STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPREME COURT

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

V.

No. 05-332-M.P.

A.W. CHESTERTON COMPANY, *ET AL.*

BRIEF OF
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
AMERICAN TORT REFORM ASSOCIATION,
PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA,
COALITION FOR LITIGATION JUSTICE,
NATIONAL ASSOCIATION OF MANUFACTURERS, AND
AMERICAN INSURANCE ASSOCIATION
AS *AMICI CURIAE* IN SUPPORT OF
PETITIONER, GENERAL ELECTRIC COMPANY

Appeal from the Providence County Superior Court (C.A No. PC 04-1552)

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INTEREST OF *AMICI CURIAE*

Amici curiae are six national associations that share a substantial common interest in the fair and effective administrative of justice. This case is of significant interest to *amici* because it provides the opportunity for Rhode Island to recognize the inherent power of Rhode Island courts to decline jurisdiction over cases that have little or no connection to the State of Rhode Island and that would be more appropriately decided elsewhere.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation, representing an underlying membership of more than three million companies and professional organizations of all sizes and in all industries. In addition to the several hundred Chamber members located in Rhode Island, countless others do business within the state and are directly affected by its litigation climate. The Chamber advocates the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation's business community.

Founded in 1986, the American Tort Reform Association ("ATRA") is a broad-based coalition of more than 300 businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than a decade, ATRA has filed *amicus curiae* briefs in cases before federal and state courts that have addressed important liability issues.

The Pharmaceutical Research and Manufacturers of America ("PhRMA") is an association comprised of the country's leading research-based pharmaceutical and biotechnology companies. PhRMA's member companies are devoted to inventing medicines that will allow

patients to live longer, healthier, and more productive lives and have led the way in the search for new cures. PhRMA members alone invested an estimated $43 billion in 2006 in discovering and developing new medicines. PhRMA's mission is to advocate for public policies that encourage the discovery of life-saving and life-enhancing new medicines for patients by pharmaceutical and biotechnology research companies.

The Coalition for Litigation Justice, Inc. ("Coalition") was formed in 2000 as a nonprofit association to address and improve the asbestos litigation environment. Established by insurers, the Coalition's mission is to encourage fair and prompt compensation to deserving current and future asbestos claimants by seeking to reduce or eliminate the abuses and inequities that exist under the current civil justice system.[1] The Coalition files briefs in important matters, such as this one, that that may have a significant impact on the asbestos and other toxic tort litigation environment.

The National Association of Manufacturers ("NAM") is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all fifty states. The NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media, and the general public about the importance of manufacturing to America's economic strength.

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[1] The Coalition for Litigation Justice includes ACE-USA companies, Chubb & Son, a division of Federal Insurance Company, CNA service mark companies, Fireman's Fund Insurance Company, Liberty Mutual Insurance Group, and the Great American Insurance Company.

The American Insurance Association ("AIA"), established over 140 years ago, is a national trade association representing major property and casualty insurers writing business nationwide and globally. AIA members collectively underwrote over $450 million in direct property and casualty premiums in Rhode Island in 2005. AIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the state and federal levels and files amicus briefs in cases before state and federal courts on issues of importance to the insurance industry and the insurance marketplace.

STATEMENT OF ISSUE PRESENTED

Whether Rhode Island courts have inherent authority to apply the common law doctrine of *forum non conveniens*, applied in federal courts and the courts of nearly every other state, to dismiss claims of plaintiffs who never lived or worked in Rhode Island, in a case in which the alleged injury occurred, and the witnesses and evidence are located, exclusively outside of Rhode Island, and where the claim can be brought in the plaintiffs' home country.

STATEMENT OF THE CASE

Amici adopt Petitioner's summary of the dispute in question.

INTRODUCTION AND SUMMARY OF ARGUMENT

When nonresident or foreign litigants choose to file claims in a distant jurisdiction, it is almost invariably a sign that there is something fundamentally wrong taking place. It is one of the basic presuppositions of the American justice system—and the doctrine of *forum non conveniens*—that parties will be inclined to bring their cases in their home forum. When plaintiffs instead choose to bring their actions in some out of the way forum, something is surely amiss. As shown below, that which is amiss is not beyond the power of Rhode Island courts to correct.

This case provides the opportunity for Rhode Island to recognize the inherent power of its courts to decline jurisdiction over cases that have little or no connection to the State that are more appropriately decided elsewhere. State and federal courts have recognized the doctrine of *forum non conveniens*, some based on statutory grounds, but most based on their inherent authority to do so. They have applied this doctrine to dismiss claims based on their consideration of the convenience of the parties, the availability of witnesses and evidence, the lack of familiarity with the applicable law, the potential to delay court access for state residents as a result of the burden placed on already crowded dockets, the unfair cost of the foreign litigation imposed on local taxpayers, the inappropriateness of shopping for favorable law, judges, or juries, and the availability of an alternative forum. Rhode Island has never rejected the doctrine; rather this Court has not had an appropriate case in which to apply it. This lack of clarity regarding the doctrine's availability has allowed "imported litigation" to flow into Rhode Island courts so long as a named defendant can be found within the State.

The case before this Court provides a prime example of the danger of such imported litigation and the opportunity to formally acknowledge the doctrine. It involves claims filed by thirty-nine lifelong Canadians alleging injuries stemming from exposure to asbestos. None of the Plaintiffs have ever lived in Rhode Island. None of the plaintiffs were exposed to asbestos in Rhode Island. The Plaintiffs' employment, exposure, injuries, and medical treatment occurred in Canada. All of the employers, worksites, co-workers, exposures, medical witnesses and fact witnesses are located in Canada. Each of the Plaintiffs currently receives compensation from the Canadian government's Workers' Compensation Board. The Plaintiffs have sued corporations that are not incorporated or headquartered in Rhode Island and established jurisdiction and venue over them simply by virtue of their doing business in the state. They have chosen Rhode Island

based on the more favorable treatment they expect to receive in the judicial system of the United States, rather than in their home country, and because Rhode Island is the only state in which the law has not developed to favor immediate dismissal of such a lawsuit on *forum non conveniens* grounds.

Amici urge this Court to adopt the principle that its courts have inherent power to decline jurisdiction over claims unrelated to Rhode Island and to provide guidance to lower state courts as to when it is appropriate to exercise such authority. The actions of the Supreme Court of the United States and numerous state high courts in applying *forum non conveniens* clearly demonstrate that there is no need for legislative action to embrace this common law doctrine. Should this Court fail to recognize the applicability of this doctrine, the Court risks opening Rhode Island to a flood of litigation from other states and foreign counties that have little or no connection to Rhode Island. Asbestos claims have a history being susceptible to forum shopping, making application of the doctrine particularly important in this case. Rhode Island should not advertise itself as the world's forum for potentially thousands of asbestos claims and other imported litigation.

ARGUMENT

I. The Origin and History of *Forum Non Conveniens*

A. Early Application of the Doctrine in England and the United States

The doctrine of *forum non conveniens* is said to have developed in early Scottish practice where courts declined to hear cases when justice dictated that the parties avail themselves of other forums. *See* Edward L. Barrett, Jr., *The Doctrine of Forum Non Conveniens*, 35 Cal. L. Rev. 380, 386-87 (1947); Robert Braucher, *The Inconvenient Federal Forum*, 60 Harv. L. Rev. 908, 909-11 (1946) (examining application of the doctrine in Scotland and England since the

1830s). During this period, for example, Scottish and British courts dismissed claims such as those involving a French shipper suing a French ship-owner in a Scotch court for loss of cargo on a journey from Scotland to France, an alien domiciled in India against an Indian solicitor in a British court for breach of a trust agreement made in India, and a Scotsman suing a Scotch bank in an English court for false representations in the prospectus of a Scotch company. *See* Paxton Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 Colum. L. Rev. 1, 20-21 (1929) (citing cases). As one commentator concluded:

> To sum up the English and Scottish practice, the plea of *forum non conveniens* will be sustained where there is another available and more appropriate forum, in which the ends of justice would be better served in view of the interests of all the parties, by eliminating the vexatious or oppressive character of the pending proceedings and by removing any unfairness to either party which would result from trial in the forum seized of the case.

Joseph Dainow, *The Inappropriate Forum*, 29 Ill. L. Rev. 867, 884 (1934); *see also Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 249 n.13 (1981) (recognizing this history and citing Braucher and Blair as authority).

The doctrine arrived in the United States as part of the judiciary's inherent powers, though it was not referred to by name prior to the twentieth century. Rather, it was routinely applied by courts "with such little consciousness of what they were doing as to remind one of Moliere's M. Jourdain, who found he had been speaking prose all his life without knowing it." Blair, 29 Colum. L. Rev. at 21-22. When early American courts exercised their inherent power to dismiss cases more appropriately heard in another jurisdiction, they did so on the basis of the unavailability of witnesses, the unfairness to a state's own citizens who would experience delays in access to their courts and pay the expense of the foreign litigation, and the dissimilarity between the foreign law and American law.

For instance, when a Canadian resident sued a Michigan corporation for a tort committed in Canada, a Michigan court dismissed the claim due to the "danger of injustice" since witnesses and evidence were outside of the country and possibly unreachable as well as the potential importance of foreign law to the outcome. *See Great Western Ry. Co. v. Miller*, 19 Mich. 305, 1869 WL 3643 (Mich. 1869). A federal court in New York found that a resident of Germany could not pursue a breach of contract claim against an English company arising from a contract entered into in Canada for the carriage of goods from Quebec to Manchester, by assigning the claim to an agent in New York, because "all the substantial reasons for prosecuting the suit in Canada rather than in this jurisdiction, remain as before." *Goldman v. Furness, Withy & Co.*, 101 F. 467, 468 (S.D.N.Y. 1900). As early as 1904, the Supreme Court of the United States upheld the dismissal by a Texas court of a wrongful death claim arising from an accident in Mexico brought under Mexican law where "[t]he defendant always can be found in Mexico on the other side of the river, and it is to be presumed that the courts there are open to the plaintiffs . . . ." *Slater v. Mexican Nat'l R.R. Co.*, 194 U.S. 120, 129 (1904). As these examples illustrate, courts frequently dismissed cases where the parties included aliens or foreign corporations, not as a result of inhospitality to foreigners, but on the basis that there is a high probability that the local forum selected is inappropriate unless special circumstances make it reasonable to entertain the action. *See* Roger S. Foster, *Place of Trial – Interstate Application of Intrastate Methods of Adjustment*, 44 Harv. L. Rev. 41, 53-54 (1930) (citing several decisions supporting this principle rendered between 1793 and 1916).

The lack of a unified body of case law recognizing the doctrine of *forum non conveniens* in these early years may be due to the rare need for its use during this period. For many years, the U.S. Constitution itself effectively limited suits lacking a connection to the forum

jurisdiction. *See Pennoyer v. Neff*, 95 U.S. 714 (1877) (holding that a court may not exercise personal jurisdiction over a defendant unless the defendant is physically present in the state). The Commerce Clause was also invoked as a means of limiting cases where the parties had little or no connection to the forum jurisdiction. *See Davis v. Farmers Coop. Equity Co.*, 262 U.S. 312 (1923) (finding that trial of a claim in Minnesota in which all parties and the action were from Kansas would pose an unreasonable burden on interstate commerce given the time and expense of bringing distance witnesses, and therefore finding that a statute providing jurisdiction over the defendant, an interstate carrier, could not be constitutionally applied). This changed as interstate and international commerce became the norm and laws more broadly permitted jurisdiction over corporations that do business in the state. *See* Dainow, 29 Ill. L Rev. at 868 ("[A]s a result of the extension of the businesses of corporations state lines, and state statutes providing for local jurisdiction over them, there appeared more and more veraciously imported actions between nonresidents.").[2] Surely, in today's global marketplace there is even greater need for courts to exercise discretionary authority to decline jurisdiction when a claim is more appropriately heard in another forum, even if a broad state venue law and the U.S. Constitution would permit it to hear the case.

In a seminal 1929 article, Paxton Blair coined the phrase, *forum non conveniens*, and advocated for its increased use by courts to divert a flood of litigation that may be more appropriately tried elsewhere. *See* Blair, 29 Colum. L. Rev. at 1. Mr. Blair noted the

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[2] *See also* Comment, *Forum Non Conveniens, A New Federal Doctrine*, 56 Yale L.J. 1234, 1234 (1946) (recognizing that the doctrine of *forum non conveniens* rose as a reaction to state laws providing plaintiffs with wider choices of forum, such as those providing jurisdiction over nonresidents doing business in the state); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) (holding that personal jurisdiction may be maintained upon minimum contacts, such that the suit does not offend "traditional notions of fair play and substantial justice").

increasingly frequent practice of suing corporations in jurisdictions alien to the defendant's domicile, the plaintiff's residence, and where the cause of action arose, stemming from a "desire to sue where the verdicts are the largest." *Id.* at 34. After engaging in a thorough evaluation of the historic, constitutional, and public policy basis supporting *forum non conveniens*, Mr. Blair urged its more frequent use given the effect of "imported controversies" on the apportioning of courts and judges to the population, congestion on court dockets, and the expense placed on local taxpayers. *Id.* Mr. Blair did not call for legislative action. Rather, he recognized:

> [N]ew legislation is not needed before any benefit can be expected to flow from the remedies we propose; for the doctrine in question involves nothing more than an appeal to the inherent powers possessed by every court of justice—powers, that is to say, which are incontestably necessary to the effective performance of judicial functions.

Id. at 1.

B. The U.S. Supreme Court Recognizes the Inherent Power of Courts to Decline Jurisdiction Over Cases Better Heard in Another Forum

Despite the common application of the doctrine under various rationales and names, courts in the United States did not wholeheartedly embrace their ability to decline jurisdiction over cases more rationally heard in another forum into the early twentieth century. *See* Roger S. Foster, *Place of Trial in Civil Actions*, 43 Harv. L. Rev. 1217, 1239 (1929). This hesitancy was "partly owing to a distrust of discretionary power and partly owing to supposed constitutional difficulty" as to whether a court with jurisdiction has any choice but to exercise it. *Id.* Many courts did not adopt the doctrine on the mistaken rationale that limiting the access of residents of other states to local courts violated the Privileges and Immunities Clause of Article IV of the U.S. Constitution. *See* Barrett, 35 Cal. L. Rev. at 389-90 (citing cases).

In 1929, the Supreme Court of the United States dispelled any confusion when it made clear that states may constitutionally limit the ability of nonresidents to bring actions in state

courts in a case arising under the Federal Employers' Liability Act (FELA). *See Douglas v. New York, N.H. & H. R.R. Co.*, 279 U.S. 377 (1929). In that case, a New York statute provided that a foreign corporation or nonresident could only sue a foreign corporation in New York if the defendant foreign corporation conducted business in New York. *See id.* at 386. In upholding that law, Justice Holmes, writing for the Court, recognized, "[t]here are manifest reasons for preferring residents in access to often overcrowded Courts, both in convenience and in the fact that broadly speaking it is they who pay for maintaining the Courts concerned." *Id.* at 387. The Court squarely rejected a constitutional challenge under Privileges and Immunities Clause. *See id.*

A flurry of legal scholarship followed the *Douglas* decision recognizing the inherent authority of both federal and state courts to apply the doctrine and its increasing importance as commerce spread across state lines. In an influential law review article, Yale Law Professor Roger S. Foster recognized the problem of allowing lawsuits against defendants wherever they may be "found" and the challenges in addressing this problem through legislation due to political inertia and the inflexibility of statutes to adapt to widely varying facts. *See* Foster, 44 Harv. L. Rev. at 52-54. "The best hope is that the courts will feel free to take appropriate action without specific legislation authorizing them to do so. It is submitted that authority for such action is implicit in well-established common law principles." *Id.* at 52; *see also* Dainow, 29 Ill. L. Rev. at 870 (recognizing that "hard and fast mechanical rules eventually become unsuitable and inadequate," that the "complexity of situations must progressively increase," and therefore "[t]here is only one sufficiently elastic method of assuring adjustment and that is by reposing the determination of the border-line situations in the discretion of the court").

By 1941, Justice Frankfurter referred to *forum non conveniens* as a "familiar doctrine" and as a "manifestation of a civilized judicial system . . . firmly imbedded in our law." *Baltimore & Ohio R.R.. Co. v. Kepner*, 314 U.S. 44, 55 (1941). The Supreme Court closed any outstanding questions as to the authority and propriety of federal courts to control filings by nonresident plaintiffs through application of *forum non conveniens* in a pair of cases in 1947. In *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), a Virginia resident sued a Pennsylvania corporation four hundred miles away in a federal court in New York City for a negligence action arising in Lynchburg, Virginia. Justice Jackson, in affirming the dismissal of the action with instructions that it be filed in Virginia, set forth a nonexclusive list of private and public interest factors that a court may consider in deciding whether to dismiss a case under the doctrine. *See id.* at 508-09; *infra* Section III.A. Federal courts and many state courts continue to consider these factors today.

In a companion case, *Koster v. Lumbermens Mutual Casualty Co.*, 330 U.S. 518 (1947), the Supreme Court emphasized that even where a defendant is technically a resident of the forum state because it is incorporated in that state, it is not precluded from invoking the doctrine of *forum non conveniens* if the forum will result in substantial inconvenience to the defendant and the plaintiff has failed to advance a satisfactory reason as to why claim should be tried in the forum selected. As the Court explained:

> Under modern conditions, corporations often obtain their charters from states where they no more than maintain an agent to comply with local requirements, while every other activity is conducted far from the chartering state. Place of corporate domicile in such circumstances might be entitled to little consideration under the doctrine of *forum non conveniens*, which resists formalization and looks to the realities that make for doing justice.

Id. at 527.

Four justices dissented in *Gilbert*. Two argued that the Court's adoption of the doctrine invaded the legislative domain. *See* 330 U.S. at 515 (Black, joined by Rutledge, JJ, dissenting). Two others suggested in *Koster* that grouping cases where dismissal is proper under the doctrine is only "at the expense of analysis." 330 U.S. at 837 (Reed and Burton, JJ, dissenting). These minority views have long been discredited. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 248-49 (1981) (recognizing that although federal *forum non conveniens* law was not "fully crystallized" until *Gilbert*, the doctrine has a long history). Recently, the Supreme Court unanimously held, in what it called a "textbook case" for immediate *forum non conveniens* dismissal, that federal courts may exert its authority under the doctrine where a foreign tribunal is plainly the more suitable arbiter of the case before even considering whether it possessed personal or subject matter jurisdiction. *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. --, No. 06-102, Slip Op. at 1, 11-12 (Mar. 5, 2007).

II. The Inherent Authority of Courts to Apply *Forum Non Conveniens* is Accepted Throughout the United States

State courts have inherent power to apply the doctrine of *forum non conveniens*. *See* Barrett, 35 Cal. L. Rev. at 402 ("[T]here are no federal constitutional or statutory provisions preventing the widespread application of the doctrine of *forum non conveniens* in both state and federal courts."). In fact, "the doctrine did not originate in federal but in state courts." *See Gilbert*, 330 U.S. at 505 n.4; *see also Piper Aircraft*, 454 U.S. at 248 n.13 ("The doctrine . . . originated in Scotland . . . and became part of the common law of many States.").

Today, the availability of the doctrine is firmly established in forty-eight states and the District of Columbia. *See* Adoption of *Forum Non Conveniens* in the States, Appendix of *Amici*

Curiae.[3] Rhode Island has not yet adopted the doctrine of *forum non conveniens*, which may be due to the lack of an appropriate case to apply it before this Court. This case presents such an opportunity.

A. States Have Long Recognized Their Power to Limit Imported Litigation

At least as early as 1817, there are examples of state courts exercising discretionary power to deny their courtrooms to actions over which it had jurisdiction, but more properly belonged in another court. *See* Braucher, 60 Harv. L. Rev. at 914 (citing *Gardner v. Thomas*, 14 Johns. 134 (N.Y. 1817)). In New York, courts were early flooded with foreign litigation, leading to development of its jurisprudence declining jurisdiction over foreign tort cases to protect access of the state's citizens to their own courts and to protect New York taxpayers from the burden of funding foreign litigation. *See* Note, *New Limitations on Choice of Federal Forum*, 15 U. Chi. L. Rev. 332, 339 (1947) (citing cases). As New York courts have long recognized:

> It is the well settled rule of this state that, unless special reasons are shown to exist which make it necessary or proper to do so, the courts will not retain jurisdiction of and determine actions between the parties residing in another state for personal injuries received in that state. . . . The reason of the rule is obvious,--because the courts of this state should not be vexed with litigations between non-residents over causes of action arising outside of our own territorial limits. Our courts are not supported by the people for any such purpose. . . . It already appears that it is against the settled policy of the state to permit our courts to be used by non-residents for the redress of personal injuries received in the state of their domicile, unless special reasons are shown therefor.

Ferguson v. Neilson, 11 N.Y.S. 524, 524 (Sup. Ct. 1890); *see also Collard v. Beach*, 81 N.Y.S. 619 (App. Div. 1903) (declining jurisdiction of tort action occurring in another jurisdiction between nonresidents).

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[3] Only in Idaho does the availability of *forum non conveniens* appear uncertain. *See* Appendix.

Many states around the country have followed this sound practice for many years, particularly in situations involving foreign nationals and actions arising abroad. *See, e.g.*, *Universal Adjustment Corp. v. Midland Bank, Ltd.*, 184 N.E. 152, 158 (Mass. 1933) (finding that the doctrine of *forum non conveniens* is the law of Massachusetts and "prevails generally," citing various state, federal and English court decisions); *Great Western Ry. Co. of Canada v. Miller*, 19 Mich. 305, 1869 WL 3643, at *6 (Mich. 1869) ("[W]here the parties are not residents of the United States, and the trespass was committed abroad, the right of action in our courts can only be claimed as a matter of comity"); *Disconto Gesellschaft v. Umbreit*, 106 N.W. 821, 823-24 (Wis. 1906) ("To hold that two foreigners may import, bodily, a cause of action, and insist, as a matter of right, that taxpayers, citizens, and residents shall await the lagging steps of justice in the ante-room, while the court hears and decides the foreign controversy, seems, on its face, to be unreasonable, if not absurd."); *see also Jackson & Sons v. Lumbermen's Mut. Cas. Co.*, 168 A. 895, 897 (N.H. 1933) (finding "manifest that on every phase of the case the facts are against entertaining jurisdiction here" where the plaintiff was an Ohio corporation, the defendant did business in Ohio, a related case was litigated in Ohio, and the claim was subject to Ohio law).

The fact that this Court has remained silent on the availability of *forum non conveniens* does not affect its ability to invoke its inherent authority to apply these sound principles. States

that had previously rejected the doctrine, either due to constitutional doubts pre-*Gilbert*[4] or for other reasons, and aligned with the minority of states at the time "have since reversed their position and embraced the *forum non conveniens* doctrine in some form." *Werner v. Werner*, 526 P.2d 370, 376-78 (Wash. 1974) (overruling *Lansverk v. Studebaker-Packard Corp.*, 338 P.2d 747 (Wash. 1959) and recognizing *forum non conveniens* as an "inherent discretionary power of the courts"). This Court has not previously had an opportunity to consider the availability of *forum non conveniens*. This case provides such an occasion.

Rhode Island's lower courts have indicated a willingness to recognize their inherent power to decline jurisdiction on *forum non conveniens* grounds. In *Groff v. America Online, Inc.*, No. PC 97-0331, 1998 WL 307001 (R.I. Super. May 27, 1998), the Superior Court reasoned:

> Although neither party has referred to any [*forum non conveniens*] decision from the Supreme Court of Rhode Island, that Court has held that when the Rhode Island Rules of Civil Procedure and Rhode Island case law are silent, it is allowable to refer to the body of law that has addressed the question, particularly the Federal Rules of Civil Procedure which formed the basis of our rules.

Id. at *6 (citing *Ciunci, Inc. v. Logan,* 652 A.2d 961, 962 (R.I. 1995)). Although *Groff* dealt with the specific application of the contractual forum selection clause, the court discussed the balancing of public and private interests set forth in *Gilbert*. Furthermore, the court based its

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[4] Since *Gilbert*, state and federal courts have almost uniformly found that the Privileges and Immunities Clause does not prevent courts from applying *forum non conveniens* rules to limit the accessibility of courts to residents of other states. *See, e.g., Price v. Atchison, T & S.F. Ry. Co.*, 268 P.2d 457 (Cal. 1954); *Qualley v. Chrysler Credit Corp.*, 217 N.W.2d 914, 915 (Neb. 1974); *Gore v. United States Steel Corp.*, 104 A.2d 670, 675 (N.J. 1954); *Rosenthal v. Unarco Indus., Inc.*, 297 S.E.2d 638, 641 (S.C. 1982). *But see Crown Equip. Corp. v. Morris*, 633 S.E.2d 292 (W. Va.), *cert. denied*, 127 S. Ct. 833 (2006) (invalidating venue statute barring a nonresident plaintiff from bringing an action in West Virginia, unless all or a substantial part of the acts or omissions giving rise to the claim asserted occurred in West Virginia under the Privileges and Immunities Clause).

decision to follow to the jurisdiction stated in the forum selection clause, in part, on a weighing of the "private interest factors." *Id.* The lower court did, however, stop short of explicitly recognizing the availability of *forum non conveniens* in Rhode Island. This Court should take the next step and align with the overwhelming majority of states that formally acknowledge the judiciary's inherent authority to apply the doctrine of *forum non conveniens*.

B. Inherent Authority is the Source of the Common Law Doctrine

In the vast majority of states, application of the doctrine of *forum non conveniens* is clearly rooted in the inherent power of the courts to decline jurisdiction over cases that are more appropriately decided in the court of another state or country. *See Appendix.*

State high courts have recognized their inherent authority to apply the common law doctrine of *forum non conveniens* on many occasions. For example, the Supreme Court of Georgia proclaimed, "Following the majority of states, we adopt the doctrine of *forum non conveniens* and hold that Georgia courts may exercise their inherent power and dismiss cases involving nonresident aliens when an adequate alternative forum exists and dismissal serves the interests of justice and convenience of the parties." *AT&T Corp. v. Sigala*, 549 S.E.2d 373, 375 (Ga. 2001).

States generally invoke this authority in the absence of any statutory guidelines. The Supreme Court of Illinois, for instance, adopted the doctrine upon a determination that, "[w]hile in Illinois we are without any statutory authorization, we find that such authority to transfer a case under the doctrine of *forum non conveniens* exists at common law, and, therefore, statutory authorization is unnecessary as it only recognizes and codifies a right that previously existed at common law." *Torres v. Walsh*, 456 N.E.2d 601, 605 (Ill. 1983). The Supreme Court of Utah similarly held:

> There is no provision in our statutes or our rules of procedure expressly authorizing the dismissal of an action on the basis of *forum non conveniens.* However, as part of the inherent power that our district courts have, as courts of general jurisdiction, they undoubtedly could refuse to exercise jurisdiction if convinced that it would place an unreasonable burden upon some or all of the parties, or upon the court, to try the case here.

Summa Corp. v. Lancer Indus., Inc., 559 P.2d 544, 546 (Utah 1977).

This formal acknowledgement of common law authority is equally clear across other states and frequently reiterated. *See, e.g., State v. Johnson*, 932 P.2d 380, 383 (Kan. 1997) ("*Forum non conveniens* is part of the common-law of the State of Kansas..."); *Radeljak v. DaimlerChrysler Corp.*, 719 N.W.2d 40, 42 (Mich. 2006) ("The doctrine is not derived from statutes; rather, it is a common-law doctrine created by courts."); *Civil Southern Factors Corp. v. Bonat*, 322 A.2d 436, 438 (N.J. 1974) ("The doctrine of *Forum non conveniens*, an equitable principle, is firmly embedded in the common law of this State."); *Rothluebbers v. Obbe*, 668 N.W.2d 313, 317 (S.D. 2003) ("[T]he doctrine of *forum non conveniens* is alive and well in the State of South Dakota."). While application of the doctrine to a specific set of facts may vary to some degree among states, a court's inherent authority is rarely in question. As the Supreme Court of Tennessee stated when adopting the doctrine:

> Even in some of the cases rejecting the doctrine the rejection is not on lack of authority, but for other reasons. This power is inherent in the courts since in some cases, due to various factors, the interest of justice so demand. It results and we so hold courts of general jurisdiction in Tennessee have inherent power to apply the doctrine of *forum non conveniens* as a ground for refusal to exercise jurisdiction over a cause of action arising beyond the boundaries of Tennessee.

Zurick v. Inman, 426 S.W.2d 767, 771 (Tenn. 1968).

C. Legislative Codification of *Forum Non Conveniens* Principles in Some States or Contexts Does Not Reflect a Lack of Inherent Authority

Some state legislatures have codified principles of the common law doctrine of *forum non conveniens* in a state's civil code or rules of procedure. Such laws provide a party with

definitive statutory authority on which to assert *forum non conveniens*; this should not be confused with a lack of judicial authority under common law. For example, Maryland's *forum non conveniens* statute, Md. Cts. & Jud. Pro. § 6-104(a), simply "confirms the existence of an inherent power and makes clear that it may be applied in relation to the broad standard of 'the interest of substantial justice.'" *Johnson v. G.D. Searle & Co.*, 552 A.2d 29, 32 (Md. 1989). Other states are also careful to maintain the separation of a court's inherent authority and any specific authority granted by the legislature. *See, e.g., Codo v. McDermott*, 709 So. 2d 1023, 1062, n.5 (La. Ct. App. 1998) (recognizing that the common law doctrine of *forum non conveniens* is codified in Article 123 of the Louisiana Code of Civil Procedure); *Green v. Manhattanville College*, 661 N.E.2d 123, 125 n.3 (Mass App. Ct. 1996) ("The doctrine of *forum non conveniens* was recognized in our common law long before the adoption of [the statute]...It retains its vitality outside of the statute."); *Islamic Republic v. Pahlavi*, 467 N.E.2d 245, 247 (N.Y. 1984) (discussing the "common-law doctrine of *forum non conveniens,* also articulated in [statute]..."); *Dow Chem. Co. v. Alfaro*, 786 S.W.2d 674, 677 (Tex. 1990) ("Texas courts applied the doctrine of *forum non conveniens* in several cases prior to the enactment of [statute].").

In some areas, states have codified *forum non convienens* principles to address specific types of cases or factual scenarios, providing for additional predictability and certainty above and beyond the common law approach. For example, several states have enacted specific laws providing for the dismissal of asbestos or silica claims brought by nonresident plaintiffs for exposure that did not occur in the forum state. *See, e.g.*, Fla. Stat. § 774.205(1) ("A civil action alleging an asbestos or silica claim may be brought in the courts of this state if the plaintiff is domiciled in this state or the exposure to asbestos or silica that is a substantial contributing factor to the physical impairment of the plaintiff on which the claim is based occurred in this state.");

see also Ga. Code § 51-14-8; 2006 Tenn. Pub. Acts, ch. 728, § 9(a). Again, these statutes should not be misinterpreted to result from any lack of inherent judicial authority to apply the common law doctrine.

III. The Public Policy Importance of Recognizing *Forum Non Conveniens* in Rhode Island

A. The Public and Private Interests Embodied in *Forum Non Conveniens* are Well Established

The sound public policy embodied by the doctrine of *forum non conveniens* is well established. The Supreme Court of the United States recognized the importance of the doctrine succinctly in *Gilbert* in terms of its effect on the parties before the court, the judicial system, and the general public.

In *Gilbert*, the Supreme Court outlined several private interest factors for courts to balance in determining whether to apply the doctrine of *forum non conveniens*. These factors include:

> [R]elative 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. There may also be questions as to the enforceability of a judgment if one is obtained.

330 U.S. at 508. Such factors recognize common hurdles in pursuing or defending a lawsuit in a foreign locale. In Rhode Island, the absence of this common law doctrine means that a party must litigate in the state regardless of hardships faced or oppressive tactics used to get there.

These hardships can also go beyond convenience issues and lead to significant costs and major obstacles at trial. *See e.g., Scotts v. Hacienda Loma Linda*, 942 So. 2d 900, 902 (Fla. Dist. Ct. App. 2006) (discussing the impracticability of translation costs from Spanish to English for all documents in a case better suited to the courts of Panama); *Radeljak*, 719 N.W.2d at 44

(addressing the courts lack of compulsory process over witnesses in Croatia where the cause of action arose). Failing to acknowledge any recourse to balance private interests and prevent abuses, especially in light of the inherent authority asserted by the vast majority of states, does a disservice to litigants and witnesses that reside in other states or countries. It is also contrary to the basic notion of fairness in litigation.

Recognizing the availability of *forum non conveniens* also serves the public interest. As the Supreme Court recognized:

> Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. . . . There is an appropriateness too, in having the trial . . . in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.

Gilbert, 330 U.S. at 508-09. The Michigan Supreme Court has noted that the public interest favors declining jurisdiction when the case is "imported litigation," particularly in light of already crowded court dockets. *Anderson v. Great Lakes Dredge & Dock Co.*, 309 N.W.2d 539, 543-44 (Mich. 1981); *see also Lesser v. Boughey*, 965 P.2d 802, 806 (Haw. 1998). Some state courts have even invoked their discretionary authority to discontinue action in a pending case after the plaintiff moves out of the state. *See, e.g., Carter v. Netherton*, 302 S.W.2d 382 (Ky. Ct. App. 1957).

Moreover, such litigation is paid for by local taxpayers and necessitates the time of local jurors who have no real interest in claims having no connection to their home state. Consider the reaction of a Florida state court judges when he found nonresident asbestos claims flowing into his courtroom. Judge Timothy McCarthy, who presides over all the asbestos cases in South Florida, dismissed numerous lawsuits that had no connection with the area. In a 2004 ruling, he required most South Florida asbestos cases to be re-filed in more appropriate jurisdictions, either

elsewhere in Florida or in other states. *See* American Tort Reform Found., Judicial Hellholes 28-29 (2004), *available at* http://www.atra.org/reports/hellholes/2004/hellholes2004.pdf. Judge McCarthy expressed his outrage at the use of his courts by nonresidents. In an opinion that should resonate with this Court:

> The taxpayers of Palm Beach County ought not to be burdened with expending its resources associated with the high cost of lengthy asbestos trials between non-residents of the State of Florida where the cause of action accrued elsewhere. . . . This is not only expensive but unfair to the thousands of Florida citizens whose access to the court is being delayed, while Florida funds and provides court access to strangers. . . . Palm Beach County has no interest in committing its judicial time and resources to the litigation of claims outside Palm Beach County. This Court had the right, if not the duty, to protect its dockets from claims such as those at issue here.

Id. (quoting Order on the Court's Sua Sponte Rule to Show Cause Dismissing / Transferring Cases (Cir. Ct. 15th Jud. Cir. in and for Palm Beach County, Asbestos Div., Fla. Aug. 10, 2004)).

The public interest factors are heightened in this case involving foreign plaintiffs. Because Canadian law may apply, Rhode Island courts would be further burdened with untangling conflict of law issues and with applying unfamiliar foreign law in a case with no connection to Rhode Island.

These public and private interests are evident in the numerous state and federal court decisions discussed throughout this brief in which courts apply their inherent authority to dismiss claims that have little or no connection with the forum state. This Court should protect the private interests of litigants and public interest of the court, local litigants, and taxpayers by recognizing the availability of the doctrine of *forum non conveniens* in Rhode Island courts.

B. Rhode Island Courts Have an Significant Interest in Precluding Forum Shopping by Nonresidents

In addition to the public and private interests that weigh in favor of applying *forum non conveniens*, states have a substantial interest in regulating access to their courts to discourage and

prevent forum shopping for favorable law, procedures, or juries. States courts have applied the doctrine of *forum non conveniens* to stem such abuse by nonresidents.

For example, the Supreme Court of Oklahoma has found that an automobile accident case brought by an Arkansas resident in an Oklahoma court was properly dismissed after the plaintiff candidly stated: "Naturally, plaintiff and her attorneys made this selection because they felt this would be the most advantageous jurisdiction for the presentation of the plaintiff's case." *Pruitt Tool & Supply Co. v. Windham*, 379 P.2d 849, 850 (Okla. 1963). The court found, however, that the potential for a nonresident plaintiff to obtain a higher verdict did not outweigh the burden to the court of hosting the litigation. *See id.* (citing *St. Louis-San Francisco Ry. Co. v. Super. Ct.*, 290 P.2d 118 (Okla. 1955)).

District of Columbia courts have also applied *forum non conveniens* to dismiss the cases of nonresidents who file suit in the District to avoid tort reform laws in their home states. For example, in *Kaiser Found. Health Plan of Mid-Atlantic States, Inc. v. Rose*, 583 A.2d 156 (D.C. 1990), the District of Columbia Court of Appeals found that the trial court properly dismissed a Virginia resident's medical malpractice claim in an action that arose in Virginia. The court found that "one of the purposes of the doctrine of forum non conveniens is to prevent forum-shopping" and that this purpose would be "ill-served" if the plaintiff were permitted to avoid Virginia's limit on noneconomic damages by bringing an action in the District. *Id.* at 160.

More recently, the District of Columbia Court of Appeals found that a case brought by several nonresident psychiatric patients against several corporate entities and doctors was properly dismissed. *See Eric T. v. Nat'l Med. Enter., Inc.*, 700 A.2d 749 (D.C. 1997). The court found that plaintiffs appeared to file their claims in the District to avoid Maryland's tort reform restrictions, including a mandatory arbitration system, and noted that nonresidents were

increasingly bringing actions in the District due to the courts' reputation for reducing delays on its civil calendar. *See id.* at 753. Allowing nonresidents to proceed with such complex cases would overwhelm the court's already crowded docket and place a significant burden on local citizens who would need to serve on lengthy trials to decide such cases. *See id.* at 757.

Here, the plaintiffs likely chose to file in Rhode Island rather than Canada to benefit from the procedures, jury trials, and potentially larger awards available. If Rhode Island courts are not permitted to dismiss the claims of nonresidents whose claims do not arise in Rhode Island, then its courts will see more claims from other states, and, as in the case before this Court, from other countries.

C. Rhode Island Should Not Become the World's Litigation Center

It is particularly inappropriate to open local courthouse doors to wholly foreign disputes imported into America for the purpose of benefiting from more favorable U.S. law. American courts are attractive to foreign plaintiffs because of the availability of jury trial, the permitted use of contingency fees, the lack of a loser-pays rule, and more extensive discovery, all of which are not permitted or available in most foreign jurisdictions. *Piper Aircraft*, 454 U.S. at 252 n.18. As the Supreme Court of the United States has recognized, allowing foreign plaintiffs to gain entry into American courts for the purpose of taking advantage of favorable U.S. law and procedures would have disastrous consequences. "American courts, which are already extremely attractive to foreign plaintiffs, would become even more attractive. The flow of litigation into the United States would increase and further congest already crowded courts." *Id.* at 252.

For this reason, the Supreme Court has repeatedly intervened and rejected attempts by foreign plaintiffs to sue in U.S. courts to take advantage of more favorable law than their home country. For example, in a case much like that before this Court, Canadian plaintiffs, who

owned cargo lost in an accident when two ships collided on the American side of Lake Superior, sued the Canadian owners of one of the vessels in federal court. *See Canadian Malting Co. v. Paterson Steamships, Ltd.*, 285 U.S. 413 (1932). The Canadian owners chose an American court in large part because the relevant American liability rules were more favorable than the Canadian rules. *See id.* at 417-18. The Supreme Court, in a admiralty case arising even before *Gilbert*, affirmed the district court's dismissal of the action on *forum non conveniens* grounds, finding that justice could be done in the plaintiffs' home country. *See id.* at 419-20.

The Supreme Court reaffirmed the holding of *Canadian Malting Co.* in *Piper Aircraft*, 454 U.S. at 238-39, 247-49, where a small commercial plane crashed in Scotland, killing the pilot and all five passengers, all of whom were Scottish subjects and residents. The wrongful death claim, however, was filed in a California state court, removed to federal court in California, and then transferred to a federal court in Pennsylvania, where the plane was manufactured by Piper. *See id.* at 239-40. All of the witnesses that could testify as to the training of the pilot, the maintenance of the aircraft, the investigation of the accident, as well as access to the wreckage, were in Great Britain and Scotland. *See id.* at 242. The plaintiffs brought the claim in the United States because Scottish law was less favorable. *See id.* at 260. The Supreme Court found that the action was properly dismissed.

> [T]he central focus of the *forum non conveniens* inquiry is convenience. . . . [D]ismissal may not be barred solely because of the possibility of an unfavorable change in law. Under *Gilbert*, dismissal will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice. If substantial weight were given to the possibility of an unfavorable change in law, however, dismissal might be barred even where trial in the chosen forum was plainly inconvenient.

Id. at 249 (citations omitted). Recognizing that jurisdiction and venue rules are often easily satisfied, and thus plaintiffs often have a choice of multiple forums and choose that in which the

law is most advantageous, the Court emphasize that *forum non conveniens* would lose its effectiveness if substantial weight was placed on an unfavorable change in the applicable substantive law. *See id.* at 250. It also recognized the "substantial practical problems" with considering the applicable law, pointing out that such consideration would require federal courts to interpret the law of foreign countries and engage in a complex comparative analysis of the rights, remedies, and procedures under the law that would apply in each forum. *Id.* at 263.

Lower courts have also intervened to stem such abusive forum shopping. *Republic of Bolivia v. Philip Morris Co., Inc.*, 39 F. Supp. 2d 1008 (S.D. Tex. 1999), provides a blatant example of a case imported into the United States for the sole purpose of benefiting from more favorable American law. In *Republic of Bolivia*, a federal district court found itself hosting a claim brought by the government of Bolivia against numerous tobacco companies to recover medical costs for treating illnesses of its residents allegedly resulting from smoking. The case was filed in a state court in Brazoria County, but removed to federal court. The governments of at least six other countries from around the world had filed similar claims in various jurisdictions across the United States. The federal court strongly objected to the importing of a foreign action arising out of injuries and costs in Bolivia into an area of the United States with no connection to the claim:

> Why none of these countries seems to have a court system their own governments have confidence in is a mystery to this Court. Moreover, given the tremendous number of United States jurisdictions encompassing fascinating and exotic places, the Court can hardly imagine why the Republic of Bolivia elected to file suit in the veritable hinterlands of Brazoria County, Texas. The Court seriously doubts whether Brazoria County has ever seen a live Bolivian ... even on the Discovery Channel. Though only here by removal, this humble Court by the sea is certainly flattered by what must be the worldwide renown of rural Texas courts for dispensing justice with unparalleled fairness and alacrity, apparently in common discussion even on the mountain peaks of Bolivia!

Id. at 1009. The Court ultimately transferred the case to the District of Columbia, where the Bolivian government had an embassy and physical presence, exclaiming that "there isn't even a Bolivian restaurant anywhere near here!" *Id.* at 1009-10. Although the court did not apply a thorough *forum non conveniens* analysis; it found the very nature of the action absurd. The case before this Court represents a similar exercise in absurdity, where the claims have no connection to Rhode Island whatsoever and can and should be brought in a Canadian court.

Another example grows out of the devastating accident in Bhopal, India, in which a deadly gas escaped from a chemical plant operated by Union Carbide India Limited (UCIL) resulting in over 2,000 deaths and 200,000 injuries. *See In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India December, 1984*, 809 F.2d 195 (2d Cir. 1987). Four days after the accident, 145 purported class actions were filed in federal district courts in the United States on behalf of the victims of the disaster against Union Carbide Corporation, the parent company of UCIL. *Id.* at 197. The plaintiffs brought suit in the United States due at least in part to the lack of the availability of a comparable class action procedure in India. *Id.* at 199. The Second Circuit upheld the district court's dismissal of the action on *forum non conveniens grounds*. It did so because the witnesses were located almost entirely in India, most documents bearing on the design of the plant, the safety training of the plant's employees and other forms of proof were in India, and the plant was constructed and managed by Indians, and the plant itself, which might need to be viewed for the purpose of litigation, was in India. *See id.* at 199-201. The court concluded that it owed "little or no deference" to the plaintiffs choice of forum when nearly all the plaintiffs are Indian citizens located in India who have access to "a reasonably adequate alternative forum" in India. *Id.* at 202.

This Court should adopt the principle expressed by the Supreme Court of the United States in *Piper Aircraft* that claims brought by foreign plaintiffs related to injuries that did not occur in the United States should be dismissed on *forum non conveniens* grounds when the claim could be brought in the plaintiffs' home country absent a compelling reason for maintaining such actions in the United States. This is a case more appropriately handled by capable and proficient courts in Canada, which has a well-developed legal system governing product liability claims. *See generally* David S. Morritt & Sonia L. Bjorkquist, *Product Liability in Canada: Principles and Practice North of the Border*, 27 Wm. Mitchell L. Rev. 177 (2000).

D. The Availability of *Forum Non Conveniens* is Particularly Important in the Asbestos Litigation Context

The availability of *forum non conveniens* is particularly important in cases resulting from exposure to asbestos. Within the past few years, there have been sharp increases in the number of asbestos claims filed annually. *See* Asbestos Litigation Costs and Compensation: An Interim Report, Rand Inst. for Civil Justice at v (2002), *available at* http://www.rand.org/pubs/documented_briefings/DB397/.[5] While there is some dispute over the precise number of claims that will be filed in the future, there is general agreement that the numbers will be "extremely high." *See id.* at vii.

While Rhode Island has not traditionally hosted a disproportionate share of asbestos claims, the history of asbestos litigation clearly demonstrates that nonresident claims flow to jurisdictions that develop reputations for favorable procedures and a willingness to accept

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[5] Through the end of 2000, over 600,000 people had filed claims for asbestos related injuries. *See id.* at vi. In 2001 alone, plaintiffs filed at least 90,000 asbestos related lawsuits. *See* Alex Berenson, *A Surge in Asbestos Suits, Many By Healthy Plaintiffs*, N.Y. Times, Apr. 10, 2002, at Al.

nonresident claims. For example, RAND found that between 1970 to 1987, four states hosted 61% of asbestos claims filed in state courts: California (31%), Illinois (6%), New Jersey (7%), and Pennsylvania (17%). *See* Stephen J. Carroll *et al.*, Asbestos Litigation 61-62 (RAND Inst. for Civil Justice 2005), *available at* http://www.rand.org/publications/MG/MG162. By the late 1990s, however, filings of asbestos claims in these states accounted for only 8% of the total. *Id.* Between 1998 and 2000, five other states captured 66% of filings: Mississippi (18%), New York (12%), Ohio (12%), Texas (19%), and West Virginia (5%). *Id.* These states had accounted for only 9% of the claims filed before 1988. As RAND recognized, "Sharp changes in filing patterns over time more likely reflect changes in parties' strategies in relationship to changes in the (perceived) attractiveness (or lack thereof) of state substantive legal doctrine or procedural rules, judicial case management practices, and attitudes of judges and juries toward asbestos plaintiffs and defendants, than changes in the epidemiology of asbestos disease." *Id.* at 63. This shifting continues today as plaintiffs look for the next favorable forum willing to accept their claims.[6]

While the cases before this Court presently involve thirty-nine plaintiffs, General Electric represents that, upon information and belief, nearly one thousand more Canadian plaintiffs are expected to file complaints stemming from workplace asbestos exposure that exclusively occurred in Canada in the Rhode Island Superior Court if permitted to do so. *See* Defendant's

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[6] For example, there is evidence that as traditional venues for asbestos claims close their courts to nonresidents and those who are unimpaired, Delaware, a jurisdiction generally considered fair to corporate defendants, has seen a notable increase in filings. *See* American Tort Reform Found., Judicial Hellholes 25-26 (2006), *available at* http://www.atra.org/reports/hellholes/report.pdf (reporting that, according to court records, there were only 61 new asbestos cases filed in Delaware from May 1, 2004, through April 30, 2005, but there were 272 asbestos claims filed between May 1, 2005 and August 25, 2006, many of which were filed by out-of-state law firms).

Motion to Dismiss on the Grounds of *Forum Non Conveniens* at 1. This situation underscores the importance of clarifying that the doctrine of *forum non conveniens* is available to trial courts.

Should this Court reject the doctrine of *forum non conveniens* in this case, it would effectively raise a billboard in Canada, as well as in other states, that Rhode Island courts are open to nonresident claims. Such dubious distinction is not in the interests of Rhode Island taxpayers, litigants, or courts.

CONCLUSION

For the reasons stated herein, *amici* respectfully request that this Court recognize the inherent authority of Rhode Island courts to apply long-standing common law principles of *forum non conveniens* and reverse the decision of the court below.

Respectfully submitted,

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	ADOPTION OF *FORUM NON CONVENIENS* IN THE STATES
AL	*Forum non conveniens* applicable through statute. Ala. Code § 6-5-430; *see also* Ala. Code § 6-3-21.1.
AK	"Under the doctrine of forum non conveniens, a court should decline to exercise its jurisdiction only if the selected forum is a seriously inconvenient place to conduct litigation. We have previously held that this doctrine has 'only an extremely limited application' in cases where a plaintiff is a resident of the forum state. Moreover, in all cases, a plaintiff's choice of forum should rarely be disturbed unless the balance of private and public interests weighs strongly in favor of dismissing the case." *Baypack Fisheries v. Nelbro Packing Co.*, 992 P.2d 1116, 1118-19 (Alaska 1999); *see also Crowson v. Sealaska Corp.*, 705 P.2d 905 (Alaska 1985).
AZ	*Cal Fed Partners v. Heers*, 751 P.2d 561, 563 (Ariz. App. 1983) (acknowledging "the generally discretionary nature of the trial court's judgment on the application of forum non conveniens"). *Cacho v. Superior Court*, 821 P.2d 721, 722 (Ariz. 1991) (interpreting Ariz. Code Ann. § 12-406 to codify *forum non conveniens* principles).
AR	"The Arkansas Supreme Court formally recognized the doctrine of *forum non conveniens* in *Running v. Southwest Freight Lines, Inc.*, 227 Ark. 839, 303 S.W.2d 578 (1957), *overruled on other grounds, Malone & Hyde, Inc. v. Chisley*, 308 Ark. 308, 825 S.W.2d 558 (1992). The doctrine was also recognized by the Arkansas legislature in Act 101 of 1963, which is codified at Ark. Code Ann. § 16-4-101." *Wall Mart Stores v. U.S. Fidelity & Guar.*, 76 S.W.3d 895, 899 (Ark. Ct. App. 2002); *see also* Ark. Code Ann. § 16-4-101.
CA	"This case presents the question of the availability in California of the doctrine of *forum non conveniens* as a ground for refusal by a court to exercise jurisdiction over a cause of action which arose outside the state's boundaries. We have concluded that upon a proper showing and within the limitations imposed by the privileges and immunities clause of the federal Constitution (art. IV, § 2) the doctrine may be applied in this state." *Price v. Atchison*, 267 P.2d 457 (Cal. 1954); *see also Stangvik v. Shiley, Inc.*, 819 P.2d 14 (Cal. 1991); Cal. Code Civ. Pro. §410.30.

	ADOPTION OF *FORUM NON CONVENIENS* IN THE STATES
CO	"The forum non conveniens determination is committed to the sound discretion of the trial court.... In Colorado, the doctrine of forum non conveniens is available in only the most limited circumstances. The supreme court first considered the availability of forum non conveniens in Colorado courts in *McDonnell-Douglas Corp. v. Lohn*, 192 Colo. 200, 557 P.2d 373 (1976)." *UIH-SFCC Holdings v. Brigato*, 51 P.3d 1076, 1078-79 (Colo. App. 2002).
CT	"As a common law matter, the doctrine of forum non conveniens vests discretion in the trial court to decide where trial will best serve the convenience of the parties and the ends of justice. . ." *Durkin v. Intevac*, 782 A.2d 103, 111 (Conn. 2001) (quoting *Picketts v. International Playtex, Inc.*, 576 A2d 518 (Conn. 1990)).
DE	"Delaware's modern jurisprudence in *forum non conveniens* ("FNC") cases has been consistent. In cases where there is no issue of prior pendency of the same action, our analysis has been guided since at least 1964 by what has come to be known as the '*Cryo-Maid*' factors...." *Ison v. E.I. Dupont de Nemours & Co., Inc.*, 729 A.2d 832, 837 (Del. Super. Ct. 1999); *see also General Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681 (Del. 1964).
DC	*Forum non conveniens* applicable through statute. "Although the authority to dismiss because of an inconvenient forum is statutorily based, this court has adopted the forum non conveniens analysis set forth by the Supreme Court in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947)." D.C. Code Ann. § 13-425; *see also Dennis v. Edwards*, 831 A.2d 1006, 1010 (D.C. 2003).
FL	"Forum non conveniens is a common law doctrine... The doctrine 'serves as a brake on the tendency of some plaintiffs to shop for the 'best' jurisdiction in which to bring suit.'" *Baranek v. American Optical Corp.*, 941 So. 2d 1214, 1215 (Fla. Dist. Ct. App. 2006); *see also Kinney Sys. Inc. v. Continental Ins. Co.*, 674 So. 2d 86, 88 (Fla. 1996); Fla. R. Civ. Pro. 1.061.
GA	"Following the majority of states, we adopt the doctrine of forum non conveniens and hold that Georgia courts may exercise their inherent power and dismiss cases involving nonresident aliens when an adequate alternative forum exists and dismissal serves the interests of justice and convenience of the parties." *AT&T Corp. v. Sigala*, 549 S.E.2d 373, 375 (Ga. 2001); *see also* GA. Code Ann. § 9-10-31.1

	ADOPTION OF *FORUM NON CONVENIENS* IN THE STATES
HI	"This court has long recognized that it is inappropriate to disturb a [circuit] court's order granting a motion to dismiss the complaint on the grounds of *forum non conveniens* unless the trial judge committed an abuse of discretion." *UFJ Bank Ltd. v. Ieda*, 123 P.3d 1232, 1237 (Haw. 2005) (quoting *Lesser v. Boughey*, 965 P.2d 802, 804 (Haw. 1998)); *see also Harbrecht v. Harrison*, 38 Haw. 206 (1948).
ID	Availability of the doctrine of *forum non conveniens* is unclear. *See Marco Distrib. Inc. v. Biehl*, 555 P.2d 393, 396-97 (Idaho 1976) (finding that trial court's use of forum non conveniens analysis to dismiss case was incorrect and holding that once a court determines it has jurisdiction over a complaint, "it could not escape that responsibility by asserting that the case should be tried elsewhere"); *But cf. Diet Center, Inc. v. Basford*, 855 P.2d 481, 483 (Idaho Ct. App. 1993) (finding district court was within its sound discretion in dismissing action on the ground that an action between the parties was pending in a California court); *D.J. Nelson v. World Wide Lease, Inc.*, 716 P.2d 513, 518 n.1 (Idaho Ct. App. 1986) ("Even if jurisdiction exists and may be exercised constitutionally, a court might entertain a motion to decline jurisdiction in favor of another, more convenient forum."); *Wing v. Amalgamated Sugar Co.*, 684 P.2d 307, 310 (Idaho Ct. App. 1984) (recognizing that it is within a trial court's sound discretion to make a determination "of whether a court represents a forum non conveniens for a claim or issue that better could be tried elsewhere"), *overruled on other grounds, NBC Leasing Co. v. R & T Farms, Inc.*, 733 P.2d 721 (Idaho 1987).
IL	"While in Illinois we are without any statutory authorization, we find that such authority to transfer a case under the doctrine of *forum non conveniens* exists at common law, and, therefore, statutory authorization is unnecessary as it only recognizes and codifies a right that previously existed at common law." *Torres v. Walsh*, 456 N.E.2d 601, 605 (Ill. 1983); *see also McClain v. Central Gulf R.R. Co.*, 520 N.E.2d 368, 372 (Ill. 1988).
IN	*Forum non conveniens* applicable through statute. Ind. R. Tr. Pro. 4.4(c), (d); *see also Story Oil v. American States Ins.*, 622 N.E.2d 232 (Ind. Ct. App. 1993).
IA	Forum non conveniens is "a self-imposed limitation on jurisdictional power which has been described as a necessary response to the expanding bases of personal jurisdiction derived from long-arm statutes." *Silversmith v. Kenosha Auto Transp.*, 301 N.W.2d 725, 726 (Iowa 1981).

	ADOPTION OF *FORUM NON CONVENIENS* IN THE STATES
KS	*State v. Johnson*, 932 P.2d 380, 383 (Kan. 1997) ("Forum non conveniens is part of the common-law of the State of Kansas..."). "In *Gonzales, Administrator v. Atchison, T. & S.F. Rly. Co.*, 189 Kan. 689, 695, 371 P.2d 193 (1962), the Kansas Supreme Court expressly made the doctrine of forum non conveniens part of the common law of Kansas." *Stephens Cattle Co. v. Hollingsworth*, 799 P.2d 527, 528 (Kan. Ct. App. 1990).
KY	*Beaven v. McAnulty*, 980 S.W.2d 284, 287 (Ky. 1998) ("[T]he doctrine of forum non conveniens is clearly part of Kentucky common law."). KRS 452.105 extended the common law to allow *intrastate* transfers: "Obviously this statute, which was effective July 14, 2000, was enacted following the decision of this Court in *Beaven v. McAnulty*, Ky., 980 S.W.2d 284 (1998). That case held that the doctrine of forum non conveniens only empowers a trial judge to dismiss or stay an action before him. Moreover, absent a statute, there was no inherent authority for a judge in one circuit to move a case to a judge of another court. KRS 452.105 now provides that authority." *Seymour Charter Buslines, Inc. v. Hopper*, 111 S.W.3d 387, 388-89 (Ky. 2003) (emphasis added); Ky. Rev. Stat. § 452.105.
LA	"The device of forum non conveniens is a procedural rule of the common law... Article 123 of the Louisiana Code of Civil Procedure sets forth the doctrine of forum non conveniens in Louisiana." *Codo v. McDermott*, 709 So. 2d 1023, 1062, fn. 5 (La. Ct. App. 1998); *see also* La Code Civ. Proc. art 123; *Lejano v. Bandak*, 705 So. 2d 158 (La. 1997) (holding that the doctrine is specifically made unavailable under statute in cases of the Jones Act or maritime law).
ME	"Dismissal for *forum non conveniens,* although discretionary, must be predicated upon the trial court's initial determination that dismissal will further the ends of justice and promote convenience of the suit for all parties." *MacLoed v. MacLoed*, 383 A.2d 39, 43 (Me. 1978); *see also Field Indus. v. D.J. Williams*, 470 A.2d 1266 (Me. 1984).

	ADOPTION OF *FORUM NON CONVENIENS* IN THE STATES
MD	"Inasmuch as the courts of limited jurisdiction of the federal sovereign have inherent power to dismiss by applying common law forum non conveniens, that power necessarily also lies with the Maryland trial courts of general jurisdiction, the circuit courts. Thus, CJ § 6-104(a) confirms the existence of an inherent power and makes clear that it may be applied in relation to the broad standard of 'the interest of substantial justice.'" *Johnson v. G.D. Searle & Co.*, 552 A.2d 29, 32 (Md. 1989); *see also* Md. Cts. & Jud. Pro. § 6-104 (a).
MA	"The doctrine of forum non conveniens was recognized in our common law long before the adoption of G.L.c. 223A, inserted by St. 1968, c. 760. *See, e.g., Universal Adjustment Corp.* v. *Midland Bank, Ltd.*, 281 Mass. 303, 312-322 (1933). It retains its vitality outside of the statute." *Green v. Manhattanville College*, 661 N.E.2d 123, 125 n.3 (Mass App. Ct. 1996); *see also* Mass. Gen. Laws Ann. ch. 223 A §5.
MI	"The doctrine is not derived from statutes; rather, it is a common-law doctrine created by courts... This Court first recognized this doctrine in 1973 in *Cray*." *Radeljak v. DaimlerChrysler Corp.*, 719 N.W.2d 40, 42 (Mich. 2006); *see also Cray v. General Motors Corp.*, 207 N.W.2d 393 (Mich. 1973).
MN	*Bergquist v. Medtronic, Inc.*, 379 N.W.2d 508, 511 (Minn. 1986) ("Minnesota forum non conveniens law is patterned after the doctrine set forth by the United States Supreme Court in *Gulf Oil.*"); *see also Hague v. Allstate Ins. Co.*, 289 N.W.2d 43 (Minn. 1978), *aff'd,* 449 U.S. 302, *reh'g denied,* 450 U.S. 971 (1981).
MS	"[A]t common law, the plea of forum non conveniens 'was sustained in cases where *the jurisdiction seemed clear* but the parties were nonresidents and [a given venue] would have been inconvenient.'" *Creel v. Bridgestone/Firestone*, 2005-CA-01875-SCT, 2007 WL 686141 (Miss. Mar. 8, 2007); *see also* Miss. Code Ann. § 11-11-3; Miss. R. Civ. P. § 82(e). "We have recognized the doctrine of forum non conveniens in cases involving out-of-state defendants requesting transfer to another state..." *Clark v. Luvel Dairy Prod.*, 731 So. 2d 1098, 1101 (Miss. 1998) (holding the doctrine does not apply to intrastate changes in venue).

	ADOPTION OF *FORUM NON CONVENIENS* IN THE STATES
MO	"Apparently, the first conscious reference in a Missouri decision to the doctrine of forum non conveniens was in *State ex rel. Southern Ry. Co. v. Mayfield*, 359 Mo. 827, 224 S.W.2d 105." *State ex rel. Chicago, Rock Island & Pacific R.R. Co. v. Riederer,* 454 S.W.2d 36, 37 (Mo. banc 1970); *see also Besse v. Missouri Pac. R.R. Co.*, 721 S.W.2d 740, 741 (Mo. 1986), *cert. denied* 481 U.S. 1016 (1987) (analyzing six factors to consider when applying forum non conveniens).
MT	Forum non conveniens applicable through statute. "While recognizing our ability to adopt the doctrine of *forum non conveniens* in non-resident FELA cases, we, nevertheless, unequivocally declined to do so." *State ex rel. Burlington Northern Ry. Co. v. District Ct.*, 891 P.2d 493, 497 (Mont. 1995). "Forum non conveniens, which is codified in Montana at § 25-2-201(2) and (3), MCA, allows a court to decline to exercise jurisdiction even when jurisdiction is authorized under the venue statutes, when an impartial trial cannot be had in the county designated in the complaint or the convenience of witnesses and the ends of justice would be promoted by the change." Mont. Code Ann. § 25-2-201; *see also Rule v. Burlington Northern Ry.*, 106 P.3d 533, 537 (Mont. 2005).
NE	*Qualley v. Chrysler Credit Corp.*, 217 N.W.2d 914, 915 (Neb. 1974) (affirming a trial courts dismissal on forum non conveniens grounds and noting "the doctrine of forum non conveniens, although used infrequently until recent years, is generally considered to be of common law origin.").
NV	*Payne v. Eighth Judicial Dist. Ct.*, 626 P.2d 1278, 1279 (Nev. 1981) ("[A]pplication of the doctrine of forum non conveniens, remains an exercise in judicial discretion requiring a balancing of many factors"), *overturned on other grounds by* 88 P.3d 840 (Nev. 2004).
NH	"A motion to dismiss on the ground of *forum non conveniens* is generally one to be decided in the discretion of the trial court." "In *Leeper* we cited with approval *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1045 (1947), which set out the considerations for application of the doctrine of *forum non conveniens.*" *Digital Equip. Corp. v. International Digital Sys. Corp.*, 540 A.2d 1230, 1232 (N.H. 1988) (quoting *Leeper v. Leeper*, 354 A.2d 137, 139 (N.H. 1976)).

	ADOPTION OF *FORUM NON CONVENIENS* IN THE STATES
NJ	*Civil Southern Factors Corp. v. Bonat*, 322 A.2d 436, 438 (N.J. 1974) ("The doctrine of Forum non conveniens, an equitable principle, is firmly embedded in the common law of this State"); *see also Kurzke v. Nissan Motor Corp.*, 752 A.2d 708, 711 (N.J. 2000).
NM	"We have addressed the doctrine of forum non conveniens in two cases, *Torres v. Gamble*, 75 N.M. 741, 410 P.2d 959 (1966) and *McLam v. McLam*, 85 N.M. 196, 510 P.2d 914 (1973).... We applied the doctrine of forum non conveniens, recognizing that the use of the doctrine rests largely in the discretion of the court to which the claimant resorts." *Buckner v. Buckner*, 622 P.2d 242, 243 (N.M. 1981).
NY	"The common-law doctrine of *forum non conveniens,* also articulated in CPLR 327, permits a court to stay or dismiss such actions where it is determined that the action, although jurisdictionally sound, would be better adjudicated elsewhere...." *Islamic Republic v. Pahlavi*, 467 N.E.2d 245, 247 (N.Y. 1984); *see also* N.Y. Civ. Prac. L. & R. § 327.
NC	*Forum non conveniens* applicable through statute. "We hold the doctrine of forum non conveniens should be applied with flexibility depending upon the facts and circumstances of each case, with the view of achieving substantial justice between the parties." N.C. Gen. Stat. § 1-75.12; *see also Management, Inc. v. Development Co.*, 266 S.E.2d 368, 371 (N.C. Ct. App. 1980).
ND	"It is well settled that the decision whether to decline to exercise jurisdiction on inconvenient-forum grounds lies entirely within the trial court's discretion, and its decision will be reversed on appeal only for an abuse of discretion." *Smith v. Smith*, 534 N.W.2d 6, 10 (N.D. 1995) (quoting *Dennis v. Dennis*, 387 N.W.2d 234, 235 (N.D. 1986)); *see also* N.D. R. Civ. P. § 4; *Wintz v. Crabtree*, 593 N.W.2d 355, 358 (N.D. 1995).

	ADOPTION OF *FORUM NON CONVENIENS* IN THE STATES
OH	"The Supreme Court of Ohio in *Chambers v. Merrell-Dow Pharmaceuticals, Inc.* (1988), 35 Ohio St.3d 123, 519 N.E.2d 370, adopted the doctrine of forum non conveniens." *Omans v. Norfolk S. Ry.*, 844 N.E.2d 1259, 1261-62 (Ohio Ct. App. 2006). "The doctrine of *forum non conveniens* has, since its origination in Scotland in the early nineteenth century, become firmly entrenched in the common law of virtually every Anglo-American jurisdiction." *Chambers v. Merrell-Dow Pharm., Inc.*, 519 N.E.2d 370, 372 (Ohio 1988).
OK	"The discretionary nature of a trial judge's authority to act upon a motion based upon the doctrine of forum non-conveniens was established in this jurisdiction in St. Louis-San Francisco Ry. Co. v. Superior Court of Creek County et al., 276 P.2d 773 (Okla.1954)...." *Groendyke Transport Inc. v. Cook*, 594 P.2d 369, 372 (Okla. 1979).
OR	Under the Oregon inconvenient forum doctrine, "a court may dismiss an action when, "in spite of the existence of 'subject matter jurisdiction, personal jurisdiction, and proper venue, trying the action elsewhere would "best serve the convenience of the parties and the ends of justice.'" *Novich v. McClean*, 18 P.3d 424, 430 (Or. App. 2001).
PA	"[A] plaintiff's choice of forum is not unassailable and the availability of a *forum non conveniens* challenge is a necessary counterbalance to insure fairness and practicality." *Okkerse v. Howe*, 556 A.2d 827, 832 (Pa. 1989); *see also* Pa. Stat. Ann. tit. 42 § 5322e; Pa. R. C. P. § 1006(d)(2). "Proper application of the doctrine of Forum Non Conveniens necessitates that the court below make a finding as to the availability of other forums and then exercise its discretion after considering all the factors." *Plum v. Tampax, Inc.*, 160 A.2d 549, 545 (Pa. 1960) (adopting the doctrine).
RI	The Rhode Island Supreme Court has not considered the availability of *forum non conveniens*.

	ADOPTION OF *FORUM NON CONVENIENS* IN THE STATES
SC	"The decision to invoke the doctrine is one which lies within the discretion of the trial court: 'Forum non conveniens is the discretionary precept which allows a court with proper jurisdiction to dismiss an action, when such would further the ends of justice and promote the convenience of the parties.'" *Braten Apparel Corp, v. Bankers Trust Co.*, 259 S.E.2d 110, 112 (S.C. 1979) (quoting *Nienow v. Nienow*, 232 S.E.2d 504, 507 (S.C. 1977)); *see also* S.C. Code § 15-5-150 (providing that a nonresident may not file a lawsuit in state court against a foreign corporation unless the cause of action arose within the state).
SD	"There is no indication that the common law doctrine of *forum non conveniens* conflicts in any way with a federal or state statute, or the Constitution. There is also no indication that this Court has ever refused to adopt the doctrine in this context. Consequently, the doctrine of *forum non conveniens* is alive and well in the State of South Dakota." *Rothluebbers v. Obbe*, 668 N.W.2d 313, 317 (S.D. 2003).
TN	"Even in some of the cases rejecting the doctrine the rejection is not on lack of authority, but for other reasons. This power is inherent in the courts since in some cases, due to various factors, the interest of justice so demand. It results and we so hold courts of general jurisdiction in Tennessee have inherent power to apply the doctrine of forum non conveniens as a ground for refusal to exercise jurisdiction over a cause of action arising beyond the boundaries of Tennessee." *Zurick v. Inman*, 426 S.W.2d 767, 771 (Tenn. 1968).
TX	"Texas courts traditionally applied forum non conveniens as a common-law rule in all types of cases." *Easter v. Tech. Mgmt.*, 135 S.W.3d 821, 824 (Tex. App. 2004); *see also* Tex. Civ. Prac. & Rem. Code Ann. § 71.051. "Texas courts applied the doctrine of forum non conveniens in several cases prior to the enactment of article 4678 in 1913. In 1890, this court in dicta recognized the power of a court to refuse to exercise jurisdiction on grounds essentially the same as those of forum non conveniens. *See Morris v. Missouri Pac. Ry.*, 78 Tex. 17, 21, 14 S.W. 228, 230 (1890)." *Dow Chem. Co. v. Alfaro*, 786 S.W.2d 674, 677 (Tex. 1990), *cert. denied*, 498 U.S. 1024 (1991).

	ADOPTION OF *FORUM NON CONVENIENS* IN THE STATES
UT	"The State of Utah has long recognized the doctrine of forum non-conveniens, one of the most significant decisions on this subject being *Mooney v. Denver.*" *Kish v. Wright*, 562 P.2d 625, 628 (Utah 1977) (citing *Mooney v. Denver*, 221 P.2d 628 (Utah 1950)). "There is no provision in our statutes or our rules of procedure expressly authorizing the dismissal of an action on the basis of forum non conveniens. However, as part of the inherent power that our district courts have, as courts of general jurisdiction, they undoubtedly could refuse to exercise jurisdiction if convinced that it would place an unreasonable burden upon some or all of the parties, or upon the court, to try the case here." *Summa Corp. v. Lancer Indus., Inc.*, 559 P.2d 544, 546 (Utah 1977).
VT	"Dismissal [on forum non conveniens grounds] 'should be granted only in the rare case in which the combination of factors to be considered tips the scales overwhelmingly in favor of defendant.' The mere showing of inconvenience on the part of defendant is not enough." *Burlington v. Ashland Oil Co., Inc.*, 356 A.2d 506, 510 (Vt. 1976).
VA	*Forum non conveniens* applicable through statute. Va. Code Ann. § 8.01-265.
WA	"This court first recognized the doctrine of forum non conveniens in *Werner v. Werner*, 84 Wn.2d 360, 371, 526 P.2d 370 (1974)." *Myers v. Boeing Co.*, 794 P.2d 1272 (Wash. 1990); *see also Johnson v. Spider Staging Corp.*, 555 P.2d 997 (Wash. 1976). "In *Lansverk v. Studebaker-Packard Corp.*, 54 Wn.2d 124, 338 P.2d 747 (1959), we rejected the doctrine of forum non conveniens and aligned ourselves with the minority of states that had done likewise. Most of the states in that minority have since reversed their position and embraced the forum non conveniens doctrine in some form." "In our opinion, therefore, it is time we forthrightly recognize the doctrine of forum non conveniens as an inherent discretionary power of the courts. Henceforth, considerations of the power to adjudicate shall be anterior to the nonjurisdictional, discretionary question of whether justice dictates dismissal under the doctrine of forum non conveniens." *Werner v. Werner*, 526 P.2d 370, 376-78 (Wash. 1974).

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WV	"After the 1986 revisions to *W. Va. Code*, 56-1-1(b)[1986], a contrary line of cases adopted and defined the common law doctrine of *forum non-conveniens.*" *State ex rel. Mitchem v. Kirkpatrick*, 485 S.E.2d 445, 448 (W. Va. 1997); *see also* W. Va. Code Ann. § 56-1-1. "As the phrase indicates, the common law doctrine of *forum non conveniens* is a concept that has been formulated by the courts as a part of their common law powers to provide for the efficient administration of justice...." *Norfolk & Western Ry. Co. v. Tsapis*, 400 S.E.2d 239, 243 (W. Va. 1990).
WI	*Forum non conveniens* applicable through statute. Wis. Stat. Ann. § 801-63; *see also* Wis. Stat. Ann. § 801-52 (amended 2007).
WY	"Whether a case should be dismissed under the doctrine of *forum non conveniens* lies within the discretion of the district court." *West Texas Utilities v. Exxon Coal USA*, 807 P.2d 932, 935 (Wyo. 1991); *see also Booth v. Magee Carpet Co.*, 548 P.2d 1252 (Wyo. 1976).

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be served by ~~hand delivery~~/regular First-Class U.S. mail on this 18th day of April, 2007, on the following counsel of record:

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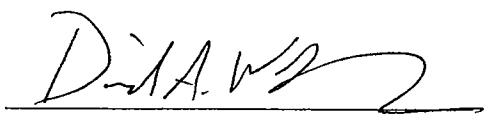

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