

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

TRAD THORTON, et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 07 L 004642
v.	)	
	)	
HAMILTON SUNDSTRAND CORP., et al.,	)	
	)	
Defendants.	)	

**ORDER**

This matter coming before the court on Defendants' Motion to Dismiss on the basis of *forum non conveniens*, the court having considered the written submissions and oral arguments of the parties, **HEREBY FINDS AS FOLLOWS:**

**I. Procedural Posture**

This case arose when a commuter airplane crashed while approaching an airport in Lockhart River, Queensland, Australia. Fourteen wrongful death and survival actions were filed in Cook County, Illinois alleging negligence and products liability. Defendants brought this joint motion to dismiss and assert that Australia is a more convenient forum to litigate these issues.

**II. Australia is an adequate forum.**

At the outset of a *forum non conveniens* motion, the court must first consider whether there is another adequate alternative forum that can resolve a plaintiff's claims. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981). Generally, another forum is adequate if the defendant is amenable to process in the alternative forum. *Piper Aircraft Co.*, 454 U.S. at 255. However, an alternative forum can be inadequate if the application of foreign law would deny the plaintiff a remedy or treat the plaintiff unfairly. *Philips Elecs. N.V. v. New Hampshire Ins. Co.*, 312 Ill.

App. 3d 1070, 1085 (1st Dist. 2000). Still, an alternative forum may be considered adequate even if not all of the same remedies are available. *Piper Aircraft Co.*, 454 U.S. at 254-55.

In the present case, the court finds that Australia is an adequate alternative forum. Plaintiffs assert that they may be prevented from bringing claims against three Defendants, Honeywell International Inc. (“Honeywell”), Lambert Leasing (“Lambert”), and Saab Aircraft Leasing, Inc. (“Saab”) if the case is transferred to an Australian court. Plaintiffs also have voiced concerns over jurisdictional issues and their ability to depose third-parties to this litigation. Defendants, including Honeywell, Lambert, and Saab, have agreed to consent to jurisdiction in Australia. Although Plaintiffs’ remedies may differ in an Australian forum, any procedural difference or differences in the law do not appear to completely deprive the Plaintiffs of a remedy. Finally, there is no evidence that Plaintiffs would be treated unfairly by an Australian court.

Therefore, the court finds that Australia is an adequate alternative forum. The court must next consider the plaintiff’s choice of forum and then weigh both private and public interest factors in making its determination.

### **III. Plaintiffs’ choice of forum deserves less deference in this case given the facts.**

Before weighing the private and public interest factors, the court must also determine how much deference should be given to plaintiff’s choice of forum. *Ellis v. AAR Parts Trading, Inc.*, 357 Ill. App. 3d (1st Dist. 2005). While deference is typically accorded to a plaintiff’s choice of forum, such deference is given less significance when the plaintiff is foreign to the chosen forum. *See, e.g., First National Bank v. Guerine*, 198 Ill.2d 511, 517 (2002); *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill.2d 101, 106 (1990). Still, the court must keep in mind that *less* deference is not the same as *no* deference. *Ellis*, 357 Ill. App. 3d at 742 *citing*

*Dawdy*, 207 Ill.2d at 174. Therefore, “the defendant must show that the plaintiff’s chosen forum is inconvenient to the defendant and another forum is more convenient to all parties.” *Id.*

In the present action, the injuries occurred in Australia and none of the decedents were United States citizens or Cook County residents. One administrator of a decedent’s estate is a United States citizen although she currently resides in Australia. Given these facts, the court will give less deference to the Plaintiffs’ chosen forum.

**IV. Despite giving less deference to Plaintiffs’ choice, the facts of this case illustrate that the private and public interests factors do not warrant dismissal on the basis of *forum non conveniens*.**

The court must weigh both private and public interest factors when making a determination. The relevant private interest factors include: the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure attendance of unwilling witnesses; the cost to obtain attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical considerations that make a trial easy, expeditious, and inexpensive. *Dawdy v. Union Pacific Railroad Co.*, 207 Ill.2d 167, 172-73 (2003).

The relevant public interest factors include the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; the unfairness of imposing jury duty upon residents of a county with no connection to the litigation; and the interest in having local controversies decided locally. *Id.* In essence, the ultimate test turns on “whether the relevant factors, viewed in their totality, strongly favor transfer to the forum suggested by defendant.” *Id.* at 176.

Turning to the private interest factors, the relevant facts in the case at bar demonstrate that all of the Defendants are United States corporations and two Defendants, The Boeing

Company (“Boeing”) and Matthew Hier (“Hier”) have ties to Illinois. Specifically, Boeing is headquartered in Illinois and Hier resides in Rockford, Illinois. Potential trial witnesses and sources of proof are scattered among various states (Texas, Washington, and Colorado) and countries (United States and Australia). The accident site is in Australia. However, the site is in a remote area and may not be readily accessible. Finally, Plaintiffs’ and Defendants’ counsel have offices in Cook County, Illinois.

Defendants’ main contention is that an Illinois court cannot compel the production of Australian witnesses, documents, or records. However, the same is true of a United States forum if this case was heard in Australia. What is more, when potential trial witnesses are scattered among various states and countries, no single forum can be more convenient than another. Defendants have not submitted any affidavits asserting that a trial in Cook County is inconvenient for any of the witnesses. The court also recognizes that this is a products liability case and the documents relating to the design and manufacturing of the plane, the engine, and the Ground Proximity Warning System are in the United States. Finally, in a products liability case, the site of the accident is less important because, “there is a more general interest in resolving a claim concerning an allegedly defective product and jury views of the accident site are generally unnecessary.” *Ammerman v. Raymond Corp.*, 379 Ill. App. 3d 878, 886 (1st Dist. 2008). For these reasons, the court finds that the private interest factors do not weigh strongly in favor of dismissal.

Turning to the public interest factors, the relevant facts include that the Australian government has taken an interest in this particular accident and the litigation following the crash. All of the decedents were Australian residents. However, Boeing is an Illinois corporation, is

headquartered in Cook County, and does business in Illinois. Additionally, Defendant, Hier, is a resident of Illinois.

Again, the court is reminded that in a products liability case the site of the accident is less important. And, while conducting business in a particular forum is more relevant when considering issues of venue rather than *forum non conveniens*, Illinois residents have an interest in resolving a matter when an Illinois corporation, who takes advantage of Illinois law, is involved in the litigation. Finally, court congestion is only one factor to consider, and Defendants have not shown that an Australian trial would take place more quickly than a trial in Cook County. Therefore, Defendants have not shown that the public interest factors strongly favor dismissal.

Accordingly, in applying the above factors to the case at bar, the balance of the private and public interest factors do not strongly favor dismissal and the Plaintiffs' choice of forum should not be disturbed.

**IT IS HEREBY ORDERED:**

Defendants' Motion to Dismiss on the basis of *forum non conveniens* is denied.

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JUDGE WILLIAM D. MADDUX

