff brought suit in Florida, but the trial court, noting that both the scene of the accident and the witnesses were located in North Carolina, dismissed on the basis of forum non conveniens.[32] The Florida Fourth District Court of Appeal affirmed.[33] However, the Florida Supreme Court reversed, holding that the doctrine is inapplicable to suits filed in Florida for the purposes of Florida's venue statutes, where either party is a Florida resident.[34] The court noted that unlike federal courts, "only under the most compelling circumstances" should state courts dismiss a suit, rather than merely transfer an action under the doctrine.[35] In its decision to bar forum non conveniens from suits involving Florida residents, the *Houston* court balanced two public policy interests: the benefit of guaranteeing all residents access to Florida's courts and the possible convenience achieved through dismissal.[36] The *Houston* court found the state's goal to resolve its citizens' controversies to be the more important interest.[37]

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28. 359 So. 2d 858 (Fla. 1978).
29. *Id.*
30. *Id.* at 859 (citing Killingsworth v. Montgomery Ward & Co., 327 So. 2d 50 (Fla. 2d DCA 1976); Ganem v. Issa, 225 So. 2d 564 (Fla. 3d DCA 1969); Adams v. Seaboard Coast Line R.R., 224 So. 2d 797 (Fla. 1st DCA 1969); Atlantic Coast Line R.R. v. Ganey, 125 So. 2d 576 (Fla. 3d DCA 1960)).
31. *Id.*
32. *Id.*
33. Houston v. Caldwell, 347 So. 2d 1041 (Fla. 4th Dist. Ct. App. 1977).
34. *Houston*, 359 So. 2d at 859, 861.
35. *Id.* at 860.
36. *Id.* at 861.
37. *Id.*

C. Piper Aircraft Corp. v. Schwendemann: *The Influence of Florida's Doctrine on Foreign Plaintiffs*

In *Piper Aircraft Corp. v. Schwendemann*,[38] a Florida appellate court addressed the impact of Florida's forum non conveniens doctrine on foreign litigants.[39] The Third District Court of Appeal held that "[e]ven though the cause of action arises in a foreign state or nation, [the] doctrine of forum non conveniens does not apply when [the] principal place of business of [the] defendant corporation is in state."[40] In *Schwendemann*, the plaintiffs were citizens of Germany.[41] They included the survivors of those who were killed and persons who were injured in an aircraft crash in Munich, Germany.[42] The defendant, Piper Aircraft Corporation, was a U.S. airplane manufacturer, with its principal place of business in Florida.[43] The court reasoned that since the corporation had its principal place of business in Florida and was therefore a resident for venue purposes, the case could not be dismissed on the basis of forum non conveniens.[44]

A concurring opinion opined that the Florida Supreme Court had never officially determined whether the *Houston* rule would apply when all of the plaintiffs and witnesses are citizens of a foreign nation where the cause of action took place.[45] Ironically, the *Houston* court's emphasis on access for

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38. 578 So. 2d 319 (Fla. 3d Dist. Ct. App. 1991).

39. *Id.* The U.S. Supreme Court had previously addressed how the *Gilbert* standard should apply to foreign litigants in federal court in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). *Reyno* involved wrongful death actions stemming from a plane crash in Scotland. *Id.* at 238-39. The U.S. District Court for the Middle District of Pennsylvania dismissed on the basis of forum non conveniens, and the U.S. Court of Appeals for the Third Circuit reversed, on the ground that "the alternative forum [wa]s less favorable to the plaintiff." *Id.* at 238. Noting that applying the doctrine to foreign plaintiffs would inevitably result in dismissal in favor of a foreign jurisdiction (as opposed to domestic lawsuits which usually would only be transferred to another district), the Supreme Court reversed the court of appeals and upheld the district court's dismissal. *Id.* at 261. The Court held: "Because the central purpose of any *forum non conveniens* inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice [of forum] deserves less deference" than that of a domestic plaintiff. *Id.* at 256. The Court noted that even though a foreign remedy might be less favorable, in this case Scotland had no theory of strict liability and offered a potentially smaller remedy, a district court still might choose to dismiss in favor of a foreign forum if convenience mandated it. *Id.* at 254-56.

40. *Schwendemann*, 578 So. 2d at 319.

41. *Id.* at 320.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* (noting, however, that the third district in *Sempe v. Coordinated Caribbean Transport Inc.*, 363 So.2d 194 (Fla. 3d DCA 1978), and the fifth district in *Oboussier-Lowe v. Kuehne & Nagel (A.G. & Co.)*, 531 So. 2d 249 (Fla. 5th DCA 1988), had cited *Houston* as authority for their holding). The concurring opinion noted that such a result would not be mandated under the federal doctrine of forum non conveniens where residency is only a factor

Florida residents had given greater access to foreign plaintiffs in situations where Florida defendants actually might have preferred to litigate elsewhere.[46] Therefore, even if a U.S. corporation satisfied the Florida residency requirement and wished to litigate in the foreign nation, the defendant's residency status would bar dismissal.[47]

III. INSTANT CASE

The instant court addressed the *Houston* doctrine's influence on foreign litigants.[48] In fact the relatively easy access provided to foreign litigants through the *Houston* doctrine motivated, to some extent, the instant court's decision to do away with it.[49] Noting that the *Houston* doctrine placed burdens upon Florida's courts beyond those caused by disputes with substantial connections to state interests,[50] the Florida Supreme Court overruled the doctrine and replaced it with the federal doctrine as announced in *Gilbert*.[51] Thus, the requirement that both parties be nonresidents was

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to be considered in a court's application of the *Gilbert* standard. *Id.* (Ferguson, J., concurring); *see also* Michael J. Higer & Harris C. Siskind, *Florida Provides Safe Haven for Forum Shoppers*, FLA. B.J., Oct. 1995, at 20, 24. Higer & Harris noted that the instant case [*Kinney*] finally gave the Florida Supreme Court the opportunity "to overrule its prior precedent in *Houston* and abolish the nonresidency restriction altogether." *Id.* They also stated that the adoption of the application of forum non conveniens would finally put "Florida [courts] on equal ground with . . . federal courts").

46. *See* Higer & Siskind, *supra* note 45, at 24. Higer and Harris note that "Florida's nonresidency requirement practically swallows the forum non conveniens doctrine in this situation because if personal jurisdiction exists, the defendant will, in many cases, be considered a 'resident' for forum non conveniens purposes." *Id.* at 26. They also state that this is "especially true in the Fourth District," *id.*, where corporations need only do business or be registered to do business in the state to be considered residents. *Id.* at 23. Like the instant court, these authors focus on the negative impact of the nonresidency requirement that forces Florida courts to adjudicate matters having only a tenuous connection to Florida. *Id.* at 26. In addition, Higer and Siskind argue that allowing an action arising anywhere in the world to be brought against a business deemed to be a Florida resident makes "Florida state courts . . . the dumping ground for litigation that belongs elsewhere, causing congestion in Florida's court system" and that would be dismissed under the federal doctrine of forum non conveniens. *Id.* at 24. They note that there is a disparity between corporations that can remove to federal court and those who must litigate in Florida state courts. *Id.* at 26. Lending support for opposition to Florida's doctrine, the authors note that numerous business entities filed amici briefs in *Kinney*. *Id.*

47. *Schwendemann*, 578 So. 2d at 320; *see also supra* note 46 and accompanying text.

48. *Kinney*, 674 So. 2d at 88-89.

49. *Id.* The *Kinney* court also noted the expanded ability of Florida's trial courts to hear cases "arising on foreign soil" due to the legislative reforms to Florida's personal jurisdiction statutes. *Id.* at 88. The revised statutes have "lessen[ed] . . . [the] traditional connexity requirements" between a cause of action and the community in which it's litigated. *Id.*; *see* Fla. Stat. § 48.193 (1995).

50. *Kinney*, 674 So. 2d at 88; *see supra* note 46 and accompanying text.

51. *Kinney*, 674 So. 2d at 93.

removed as a precondition to permitting dismissal.[52] Instead, trial courts may now evaluate both residency and business activities as only one of many factors in an overall assessment of whether an action would be better litigated elsewhere.[53] The instant court therefore rejected the court of appeal's automatic application of the doctrine and remanded the case for a determination as to whether the doctrine was properly applied under *Gilbert*.[54]

The instant court recognized the significance of the *Gilbert* factors to international parties.[55] In addressing the second part of the *Gilbert* analysis, which weighs the parties' private interests, the court recognized that the availability of witnesses, as well as adequate access to evidence, may weigh in a trial court's analysis.[56] However, the court also stated that factors, such as whether a foreign nation duplicates a U.S. jury system or whether a U.S. court might offer a more advantageous legal system, should not be considered as private interests for the purpose of forum non conveniens determinations.[57]

In addition, in applying the public interest part of the *Gilbert* standard, the instant court focused on Florida's public interests as opposed to foreign interests.[58] Noting that Florida is favored as a venue by international plaintiffs because of the *Houston* doctrine, the court maintained that no "individual state has an absolute obligation to police the foreign actions of American multinational corporations."[59] The court stated that it did not "imply that Florida courts will never serve such a role", but rather that such regulation is more appropriately within the province of national judicial interests, "at least where the corporation's connections to Florida are tenuous".[60] The court reasoned that Florida's judicial interests are implicated only by matters with a "strong nexus" to Florida, and only this "strong nexus" justified the allocation of Florida's judicial resources to a case.[61]

The instant court found that the first part of the *Gilbert* analysis, which requires that an adequate alternative forum exist, does not require that it be

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52. *Id.*
53. *Id.* & n.7.
54. *Id.* at 94.
55. *Id.* at 89. The *Gilbert* factors are: an adequate alternative forum; weighing all relevant facts of private interest, which include a strong presumption in favor of a plaintiff's choice of forum; weighing factors of public interest; and an insurance that the action can be reinstated in an alternative forum "without undue inconvenience or prejudice." *Id.* at 90.
56. *Id.* at 91.
57. *Id.*
58. *Id.* at 91-93 (citing Pain v. United Tech. Corp., 637 F.2d 775 (D.C. Cir. 1980)) (citations omitted).
59. *Id.* at 89.
60. *Id.*
61. *Id.* at 90, 92.

an identical forum.[62] Therefore, foreign plaintiffs may not claim a bar to forum non conveniens merely because their own governments offer a system that adjudicates claims at a slower rate or offers less desirable remedies.[63] So long as a foreign government permits litigation of the matter, an alternative forum exists.[64] Although the instant court acknowledged that application of the *Gilbert* standard would deny many litigants access to courts in Florida, it refused to force Florida into the role of "courthouse for the world, nor . . . the taxpayers of the state . . . [to] pay to resolve disputes utterly unconnected with [Florida's] . . . interests."[65] The court reasoned that as the national forum non conveniens standard did not force courts to police such activities, a single state's judiciary need not take such a task upon itself.[66]

IV. ANALYSIS

Like the *Houston* court, the instant court weighed two ongoing public policy concerns: access and judicial economy.[67] However, the instant court ultimately came to a different conclusion than its predecessor[68] and shifted its emphasis from the guarantee of access to the drain upon Florida's judicial resources.[69] The *Kinney* decision lends validity to this shift by revisiting the Florida Constitution's guarantee of access to Florida courts.[70] The instant court reasoned that the constitutional guarantee is only a general guarantee of access for redress of injuries.[71] Therefore, nothing forbids a case with

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62. *Id.* at 92.
63. *Id.* at 90.
64. *Id.*
65. *Id.* at 88.
66. *Id.* at 89.
67. *Id.* at 89-90.
68. *Id.* at 93.
69. *Id.*
70. *Id.* at 92. The Florida Constitution provides, in part: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." FLA. CONST. art. I, § 21 (1968).
71. *Kinney*, 674 So. 2d at 92-93. The instant court noted:

> While it is true that the Florida Constitution guarantees every person access to our courts for redress of injuries, art. I, § 21, Fla. Const., that right has never been understood as a limitless warrant to bring the world's litigation here. . . . [T]he obvious purpose underlying article I, section 21 is to guarantee access to a potential remedy for wrongs, not to provide a forum to the world at large.

Id. at 93.

The instant court altered the *Houston* court's analysis of "access." *See Houston*, 858 So. 2d at 859. In contrast to the instant court, the *Houston* court had stated:

> We believe the certainty of resolution of the dispute outweighs the possible benefits achieved by dismissal in favor of a more convenient forum. This state has a fundamental interest in resolving controversies involving its citizens. In light of this

only a tenuous connection to Florida from being litigated elsewhere so long as an alternative forum exists.[72]

The *Kinney* court's shifting view of access and its focus on judicial economy will have drastic effects for foreign plaintiffs who wish to sue U.S. multinational companies in U.S. courts.[73] One of the instant court's major concerns with the *Houston* standard was the number of foreign plaintiffs who sought to litigate in Florida.[74] Because of the *Houston* standard, Florida was favored by foreign plaintiffs who otherwise would not have access to the favorable discovery rules, civil juries, or speedy adjudication available in the United States.[75] In addition, foreign nations may not be as friendly to plaintiffs and may not have well developed tort law.[76] Most often, these plaintiffs sought to litigate matters that occurred in foreign countries, involved foreign witnesses, and forced U.S. courts to apply foreign laws.[77]

As the instant court acknowledged, foreign plaintiffs may no longer have the benefit of litigating within the United States.[78] The instant court maintained that an alternative forum need not even provide a jury system "so long as a fair mechanism for trial exists in a broad and basic sense," and some sort of remedy is provided.[79] Consequently, many foreign plaintiffs will be forced to litigate outside of the United States, and ironically, defendant U.S. multinational companies may actually benefit from foreign legal systems which may not be as "plaintiff friendly."[80]

What the instant court did not address, however, is whether Florida should have its own policy on how to deal with defendant corporations that have injured a foreign plaintiff.[81] The *Houston* standard was a sanctuary for foreign plaintiffs; however, the Florida standard, like the federal standard, will now leave the issue of whether a foreign plaintiff may litigate in the United States at the trial court's discretion.[82] It is not only the new

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disposition, we need not treat constitutional issues urged by the parties.

Id. at 861.

72. *Kinney,* 674 So. 2d at 90-91.

73. *See infra* note 88 and accompanying text.

74. *Kinney*, 674 So. 2d at 88.

75. *See supra* note 27 and accompanying text.

76. *Kinney*, 674 So. 2d at 90-91.

77. *See supra* note 27 and accompanying text.

78. *Kinney*, 674 So. 2d at 90-91.

79. *Id.* at 91.

80. *See infra* note 88 and accompanying text.

81. *See Kinney*, 674 So. 2d at 93. The court held that the federal doctrine of forum non conveniens should apply but noted that although federal opinions on forum non conveniens would be persuasive, they would not necessarily be binding. The court, therefore, left open the questions of whether the *Reyno* analysis would apply in Florida, and whether Florida would adopt its own analysis as to whether a foreign plaintiff's choice of forum should be accorded less weight than that of a domestic plaintiff. *Id.*

82. *See id.*

discretion awarded to Florida courts which induces dismissal, but also the instant court's focus on the need to dispense with the inconvenience of Florida becoming a "courthouse for the world."[83] The instant court's placement of judicial economy ahead of access most likely will cause courts in Florida to lean toward denying access to foreign plaintiffs.[84] Issues like access to foreign witnesses, access to foreign sites, and the need to apply foreign law are more likely to induce courts to dismiss actions involving foreign plaintiffs since they cause inconvenience to Florida's courts and citizens.[85]

Furthermore, the instant court's decision alters the *Houston* court's understanding of access.[86] Where the *Houston* court focused on access to Florida's courts for Florida's citizens, the instant court applies a vague notion of access to judicial remedies in general.[87] Consequently, U.S. multinational corporations may now take advantage of the access problems of many foreign nations.[88] Many cases dismissed from U.S. courts are never litigated because the alternative forum offers little in the way of remedies or provides few opportunities for litigation.[89] Consequently, an almost double standard of liability applies with regard to U.S. multinational corporations, which may be held accountable for harming U.S. but not foreign citizens.[90]

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83. *See id.* at 88-89.

84. *See supra* note 46 and accompanying text. Higer and Siskind noted that an abandonment of Florida' residency requirement would give trial courts more flexibility in applying forum non conveniens. Higer & Siskind, *supra* note 45, at 26.

85. *See Kinney*, 674 So. 2d at 88, 90 (noting the tremendous drain on Florida's judicial resources caused by the *Houston* doctrine is not justified by any correspondingly strong public interest in suits arising out of state).

86. *See id.* at 92-93.

87. *Id.* at 89-90.

88. *See* Hilmy Ismail, *Forum Non Conveniens, United States Multinational Corporations, and Personal Injuries in the Third World: Your Place or Mine?*, 11 B.C. THIRD WORLD L.J. 249 (1991). Ismail notes that forum non conveniens serves as a "vital defense against perceived multitudes of foreigners seeking to take advantage of liberal product liability laws designed for the protection of American residents" for multinational corporate defendants. *Id.* at 249. Ismail states that "[t]he federal doctrine of forum non conveniens is overly protective of [U.S.] multinational corporations that act irresponsibly in the Third World" and that often are not held accountable in foreign countries where tort law is not as developed as in the United States. *Id.* at 276. Ismail points out that because these corporations would be held accountable for the same injuries to U.S. plaintiffs, the federal doctrine of forum non conveniens permits a "double standard of liability" that seems foreign to the U.S. sense of fair play. *Id.* at 266 (citing *In re Union Carbide Corp. Gas Plant Disaster at Bhopal*, 634 F. Supp. 842 (S.D.N.Y. 1986), *aff'd and modified*, 809 F.2d 195 (2d Cir.), *cert. denied*, 484 U.S. 871 (1987)).

89. *Id.* at 250 & n.7 (noting that only one of fifty-five personal injury cases dismissed from the United States for forum non conveniens was tried in a foreign court) (citation omitted).

90. *Id.* at 266; *see also supra* note 88 and accompanying text.

V. CONCLUSION

The instant court champions the cause of judicial economy, a laudable goal when one considers Florida's overburdened court system. However, the instant court's decision sacrifices one public policy for the sake of another. United States citizens have an interest in assuring that U.S. multinational corporations are held accountable for the injuries that they cause to all plaintiffs, whether foreign or American. Anything less equitable seems to violate the very essence of U.S. public policy.