Overview

Perspectives of panelists
Summary of *forum non conveniens* doctrine
Strategy – Where do litigants want to be, and why?
Precedent – Influential air crash FNC cases
Policy – Where should an accident be litigated?
Role of the U.S. government
FNC in other jurisdictions
Forum non conveniens summary

- Application of FNC involves several issues:
  - Is there an adequate alternative forum?
  - Is chosen forum efficient to litigate an accident case?
  - How to balance plaintiff’s private interests against public interests?
  - What deference due the plaintiff’s choice of forum?
Forum non conveniens summary

Private interest factors:
• Relative ease of access to sources of proof
• Availability of compulsory process for unwilling witnesses
• Costs to bring willing witnesses
• Viewing the premises
• Efficiency issues and trial costs
• Enforceability of the judgment
Forum non conveniens summary

Public interest factors:
• Court congestion
• Interests in deciding (local) controversies at home
• Avoid legal interpretation and choice of law problems
• Unfairly burdening disinterested citizens with jury duty
FNC applicable conventions

• Warsaw Convention Article 28
• Montreal Convention Article 33
• Montreal Convention’s 5th jurisdiction
Warsaw Convention Article 28

• At plaintiff’s option, an action for damages must be brought either:
  – where the carrier ordinarily is resident
  – where the carrier has its principal place of business
  – where the contract has been made
  – at the destination

• Questions of procedure shall be governed by the law of the court to which the case is submitted
Montreal Convention Article 33

• At plaintiff’s option, an action for damages must be brought:
  – at the carrier’s domicile
  – at the carrier’s principal place of business
  – where the contract has been made
  – at the destination
  – or…
Montreal Convention Article 33
5th Jurisdiction

• …when damages result from death or injury, action may also be brought:
  – where, at the time of the accident, the passenger has "principal and permanent residence" and to/from which the carrier operates.
  – "Principal and permanent residence" is the one fixed and permanent abode of the passenger at the time of the accident. Passenger nationality not determinative.

• Questions of procedure shall be governed by the law of the court seized of the case
Forum Strategy
Where do litigants want to sue, and why?

• Plaintiffs
  – State courts with sympathetic juries/judges
  – U.S. "judicial hellholes"
  – Jurisdictions that allow contingency fees
  – Liberal discovery rules
  – Strict products liability
  – Highest verdicts for non-economic damages
  – Prospect of punitive damages
  – Relatively prompt trials
  – Efficient judgment enforcement
Forum Strategy
Where do litigants want to sue, and why?

• Defendants
  – U.S. federal courts with Article III judges
  – Lower verdicts for non-economic damages
  – Neutral application of law in disciplined manner
  – Jurisdictions that disfavor punitive damages
Precedent – Influential air crash 
*forum non conveniens* Cases

- *Hosaka v. United Airlines, Inc.* (9th Cir., 2002)
- *In re Air Crash Over the Mid-Atlantic on June 1, 2009* (N.D. California 2010)
- *In re Air Crash at Little Rock* (8th Cir., 2002)
Policy – Where should an accident case be litigated?

• Efficiency
  – Where are documents and witnesses? transportable?
  – Related lawsuits being litigated elsewhere?
  – Public and private interests?

• Montreal’s "5th jurisdiction"
  – What is "principle & permanent residence"?
  – How does "5th jurisdiction" interact with common law?
  – How does "5th jurisdiction" affect passenger rights?

• Should FNC be recognized under Montreal Convention?
Role of the U.S. Government in air crash FNC decisions

• Process by which U.S. Government may become involved
• Criteria by which U.S. Government decides to become involved
FNC in Non-U.S. Common Law Jurisdictions

"Most appropriate forum" test - Spiladia (1986 H.L.)

Comparative analysis

Not available when jurisdiction based on an int'l convention:

"Clearly more appropriate forum" - Amchem (1993 C.S.C.)

Jurisdiction based on "real and substantial" connection test

FNC is a distinct comparative analysis

"Clearly inappropriate forum" - Oceanic (1988 H.C.)

("Vexatious or oppressive" test still may apply)
FNC in Civil Law Jurisdictions

Strong philosophical disapproval / Jurisdiction is determined by law
Brussels I / Brussels II

Constitutional right of access to Court


FNC Codified in 2004 (subject to Owuzu)


FNC Codified in 1994: 3135. Even though a Québec authority has jurisdiction to hear a dispute, it may exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another country are in a better position to decide.