STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPREME COURT

DEBORAH L. KEDY, LEGAL REPRESENTATIVE FOR THE ESTATE OF BRIAN SCALLION,

Plaintiff,

-against-

A.W. CHESTERTON COMPANY, ET AL.,

Defendants.

No. 05-332-M.P.
(C.A. No. 04-1552)

On Petition for Writ of Certiorari

BRIEF OF *AMICUS CURIAE* THE INTERNATIONAL ASSOCIATION OF DEFENSE COUNSEL IN SUPPORT OF PETITIONERS GENERAL ELECTRIC COMPANY, ET AL.

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MISCELLANEOUS

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The International Association of Defense Counsel (the "IADC") respectfully submits this brief in support of petitioners General Electric Company, et al., seeking reversal of the orders denying motions to dismiss based *on forum non conveniens*. Pursuant to Rule 16(h) of this Court, the IADC has concurrently filed a motion for leave to file this brief as amicus curiae.

STATEMENT OF INTEREST OF AMICUS CURIAE

The IADC is an association of insurance and corporate attorneys whose practice is concentrated on the defense of civil lawsuits, including products liability lawsuits. The IADC is dedicated to the just and efficient administration of civil justice

and the continual improvement of the civil justice system. The IADC supports a justice system in which plaintiffs are fairly compensated for genuine injuries, responsible defendants are held liable only for appropriate damages, and non-responsible defendants are exonerated without unreasonable cost.

The IADC is particularly interested in this case, because a ruling that formally recognizes the doctrine of *forum non conveniens* would prevent an influx of lawsuits with no connection to Rhode Island into the courts of this State, avoid needless burdens on Rhode Island courts and litigants, and protect the rights of defendants to a fair trial in the appropriate forum. For defense counsel, *forum non conveniens* presents especially important considerations. The doctrine is intended, among other things, to ensure the availability of documents, records and witnesses to the trier of fact. Without access to these sources of proof, defense counsel may be severely hampered in the representation of their clients. Moreover, allowing plaintiffs to bring suit in a forum with no connection to the matter, and in which defendants' access to proof is impeded, unfairly distorts the litigation process and prejudices defendants.

INTRODUCTION

These cases show the allure United States courts can hold for plaintiffs from other countries. Plaintiffs, 39 life-long residents of Canada, did not file these lawsuits in Rhode Island based on some connection to this State, because there is no such connection. None of the plaintiffs, or their decedents, ever worked in Rhode Island, was exposed to asbestos here, or received medical care here. Neither General Electric, nor

any other remaining defendant, has its principal place of business here, and there is no allegation that any tortious conduct was committed in Rhode Island.

Instead, plaintiffs chose to bring these cases in Rhode Island simply because their lawyers believed they have a "better shot in this courtroom than in any place in Canada …" *App*. at 120. Undoubtedly, plaintiffs' lawyers were also aware that Rhode Island is one of only a handful of states in the United States that has not formally recognized *forum non conveniens*, and filed these cases to take advantage of this apparent gap in Rhode Island law. *Compare Perusse v. AC & S, Inc.*, 2001 WL 668548 at *2 (R.I. Super. May 31, 2001) (stating that neither this Court nor the Rhode Island legislature has formally recognized *forum non conveniens*), with *Groff v. America Online, Inc.*, 1998 WL 307001 (R.I. Super. May 27, 1998) (applying *forum non conveniens* in an action based on alleged unfair trade practices).

In denying the defendants' motions to dismiss, the trial court pointed to this gap in Rhode Island law -- the court observed that this Court has never "ruled on or discussed" *forum non conveniens*. *App*. at 157. Similarly, the trial court noted the lack of legislation addressing the issue, except in child custody cases. *Id*. at 157-58. And because this Court has neither formally adopted *forum non conveniens* nor identified the factors that must be considered in applying the doctrine, the trial court was left to base its decision not to adopt *forum non conveniens* on a single consideration: *i.e.*, the fact that the asbestos docket "has been neither unmanageable nor unwieldy." *Id*. The court stated: "Currently, no litigation crisis exists in Rhode Island as this Court is not mired in

asbestos litigation. … there has been no deluge of asbestos cases [in Rhode Island] over the past two decades." *Id*. Given the status of its docket and the lack of controlling authority in Rhode Island, the trial court concluded that there was no "compelling reason" for "adopting the doctrine of forum non conveniens at this time." *Id*. at 158.[1]

This Court should close this gap in Rhode Island law by expressly adopting *forum non conveniens*. *Forum non conveniens* is not intended to manage a "deluge" of cases after the deluge has arisen. And it is not a method of dealing with an inefficient and unmanageable docket, when a court is "mired" in litigation. The doctrine avoids undue burdens on local courts, by allowing them to dismiss cases with no tie to the forum. Thus, the doctrine prevents courts from becoming mired in a deluge of cases in the first place. Furthermore, regardless of the condition of the court's docket, the doctrine is also intended to promote a variety of public and private interests, including the right of defendants to a fair and efficient trial and the ability of courts in other countries to set the legal standards applicable to products sold and consumed within their domain. These considerations should be incorporated into Rhode Island law through the doctrine of *forum non conveniens*.

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[1] The trial court suggested that if its docket becomes "too burdensome or inefficient" in the future, the defendants' motions to dismiss "may be revisited." *App*. at 158.

ARGUMENT

I. THIS COURT SHOULD ADOPT *FORUM NON CONVENIENS* TO DISCOURAGE INTERNATIONAL FORUM SHOPPING

Plaintiffs from other countries are encouraged to bring tort suits in the United States by a number of considerations, including the availability of trial by jury, more generous damage awards, the use of contingent fee agreements (rather than the "loser pays" rule applicable in many other countries), the liberal scope of discovery in United States courts and other favorable rules of procedure, and "malleable" choice of law rules. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 252 n.18 (1981). This combination of substantive and procedural advantages "exerts a strong pull on foreign plaintiffs." Rysavy & Raghavan, *The (Often Insurmountable) Hurdles Facing Foreign Claimants Prosecuting Class Actions In American Courts*, 42 Tort Trial & Insur. Prac. L.J. 1 (2006); *see also* Dunham & Gladbach, *Forum Non Conveniens and Foreign Plaintiffs in the 1990s*, 24 Brook. J. Int'l L. 665, 666 (1999).

Moreover, because manufacturers commonly market and sell products in many countries, plaintiffs are able to initiate claims against product manufacturers for injuries sustained outside the United States in any state in which the defendant can be subjected to personal jurisdiction. *See, e.g.*, *Piper Aircraft*, 454 U.S. at 250 ("Jurisdiction and venue requirements are often easily satisfied. As a result, many plaintiffs are able to choose among several forums.").

Thus, manufacturers conducting business in the United States and selling products abroad are subject to potential lawsuits in the United States by plaintiffs from around the world:

> The growth of [international] businesses, along with procedural innovations in jurisdiction, has created an environment easily exploited by forum shopping plaintiffs seeking to recover large awards against [multinational corporations]. Generous *in personam* jurisdiction provisions often permit plaintiffs to sue [defendants] in several different state or federal courts, thereby providing plaintiffs with a broad choice of fora. This flexibility in choice of forum … has made the United States a particularly attractive forum for plaintiffs seeking to recover against [multinational corporations].

Comment, *The Forum Non Conveniens Doctrine and the Judicial Protection of Multinational Corporations From Forum Shopping Plaintiffs,* 19 U. Pa. J. Int'l Econ. L. 141 (1998). Increasing transnational activity and other factors have combined to increase the potential number of cases that can be brought in the United States by residents of other countries, even when the case has no connection to the plaintiff's chosen forum. *Id*. at 142. And, in comparison to litigants residing in the United States, the incentive for residents of other countries to engage in forum shopping is great. *Id*. at 150-51.

In short, the growing importance of international commerce has increased the number of potential cases that can be filed in courts located in the United States by residents of other countries. Comment, *Conditioning Forum Non Conveniens,* 67 U. Chi. L. Rev. 489 (2000). *Forum non conveniens* provides an important counter-weight to this trend. Increasingly, courts have relied on the doctrine "to moderate the exercise of their jurisdiction in cases having little relationship to the forum." *Id*. at 489-90. The doctrine

allows a court to "resist imposition upon its jurisdiction", *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507 (1947), and is an important tool to avoid unnecessary burdens on courts and litigants.

Thus, in *Piper Aircraft*, the Supreme Court upheld the dismissal of a product liability action brought on behalf of Scottish passengers against United States manufacturers as a result of an air crash in Scotland. The Court looked with disfavor on the plaintiffs' attempts to secure the advantage of favorable choice of law rules, and expressed its desire to discourage such efforts. *Piper Aircraft*, 454 U.S. at 252 n.18, 256-57 n.24.

Following *Piper Aircraft*, courts have relied extensively on *forum non conveniens* and have refrained from exercising jurisdiction in products liability cases having little relationship to the forum. Overwhelmingly, courts have recognized that the doctrine is essential to avoid undue burdens on litigants and courts in the United States; the doctrine has been employed by federal courts and the vast majority of state courts to limit the in-flow of lawsuits, by plaintiffs from other countries, with no connection to the forum.[2]

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[2] *See, e.g., Aguinda v. Texaco, Inc.*, 303 F.3d 470 (2d Cir. 2002) (affirming dismissal of claims that manufacturer's oil operations polluted properties in Ecuador); *Gonzalez v. Chrysler Corp.*, 301 F.3d 377 (5th Cir. 2002) (trial court properly dismissed product liability action against car manufacturer by citizen of Mexico); *Lueck v. Sundstrand Corp.*, 236 F.3d 1137 (9th Cir. 2001) (upholding dismissal of claims against airplane

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The growing need for the doctrine of *forum non conveniens* is highlighted by this case. Plaintiffs' claims simply have no connection to Rhode Island. And while it is easy to understand plaintiffs' desire to proceed in the courts of this State because they have a "better shot" here than in Canada, many potential plaintiffs from around the world will undoubtedly feel that they have a "better shot" here, too. Thus, unless the Court adopts *forum non conveniens*, Rhode Island courts will be open to litigation brought by

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manufacturer by New Zealand citizens); *In re Vioxx Products Liability Litigation*, 448 F. Supp.2d 741, 747 (E.D. La. 2006) (granting drug manufacturer's motion to dismiss claims by Italian and French residents who purchased, ingested, and allegedly suffered injuries in Italy and France); *Delgado v. Shell Oil Co.*, 890 F. Supp. 1324 (S.D. Tex. 1995), *aff'd*, 231 F.3d 165 (5th Cir. 2000) (dismissing claims by farm workers for chemical exposure in foreign countries); *Proyectos Orchimex De Costa Rica, S.A. v. E.I. Dupont De Nemours & Co.*, 896 F. Supp. 1197 (M.D. Fla. 1995) (dismissing product liability claims for alleged damage to commercial nursery crops and real property located in Jamaica and Costa Rica); *In re Union Carbide Corp*., 634 F. Supp. 842 (S.D.N.Y. 1986), *aff'd*, 809 F.2d 195 (2d Cir. 1987) (dismissing claims for personal injuries arising out of gas plant explosion in India); *Harrison v. Wyeth Labs. Division of American Home Products Corp.*, 510 F. Supp. 1 (E.D. Pa. 1980), *aff'd*, 676 F.2d 685 (3d Cir. 1982) (granting dismissal based on *forum non conveniens* where prescription, sale, and ingestion of drugs in question, as well injuries and deaths, occurred in the United Kingdom); *Radeljak v. Daimler Chrysler Corp*., 719 N.W.2d 40 (Mich. 2006) (trial court properly dismissed action brought by residents of Croatia against car maker); *Skewes v. Masterchem Industries, Inc*., 164 S.W.3d 92 (Mo. Ct. App. 2005) (upholding dismissal of products liability claims against paint manufacturer by resident of Canada); *Chandler v. Multidata Sys. Int'l Corp.*, 163 S.W.3d 537 (Mo. Ct. App. 2005) (affirming dismissal of plaintiffs' personal injury claims arising out of exposure to radiation in Panama).

many potential claimants with no ties to the State, for injuries allegedly caused by products of all kinds.

Indeed, because almost every other state applies *forum non conveniens*, Rhode Island stands to become the chosen forum for litigants from other countries who prefer to bring suit in the United States. While foreign litigants could not proceed in other states because of *forum non conveniens*, there would be no obstacle to proceeding in this State. Courts have consistently applied *forum non conveniens* to avoid burdens of this very nature. *See, e.g., 3M Company v. Johnson*, 926 So.2d 860, 866 (Miss. 2006) (court dismissed claims by out-of-state plaintiffs for injuries caused by asbestos in order to prevent Mississippi from becoming the "default forum" for plaintiffs in mass-tort actions); *Radeljak v. Daimler Chrysler Corp.*, 719 N.W.2d at 45-46 (if all automotive design cases against car manufacturer were adjudicated in Michigan, burdens on courts in that state would be increased).

To prevent the courts of this State from being burdened by lawsuits potentially arising anywhere in the world and with no connection to Rhode Island, there is a compelling need for this Court formally to recognize *forum non conveniens*. Out-of-state cases will require resources from local courts, taxpayers, and jurors. If these resources are diverted to cases that have no connection to Rhode Island, the ability of Rhode Island's courts to manage cases with local ties will be adversely impacted.

Indeed, at a time when the vast majority of courts in other states are making greater use of *forum non conveniens*, it would be anomalous for this Court to decline formal recognition of the doctrine.

II. *FORUM NON CONVENIENS* SHOULD BE FORMALLY ADOPTED TO PROTECT THE INTERESTS OF JUSTICE

Forum non conveniens should be adopted not only to prevent forum shopping by plaintiffs and an influx of litigation to this State, but also to advance a host of public and private interests. Regardless of the condition of an individual trial court's docket, *forum non conveniens* is necessary to promote fair and efficient litigation and to prevent unfair prejudice to defendants who may be targets of litigation brought by plaintiffs from outside the State. Without the protections afforded by the doctrine, defendants will be denied access to critical proof and subject to needless expense.

Forum non conveniens derives from the inherent power of courts to control the administration of litigation. *Sibaja v. Dow Chemical Co.*, 757 F.2d 1215, 1218 (11th Cir. 1985), *rehearing and rehearing en banc denied*. As applied by federal courts (and the majority of state courts), the doctrine is a flexible one. *Piper Aircraft*, 454 U.S. at 249-50. It is based on the recognition that in some circumstances courts should decline, "in the interest of justice," to exercise jurisdiction. *Gulf Oil Corp.*, 330 U.S. at 504, quoting *Canada Malting Co. v. Paterson Steamships, Ltd.*, 285 U.S. 413, 422 (1932).

The doctrine requires courts to balance a variety of public and private interest factors. *Piper Aircraft*, 454 U.S. at 241 n.6. Private factors to be considered include:

> the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.

Id., quoting *Gulf Oil Corp.*, 330 U.S. at 508. The public interest factors to be weighed include: administrative difficulties and court congestion; the "local interest" in having local controversies decided at home; the interest in having the trial in a forum at home with the governing law; avoidance of unnecessary problems in conflict of laws or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty. *Id*., quoting *Gulf Oil Corp*., 330 U.S. at 509.

Thus, *forum non conveniens* is based on many considerations, not just the condition of the trial court's docket. Indeed, the United States Supreme Court has recognized that there can be a variety of reasons that litigation may more appropriately be conducted in a foreign court. *Gulf Oil Corp.*, 330 U.S. at 504. Moreover, no single factor is controlling: "If central emphasis were placed on any one factor, the *forum non conveniens* doctrine would lose much of the very flexibility that makes it so valuable." *Piper Aircraft*, 454 U.S. at 249-50. "[T]he ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice." *Koster v. (American) Lumbermens Mut. Casualty Co*., 330 U.S. 518, 527 (1947).

Here, however, because this Court has not formally adopted *forum non conveniens*, the trial court relied on just a single factor -- the condition of its docket -- in its decision not to adopt the doctrine. The trial court's decision demonstrates the need for this Court formally to adopt *forum non conveniens*, because it focused on only one consideration and did not address the many other interests advanced by the doctrine. *Forum non conveniens* needs to be formally recognized to insure that trial courts assess all of the concerns that are embodied in the doctrine.

A. *Forum Non Conveniens* Is Needed to Preserve Defendants' Access to Critical Evidence and Right to A Fair Trial

Forum non conveniens requires courts to weigh the "obstacles to fair trial" that would arise from adjudicating plaintiffs' claims in their chosen forum. *Piper Aircraft*, 454 U.S. at 241 n.6. And of course defendants' right to fair trial requires access to critical sources of proof. That interest is threatened when litigation is conducted in a forum that has no tie to the claim -- key documents and witnesses are inaccessible to defendants because they are not subject to the subpoena power of the court. As a result, defendants' right to a fair trial is imperiled when they are forced to litigate in a forum that has no underlying connection to the lawsuit.

Access to proof is therefore a key factor for courts to consider under *forum non conveniens*:

> Private interest factors will often militate in favor of dismissal of suits brought by foreign plaintiffs because the bulk of the witnesses and physical evidence is likely to be located abroad.

Dunham & Gladbach, 24 Brook. J. Int'l L. at 703; *see also* Rysavy & Raghavan, 42 Tort Trial & Insur. Prac. L. J. at 5 ("Access to proof is one of the most important factors in the *forum non conveniens* analysis.").

Courts applying *forum non conveniens* have recognized that "it is not fair to make U.S. manufacturers proceed to trial without foreign witnesses who cannot be compelled to attend." *Van Schijndel v. Boeing Co*., 434 F. Supp.2d 766, 779 (C.D. Cal. 2006). Where litigation in plaintiffs' chosen forum would deny defendants access to critical sources of proof, courts have consistently relied on *forum non conveniens* to dismiss plaintiffs' claims. *See, e.g., Lueck v. Sundstrand Corp*., 236 F.3d 1137, 1146-47 (9th Cir. 2001) (witnesses and evidence were located in New Zealand, including evidence concerning air crash, the flight crew, airline records, and evidence relating to plaintiffs' injuries, medical expenses, and loss of earnings); *Murray v. British Broadcasting Corp*., 81 F.3d 287 (2d Cir. 1996) (case dismissed based on *forum non conveniens* grounds where important witnesses and documentary evidence were located in England).

In tort cases involving claims for personal injury due to exposure to hazardous substances, access to proof regarding the exposure and plaintiffs' injuries is especially important. But when such key proof is not available to a defendant because the plaintiff has chosen to bring suit in a forum that has no connection to her claims -- as in this case -- the defendant is severely prejudiced. Therefore, when plaintiffs bring claims for personal injuries due to toxic exposures in a forum that is not where the

exposure or the injury occurred, courts place great emphasis on defendants' resulting inability to obtain critical proof regarding the plaintiff's exposure, injuries, and causation.

In *Delgado v. Shell Oil Co*., 890 F. Supp. 1324 (S.D. Tex. 1995), for example, plaintiffs were farm workers who claimed injuries due to exposure to a fungicide on farms in other countries. Although the defendants were headquartered in Texas, the court found that the evidence located in the United States was easily transportable, while evidence relating to foreign plaintiffs was not:

> . . . to properly investigate these matters entails a need to question not only the plaintiffs, but also their co-workers, family members, neighbors, supervisors, doctors, and employers. Defendants may also need to inspect numerous documents, including plaintiffs' employment records, to construct an accurate picture of each plaintiff's level of exposure to [the fungicide], and plaintiffs' medical and personnel records to uncover other potential causes of [plaintiffs' injuries].

890 F. Supp. at 1366-67. The court applied *forum non conveniens* and dismissed plaintiffs' claims.

Similarly, in *Doe v. Hyland Therapeutics Division*, 807 F. Supp. 1117 (S.D.N.Y. 1992), residents of Ireland brought suit for injuries due to their infusion with contaminated blood products. Even though some sources of proof were more readily accessible in New York than in Ireland, the court granted defendants' motion to dismiss because, *inter alia*, evidence relating to product identification, injury, causation and damages was located in Ireland. The court reasoned that plaintiffs' health care providers, medical records, and documents identifying blood products administered, were all located in Ireland, as were the plaintiffs' family members, employers, friends, and neighbors. It

concluded that the "scales of convenience … tilt in favor of an Irish forum." 807 F. Supp. at 1126. Moreover, the court placed "considerable importance" on the fact that litigation in New York, rather than Ireland, would deprive defendants of the ability to subpoena evidence in the control of third parties. *Id*.

Other courts have likewise concluded that *forum non conveniens* should be applied where plaintiffs' choice of forum would deny defendants access to medical records, employment records, and other documents relating to product exposure and causation, or testimony by third parties such as health care providers, co-workers, employers, and family members. *See*, *e.g*., *Miller v. Boston Scientific Corp*., 380 F. Supp.2d 443, 452 (D.N.J. 2005) (where evidence relating to causation, injury, and damages was located in Israel, court granted motion to dismiss); *In re Silicone Gel Breast Implants Liability Litigation*, 887 F. Supp. 1469, 1477 (N.D. Ala. 1995) (claims by residents of other countries dismissed where information known by surgeons, procedures used, and diagnosis and treatment would be important at trial); *Ledingham v. Parke-Davis Div. of Warner-Lambert Co*., 628 F. Supp. 1447, 1450 (E.D.N.Y. 1986) (granting defendant's motion to dismiss based on *forum non conveniens* where "the vast majority of evidence relating to the causation and damages elements of plaintiff's claims [was] located in Canada"); *Skewes v. Masterchem Industries, Inc*., 164 S.W.3d 92 (Mo. Ct. App. 2005) (upholding dismissal of products liability against paint manufacturer where witnesses to the accident, plaintiff's employer and co-workers, and medical providers were located in Canada); *3M Company v. Johnson*, 926 So.2d 860 (Miss. 2006) (in

asbestos-related products liability action, trial court abused its discretion in denying motion to dismiss claims by out-of-state plaintiffs, where medical records and evidence relating to plaintiffs' employment and work sites were located outside the forum).

Here, evidence relating to plaintiffs' exposure to asbestos products and product identification is located in Canada, not Rhode Island. Plaintiffs' medical records and employment records are also located in Canada. Testimony by plaintiffs' employers, co-workers, and family members may be essential to the trier of fact, but a Rhode Island court lacks the ability to compel testimony by such witnesses. This evidence may be relevant not only to the essential elements of plaintiffs' claims such as causation and damages, but also to affirmative defenses such as statute of limitations and contributory fault. But in this case, defendants' fundamental interest in a fair trial was not sufficiently protected because *forum non conveniens* has not been expressly adopted in Rhode Island. Formal recognition of the doctrine is necessary to help insure that the defendants' fundamental right to a fair trial is safe-guarded.

B. *Forum Non Conveniens* Is Also Necessary To Protect A Host Of Public Interests

Another important factor that courts have stressed in applying *forum non conveniens* is the interest of other countries in setting the standard of care, applicable to manufacturers, for making and selling products to their own residents. *See Gulf Oil Corp.*, 330 U.S. at 509 ("There is a local interest in having localized controversies decided at home."); *see also Stewart v. Dow Chemical Co.*, 865 F.2d 103, 107 (6th Cir.

1989) ("It is clear that the people of New Brunswick have an interest in this controversy; it is their fellow citizens who were allegedly injured.").

Thus, in dismissing cases based on *forum non conveniens*, courts have emphasized that other nations have an interest in establishing and enforcing their own product liability standards, and also in having the litigation decided in a local forum. Dismissal is warranted because foreign courts "have a substantial interest in establishing and enforcing the standards that manufacturers must satisfy in selling products there, whereas American courts will often have only a marginal interest in such matters." Dunham and Gladbach, 24 Brook. J. Int'l L. at 703-704. Otherwise, a court in the United States would need to engage in complex analysis of foreign law, an analysis that would be needlessly burdensome. For this reason, the doctrine is intended to avoid the need for United States courts to interpret and apply the law of other countries; it recognizes the administrative and substantive burdens that would be involved in interpreting other countries' laws. *See, e.g., Piper Aircraft*, 454 U.S. at 251 (the doctrine allows courts to "avoid conducting complex exercises in comparative law …").

But in addition to choice of law issues, *forum non conveniens* recognizes that matters of concern to foreign nations should actually be decided in foreign courts. In *Doe v. Hyland Therapeutics Division*, 807 F. Supp at 1128, for example, the court noted that all of the plaintiffs resided in Ireland, and all of the injuries and damages were sustained there. Moreover, none of the alleged tortious conduct occurred in New York, none of the defendants were incorporated in New York, and none had their principal

place of business there. *Id.* In these circumstances, the court said, plaintiffs' effort to invoke the jurisdiction of a court in New York was inconsistent with Ireland's interest in setting standards applicable to pharmaceuticals sold to and used by Irish residents. *Id*. at 1129. The court stressed that each country is entitled to strike a "unique balance" between the benefits derived from a product and the risks attached to its use. *Id*. Each country is also entitled to set its own standards for manufacturers' conduct, safety and care. *Id*. Moreover, each country's individual assessment will "affect not merely the quality of the product, but also the price, quantity, and availability to its public." *Id.* "Such an assessment," the court declared, "must remain the prerogative of the forum in which the product is used …" *Id*. These factors, the court concluded, weighed heavily in allowing an Irish court to decide the matter, especially because New York had only a "frail connection" to the litigation. *Id*. at 1128.

Similarly, in *Harrison v. Wyeth Laboratories*, 510 F. Supp. 1 (E.D. Pa. 1980, *aff'd,* 676 F.2d 685 (3d Cir. 1982), the court granted defendant's motion to dismiss claims for injuries allegedly caused by oral contraceptives used by consumers in the United Kingdom. The court found that there was a strong public interest in having the matter decided by courts in the United Kingdom, rather than in Pennsylvania. The court declared: "Questions as to the safety of drugs marketed in a foreign country are properly the concern of that country; the courts of the United States are ill-equipped to set a standard of product safety for drugs sold in other countries." 510 F. Supp. at 4. The court went on:

> Each [country] makes its own determination as to the standards of degree of safety and duty of care. This balancing of the overall benefits to be derived from a product's use with the risk of harm associated with that use is peculiarly suited to a forum of the country in which the product is to be used. Each country has its own legitimate concerns and its own unique needs which must be factored into its process of weighing the drug's merits, and which will tip the balance for it one way or the other.

Id. Thus, a court in the United States "should not impose its own view" of product safety, warnings, or duty of care upon a foreign country. *Id*. In order to avoid imposing a United States court's standards on the United Kingdom, the court dismissed the case, so that the matter could be decided by a court in the Unite Kingdom.

Many other courts have also recognized that when plaintiffs from other countries seek to bring suit in a court in the United States for injuries caused by a product marketed and consumed outside the United States, *forum non conveniens* should be applied because the doctrine allows other countries to decide cases that concern local interests such as product safety standards.[3]

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[3] *See, e.g., In re Vioxx Products Liability Litigation*, 448 F. Supp.2d at 748 (*forum non conveniens* applied where there was a strong public interest in resolving plaintiffs' claims in Italy and France); *In re Silicone Gel Breast Implants Liability Litigation*, 887 F. Supp. 1469, 1477 (N.D. Ala. 1995) ("differences in the positions taken by [the United States] government and by other governments in weighing the relative risks and benefits of breast implants actually highlight the significant interest such countries have in resolving claims relating to implantations performed in their jurisdiction, as well as in administering their own health-care systems."); *Fraizer v. St. Jude Medical, Inc.*, 609 F. Supp. 1129, 1131-32 (D. Minn. 1985) (where plaintiff allegedly suffered injuries in Denmark due to defendant manufacturer's product, court

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These concerns militate strongly in favor of applying *forum non conveniens*. Formal recognition of the doctrine will avoid the need for Rhode Island courts to adjudicate claims for personal injuries caused by products marketed and used in other countries. The courts of other countries, rather than Rhode Island, should choose the applicable law. And foreign courts should also determine the degree of care that a manufacturer must exercise when selling products in foreign jurisdictions. A foreign court may set a higher standard than the standard that applies in Rhode Island, it may set the same standard, or it may set a lower standard. But the standard will be decided in the proper forum -- *i.e.*, by a court in the jurisdiction where the product is marketed and sold. A foreign forum, not a court in Rhode Island, is in the best position to weigh all of relevant concerns, such as the risks and benefits of the product, and its price, quantity and availability. *See generally* Comment, 19 U. Pa. J. Int'l Econ. L. at 154-56 (allowing plaintiffs from other countries to take advantage of products liability standards imposed

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dismissed plaintiff's claims because "Denmark has a significant interest in setting the standards that a foreign manufacturer must meet to sell products there"); *Abiaad v. General Motors Corp.*, 538 F. Supp. 537, 544 (E.D. Pa. 1982, *aff'd*, 696 F.2d 980 (3d Cir. 1982), (where plaintiff claimed damages for injuries sustained in the United Arab Emirates, court granted defendant's motion to dismiss on *forum non conveniens* grounds, inasmuch as "the locality in which the product was used has the paramount interest in the accident and in the outcome of this controversy. Safety standards**,** liability rules and recovery values ought to be decided at home, and not imposed by a foreign court.").

in the United States raises prices charged to foreign consumers, creates inefficiencies, compromises principles of judicial comity, and impinges on the sovereignty of other countries).

Canada has a public interest in deciding plaintiffs' claims in these cases and in setting the standard of care for products sold in Canada. Rhode Island has no such interest. It should be left to a Canadian court to decide these cases, and *forum non conveniens* should therefore be adopted.

CONCLUSION

The orders denying petitioners' motions to dismiss based on *forum non conveniens* should be reversed.

Respectfully submitted,

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