IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-20841

CTF CENTRAL CORPORATION,

Plaintiff-Appellant,

v.

INTER-CONTINENTAL HOTELS CORPORATION, ET AL.,

Defendants - Appellees

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-94-1609)

November 13, 1995

Before KING and JONES, Circuit Judges, and KAZEN, District Judge.[*]

PER CURIAM:[**]

Plaintiff-Appellant CTF Central Corporation appeals the final judgment of the district court, entered October 12, 1994, dismissing the action on the grounds of forum non conveniens. Because the district court failed to resolve explicitly conflicts in the evidence, particularly the evidence that cuts strongly

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[*] United States District Judge for the Southern District of Texas, sitting by designation.

[**] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

against the conclusions that it reached, we vacate the order of the district court dismissing the case and remand for further proceedings.

I. BACKGROUND AND PROCEDURAL HISTORY

A. The Complaint

CTF Central Corporation ("CTF") filed its complaint in the United States District Court for the Southern District of Texas on May 11, 1994. The complaint describes the facts relevant to this action as follows: In 1989, Gordon F. Viberg ("Viberg"), the Director General and principal officer of Hoteles Presidente S.A. de C.V. ("Hopresa"), approached CTF, an Ohio corporation affiliated with Stouffer Hotels, about forming a joint venture to manage four "Presidente" hotels owned and managed by Hopresa. Those hotels, incorporated under the laws of Mexico, were Inmobiliaria Hotelera El Presidente Chapultepec, S.A. de C.V., Inmobiliaria Hotelera El Presidente San Jose Del Cabo, S.A. de C.V., Operadora El Presidente Las Palmas, S.A. de C.V., and Inversiones Turisticas Del Caribe, S.A. de C.V. (collectively, the "Mexican hotel corporations").

CTF contracted with Hopresa to create a corporate joint venture under the name Hoteles Presidente Stouffer, S.A. de C.V. (the "joint venture"), to take over Hopresa's management contracts with the Mexican hotel corporations. Initially, CTF invested $500,000, and owned a minority interest in the joint venture; Hopresa was the majority owner. Viberg became the joint

venture's Director General and chief operating officer.

Once formed, the joint venture entered into several contracts. It entered into two contracts with CTF -- a marketing management and trademark license agreement ("marketing agreement"),[1] and an advertising and central reservation service agreement ("advertising agreement").[2] In order to ensure that CTF would receive a return on its investment, the contracts were for a minimum ten-year term. Because of the way that these transactions were structured, CTF did not enter into any direct contractual relationships with the Mexican hotel corporations. Rather, it contracted solely with the joint venture, which in turn entered into management contracts with the Mexican hotel corporations.

The principal purpose of the joint venture arrangement, in CTF's view, was to promote the hotels owned by the Mexican hotel

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[1] The joint venture, CTF, and Stouffer Corporation were parties to the marketing agreement, which authorized the use of the "Stouffer" trademark in the names of the Mexican hotel corporations in exchange for the payment of licensing fees to CTF. It also provided for promotional services such as the development of marketing strategies and representation of the hotels at trade shows, as well as technical services such as personnel training, quality control and hotel improvements. The contract provided that CTF would receive a percentage of the revenues of each hotel for this service.

[2] The joint venture and CTF were parties to the advertising agreement, which provided that CTF would perform certain promotional services in the United States and Canada for the Mexican hotel corporations. It also provided that CTF would connect each of the four hotels into CTF's computer reservation system, thereby allowing for direct reservations, deposits, registration and information. CTF's fee for its services under the advertising agreement was also based on a percentage of the revenues of each hotel.

corporations in the United States and to increase their United States business, and, as a result, the contracts were substantially related to and performed in the United States. Specifically, CTF alleges that the promotional programs were developed and executed in the United States; the reservation services were performed in the United States; and the accounting records were prepared and maintained in the United States.

In late 1990, the Mexican hotel corporations, along with two other hotels operating under the "Stouffer" name in Mexico, sought additional capital because of certain debts they had incurred in connection with the hotels and to fund improvements to the hotels. To this end, in February 1991, Viberg, on behalf of the Mexican hotel corporations, negotiated a twenty million dollar investment from CTF. CTF paid the money to the joint venture, and the joint venture then allocated it to the hotels, including the four Mexican hotel corporations. As a result of this investment, CTF's ownership in the joint venture increased to fifty percent. In addition, CTF received equal representation on the board of directors of the joint venture, thereby effectively requiring the approval of both partners for any major action by the joint venture. CTF also became the "managing partner" of the joint venture, with responsibility for its day-to-day operations and management.

Soon thereafter, CTF's relationship with Viberg and the Mexican hotel corporations began to deteriorate. According to CTF's complaint, Viberg, Hopresa and the Mexican hotel

corporations devised a scheme to terminate CTF's rights and deprive it of the value of its twenty million dollar investment by taking advantage of the fact that the management contracts for the Mexican hotel corporations were with the joint venture and not directly with CTF. If the Mexican hotel corporations terminated the management contracts, CTF would have no direct recourse for the breach of the contracts and no recourse whatsoever under Mexican law because it lacked a contractual relationship with the Mexican hotel corporations. Only the joint venture would have a claim against the Mexican hotel corporations, and to file suit would require the approval of the board of directors of the joint venture. Because Hopresa controlled half of the board of directors and also owned the Mexican hotel corporations, CTF was left with no ability to file suit since it would require, in effect, convincing Hopresa to sue itself.

In order to effectuate this scheme, CTF alleged, the Mexican hotel corporations, conspiring with Viberg, began to terminate their management contracts with the joint venture. The deterioration of the relationship escalated when, in May 1993, Stouffer Hotel Holdings, Incorporated, and its affiliated companies, including CTF, were sold to a group of private investors. According to CTF, the acquisition did not affect the Mexican hotel corporations' rights and obligations to continue to operate under the "Stouffer" name. The acquisition, CTF claims, also provided a world-wide hotel affiliation with a broad

promotional system and an international reservation network which should have been attractive to the Mexican hotel corporations, the joint venture, and Viberg. The Mexican hotel corporations, however, continued to terminate their management contracts with the joint venture, allegedly in order to avoid repayment of CTF's twenty million dollar investment.

CTF further contended that, in June 1993, Viberg called a meeting of the board of directors of the joint venture, but invited only the "Hopresa" directors. These directors allegedly conspired to terminate, and purportedly did terminate, the marketing agreement and the advertising agreement between CTF and the joint venture. CTF, although not being paid for its services, continued to perform its marketing and advertising functions, forwarding its reservations to the Mexican hotels via computer. In July, Viberg and the Mexican hotel corporations formed Presidente Hotels Corporation ("PHC"), a Texas corporation having a business address in Houston, Texas, with Viberg as its sole director, allegedly for the purpose of providing the marketing and advertising functions formerly performed by CTF under the marketing and advertising agreements with the joint venture. In December 1993, CTF's computer reservation line to the Mexican hotels was cut off. Although it is unclear when, at some point Viberg and the Mexican hotel corporations also sought to hold an "extraordinary" shareholders' meeting to dissolve the joint venture.

Viberg, PHC and the Mexican hotel corporations then entered

into negotiations with several international hotel chains (including Inter-Continental Hotel Corporation ("Inter-Continental")). In November 1993, when CTF learned of these negotiations, it sent a letter to Inter-Continental, among others, explaining that it had valid and pre-existing contracts with the Mexican hotels that would prevent them from entering into an agreement with Inter-Continental. CTF specifically notified Inter-Continental that it had a non-compete agreement that precluded the Mexican hotels from associating with any United States or international hotel chain for five years from the date of termination of the marketing and advertising agreements with CTF. Nonetheless, Inter-Continental announced in April 1994 that it had entered into agreements with the Mexican hotel corporations for the use of Inter-Continental's name and reservation service.

In late 1993 and early 1994, CTF filed two actions in Mexico. The first was filed by an affiliate of CTF against the joint venture's board of directors to enjoin the holding of the shareholders meeting designed to dissolve the joint venture. The Mexican court dismissed that action because the Mexican attorneys who filed the suit did not have a proper "power of attorney." The second suit was filed in March 1994 by CTF against Hopresa, the joint venture, Viberg (the managing director of the joint venture), and the members of the board of directors of the joint venture who voted to terminate the marketing and advertising agreements. The purpose of the second suit was to enforce the

marketing and advertising agreements. The second suit, which did not name as defendants the Mexican hotel corporations or any individuals or entities named as defendants in the present action other than Viberg, was dismissed on the ground that the joint venture agreement required CTF to submit its dispute with the joint venture to arbitration. That case is apparently still on appeal in Mexico.

On May 11, 1994, CTF brought suit in the United States District Court for the Southern District of Texas against Inter-Continental, PHC, Viberg, and the Mexican hotel corporations, alleging six counts: (1) tortious interference with contract and prospective advantage; (2) conspiracy to interfere tortiously with contracts and prospective advantage; (3) fraudulent transfer of assets; (4) conversion; (5) money had and received (unjust enrichment); and (6) civil conspiracy to defraud and convert.

B. Responsive pleadings and the present motion to dismiss

On June 1, 1994, PHC answered the complaint, admitting that it is a Texas corporation residing in the judicial district in which the case was filed with a business address in Houston, and also admitting that Viberg is the sole director of PHC, but otherwise denying liability in the case. On June 17, 1994, Inter-Continental filed a motion to dismiss the case on the basis of forum non conveniens, or, in the alternative, stay the action pending the resolution of the lawsuits filed by CTF in Mexico, or, in the alternative, to dismiss the action pursuant to Rule 12(c) of the Federal Rules of Civil Procedure for judgment on

pleadings for failure to state a claim against Inter-Continental. With this motion to dismiss, Inter-Continental submitted several voluminous documents, including what appear to be contracts related to the case at bar. Of the contracts that were submitted by Inter-Continental, about half are written in English, with the other half written in Spanish. Inter-Continental also submitted an affidavit of the corporation's president, stating that all of its negotiations with Hopresa relevant to the instant lawsuit took place in Mexico City, Miami or New York City, and that none of the negotiations took place in Texas. Finally, Inter-Continental submitted two affidavits of attorneys licensed in Mexico, both in English and Spanish, which primarily address the procedural aspects of Mexican courts, contending that Mexican courts are "adequate," but do not describe in any detail the substantive law of Mexico as it would apply in the present action. To the extent that the affiants addressed the substance of Mexican law, the affidavits say nothing beyond the general statement that remedies are available in breach of contract lawsuits, and specifically cite no provision of Mexican law.

On July 22, 1994, PHC submitted its motion to dismiss on the basis of forum non conveniens, arguing primarily that the controversy was more closely related to Mexico than it was to Texas. In a letter dated July 22, 1994, counsel for Viberg and the four Mexican hotel corporations stated that it would accept the court's ruling on the other defendants' motions to dismiss on forum non conveniens grounds.

On August 3, 1994, CTF filed its opposition to Inter-Continental's and PHC's motions to dismiss. In support of its motion, CTF submitted, inter alia, copies of several contracts relevant to the lawsuit, all of which were written in English, including the joint venture agreement, the marketing agreement, the advertising agreement and the amendment to the joint venture agreement. CTF also submitted a declaration by the dean of the leading law school in Mexico, who had practiced law in Mexico since 1961. This declaration explained and cited legal authority for, inter alia, the following: (1) CTF would not have a cause of action against the Mexican hotel corporations, PHC, Inter-Continental or Viberg to the extent that it lacks a direct contractual relationship with those parties; (2) rights of third-party beneficiaries to contracts are not recognized in Mexico as they are in the United States; (3) Mexican law does not contain a concept equivalent to "piercing the corporate veil;" (4) Mexican law does not recognize a cause of action for tortious interference with contractual relations; (5) Mexican law does not allow recovery for consequential or punitive damages; and (6) Mexican courts will apply United States law only if it does not conflict with the public policy of Mexico. CTF also submitted a declaration by its corporate vice president and secretary, stating that many of the negotiations that led to CTF's investment in the joint venture took place in the United States (as opposed to Mexico), that Viberg travelled frequently to the United States to meet with him, that the records regarding CTF's

investment in the joint venture are maintained in the United States, and that, for the purposes of trial in the case at bar, CTF intended to call witnesses who live in the United States and speak English and introduce documentary evidence found in the United States and written in English.

On August 15, 1994, Inter-Continental submitted its reply brief in support of the motion to dismiss, and on August 19, 1994, PHC filed its reply brief in support of the motion to dismiss.

On September 2, 1994, counsel for CTF, Inter-Continental and PHC[3] submitted their joint report of the meeting and joint discovery/case management plan pursuant to Rule 26 of the Federal Rules of Civil Procedure.[4] In this statement, the parties stated, inter alia, that the initial disclosure statements pursuant to Rule 26(a) of the Federal Rules of Civil Procedure were to be submitted within ten days of the forthcoming September 22, 1994 scheduling conference before the district court, that they had not yet commenced formal discovery, and that discovery, when commenced, would require approximately twelve months to complete. The parties also listed possible areas of discovery in

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[3] The remaining five named defendants in the case -- Viberg and the four Mexican hotel corporations -- reserved their right to contest service; they did not participate in the joint scheduling meeting of the parties and also did not answer or otherwise respond to the complaint.

[4] Rule 26(f) of the Federal Rules of Civil Procedure provides that, at least fourteen days before a scheduling conference is held, all of the parties shall meet to discuss the nature of their claims and/or defenses as well as to create a proposed plan for discovery.

the case, including information regarding Viberg, the corporate structure of the various parties, the events surrounding CTF's investments in the joint venture and the subsequent termination of the advertising and management contracts, and Inter-Continental's involvement with Viberg and his corporations.[5] The parties estimated the length of trial to be from six to eight weeks.

On September 12, 1994, counsel for CTF, Inter-Continental and PHC appeared before the district court for a scheduling conference. At that conference, the court acknowledged the pending motions to dismiss, but did not allow argument on the motions, instead deciding to take them under consideration on the

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[5] The parties identified the following topics as potential areas of discovery: (a) information concerning the investments in the joint venture and the Mexican hotel corporations; (b) meetings and communications concerning the investment and relationship among the parties and others; (c) the nature of the various contracts entered into with respect to the Presidente hotels; (d) the contractual obligations of the parties to the contracts entered into with respect to the management and operation of the Presidente hotels; (e) the performance under certain contracts concerning the management and operation of the Presidente hotels; (f) the acquisition from Nestle Corporation of the Stouffer hotel business; (g) Viberg's role in the corporate structure and management of the Mexican hotel corporations and PHC, including Viberg's role in establishing PHC's incorporation; (h) Viberg's involvement in connection with the investment in the joint venture and the corporations in the ownership chain of the Mexican hotel corporations; (i) the events culminating in the termination of the contracts regarding the management and operation of the Presidente hotels; (j) information concerning the background and purpose for creating PHC; (k) the involvement and relationship of PHC and Inter-Continental with the Mexican hotel corporations; (l) the corporate structures of the parties; and (m) the location, quality and number of hotels owned or operated under the "Renaissance" and "Stouffer" names in Mexico and Central America at the time of the acquisition from Nestle corporation.

briefs.

On September 22, 1994, CTF, Inter-Continental and PHC filed their initial disclosure statements pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure.[6] In CTF's statement, of the known addresses of the fifty-one individuals "likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings," thirty-two were in the United States, eighteen were in Mexico, and one was in England. Of the fifteen addresses listed by Inter-Continental, five were in the United States, three were in Hong Kong, and seven were at a single address in Mexico. Of the seven addresses listed on PHC's statement, three were located in Mexico.

On September 26, 1994, CTF submitted a motion for leave to supplement the record, in order to file two letters with the court that refute PHC and Inter-Continental's contention that the majority of documents are in Spanish and that the majority of the witnesses speak only Spanish. These two documents, consisting of

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[6] Rule 26(a)(1) of the Federal Rules of Civil Procedure provides:

> **(a) Required Disclosures; Methods to Discover Additional Matter.**
>
> **(1) Initial Disclosures.** Except to the extent otherwise stipulated or directed by order or local rule, a party shall, without awaiting a discovery request, provide to other parties:
>
> > **(A)** the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information.

a letter from a T. Stauffer of CTF to G. Viberg dated June 30, 1993 and a letter from A. Acado Moreno of the joint venture to J. Hakes of Stouffer dated May 11, 1989, stated that the contracts from which CTF's tort claims arose were negotiated in English and that the English versions of the contracts were to take precedence over the Spanish versions if there were discrepancies. The letters also stated that all business meetings pursuant to the joint venture between the parties were to be conducted in English and that all of the documents written concerning the joint venture were to be written in English.

C. The district court's decision

In a brief opinion entered on October 12, 1994, the district court granted Inter-Continental's motion, and dismissed the case with prejudice to refiling in the United States. First, the court concluded that Mexico would be an available and adequate forum, reasoning that it would condition the dismissal of the case on the defendants' waiver of jurisdictional defenses in Mexico. The court stated that Mexico was an adequate forum because CTF had already brought suit there and because the available remedies were not so "clearly inadequate or unsatisfactory" as to amount to no remedy at all.

After finding that a Mexican forum would be both available and adequate, the court concluded that a Mexican forum would also be more convenient for all of the parties, based on a "balancing" of the "private and public interests." Specifically, the district court cited the following reasons in ruling that the

interests favored a Mexican forum: (a) the defendant hotel corporations and Viberg all reside in Mexico and are therefore closer to a Mexican forum than an American forum; (b) "many important witnesses" who are non-parties reside in Mexico and would therefore not be subject to service of process in this court and "would probably require an interpreter to testify;" (c) the transportation of foreign witnesses would add significant costs to this litigation; (d) even though Inter-Continental and CTF are located in the United States, "the primary defendants are Mexican Corporations," and, consequently, it would be less onerous for CTF to enforce a judgment in Mexico than in the United States; (e) "the bulk of the evidence is located in Mexico and is written in Spanish" and, thus, "[a] Mexican forum would avoid any problems associated with access to and the interpretation of evidence;" and, finally, (f) because the defendants contended that the CTF's contracts were terminated because "CTF's hotels are perceived in Mexico as lower quality and less desirable than the Stouffer hotels," a Mexican forum would be more convenient than a Texas forum should viewing the hotels' premises be necessary. The court did not discuss the considerable evidence in the record that cuts against several of these conclusions or otherwise indicate how it reached these conclusions.

Upon CTF's timely notice of appeal, we vacate and remand.

III. STANDARD OF REVIEW

The decision to grant or deny a motion to dismiss for forum non conveniens lies within the sound discretion of the district court. In re Air Crash Disaster Near New Orleans, 821 F.2d 1147, 1165 (5th Cir. 1987) (en banc), vacated on other grounds sub nom. Pan Am. World Airways, Inc. v. Lopez, 490 U.S. 1032 (mem.), opinion reinstated on other grounds, 883 F.2d 17 (5th Cir. 1989) (en banc). While the question is a discretionary one, however, it is not without strict analytical guidelines. Id.

In In re Air Crash Near New Orleans, 821 F.2d 1147 (5th Cir. 1987), sitting en banc and relying on the seminal Supreme Court decisions in Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947) and Koster v. American Lumbermens Mut. Casualty Co., 330 U.S. 518 (1947), we set forth the ground rules for the district court to follow in deciding whether a case should be dismissed on the grounds of forum non conveniens. As the first step in the two-stage analysis, the court must find that there is an adequate alternative forum in which to try the case. Air Crash, 821 F.2d at 1165. In order to be considered "adequate," the alternative forum must be both available -- meaning that "the entire case and all parties can come within the jurisdiction of that forum" -- and adequate -- meaning that "the parties will not be deprived of all remedies or treated unfairly ... even though they may not enjoy the same benefits as they might receive in an American court." Id.

Second, if the district court finds that the alternative forum is both available and adequate, it must next consider the

private and public interest factors affected by its decision to assume or reject jurisdiction over the matter. Id. The private factors, as described by the Supreme Court in Gulf Oil, include:

> the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the costs of obtaining attendance of willing, witnesses; probability 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 enforc[ea]bility of a judgment if one is obtained.

330 U.S. at 508. Courts are instructed to view these private interest factors with an eye to ascertain whether a plaintiff has chosen a particular venue in which to file suit merely in order to "vex," "harass," or "oppress" the defendant, but, unless the balance of private interest factors weighs "strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." Id.

If the court determines that the private interests do not weigh in favor of the dismissal, it then must consider the interest of the public in maintaining jurisdiction. These factors include:

> the administrative difficulties flowing from court congestion; the local interest in having localized controversies resolved at home; the interest in having the trial of a diversity case in a forum that is familiar with the law that must govern the action; the avoidance of unnecessary problems in conflicts of law, or in application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

Air Crash, 821 F.2d at 1162-63 (citing Gulf Oil, 330 U.S. at 508-09).

In balancing all of the factors set out above, no one factor alone is to be given dispositive weight, and all factors must be viewed with an eye towards the policy that "the plaintiff's initial choice [of forum] is usually to be respected." Air Crash, 821 F.2d at 1163.

We have also emphasized that, in order for us to review a district court's decision to grant or deny a motion to dismiss on the grounds of forum non conveniens, the court must set out its findings and conclusions supporting such decision in sufficient detail. Id. at 1166. Although these findings and conclusions may either be made in writing or clearly stated on the record in open court, they must be complete, detailed, and explicit. "If we are not supplied with either a written or oral explanation of the court's decision we will not be reluctant to vacate the lower court's judgment and remand because we do not perform a de novo resolution of forum non conveniens issues." Id. at 1166 n.32.

IV. DISCUSSION

CTF argues on appeal that, by concluding that Mexico was an adequate alternative forum, by failing to afford sufficient deference to CTF's status as a United States resident attempting to bring suit in United States courts, and by accepting at face value the defendants' conclusory assertions of jurisdictional facts while rejecting CTF's factual assertions in assessing the private interest factors, the district court committed reversible

error. We conclude that because the district court failed explicitly to resolve conflicts in the evidence, particularly the evidence that cuts against its conclusions, we are compelled to vacate the district court's decision dismissing the case, and remand for further proceedings.

A. Adequacy of the Alternative Forum

CTF argues that the district court committed reversible error by concluding that Mexico was an adequate alternative forum in which to bring this action. In its short opinion, the district court stated that it found Mexico to be an adequate forum because "the available remedies in Mexican courts are not so `clearly inadequate or unsatisfactory' as to amount to no remedy at all." The court characterized CTF's argument that the Mexican forum was inadequate as that "some of its claims would be `limited' if this lawsuit were tried under Mexican law." Calling this argument "misplaced," the court instructed that "[t]he plaintiff may not defend a motion to dismiss on the ground of forum non conveniens merely by showing that the substantive law that would be applied in the alternative forum is less favorable to the plaintiff than the chosen forum."

As our description of the contents of the record makes clear, the record contains considerable evidence that does not support the district court's conclusion that Mexico is an adequate alternative forum. Although the district court did ensure that the defendants stipulated to service of process in

Mexico, the fact that the defendants can be served alone does not resolve the question of whether the defendants met their burden of showing that "the entire case and all parties can come within the jurisdiction of that [foreign] forum." Air Crash, 821 F.2d 1165. On the contrary, the record reflects significant questions whether any of the causes of action alleged by CTF is cognizable under Mexican law, since the defendants concede that many of the extra-contractual remedies sought here are not available in Mexico. In fact, CTF does not claim that its remedies will be "limited" in Mexico; rather, it claims that no cause of action is available to sue six out of the seven named defendants in this action in a Mexican court.

The district court cited Kempe v. Ocean Drill & Exploration Co., 876 F.2d 1138, 1142 (5th Cir. 1989), in its determination that the Mexican forum was adequate. In that case, we held that the mere fact that one out of several causes of action could not be brought in a foreign forum did not render that forum inadequate. However, in this case, it may be that both the causes of action that CTF can bring and the individuals against whom CTF can state a claim are considerably more limited in Mexico. Thus, it appears that Kempe may not apply.

Furthermore, the record does not at this juncture appear to us to support the district court's conclusion that CTF's filing of lawsuits in Mexico against Viberg indicates by itself that Mexico is an adequate forum. CTF's former lawsuit in Mexico was apparently limited to one breach of contract claim, and no such

breach claim is included in the present action. All of the parties submitted conflicting affidavits addressing issues of Mexican law -- in particular, whether any causes of action based on extra-contractual claims are available -- and these questions were not resolved.

We conclude that we are left with no option other than to remand the case for further proceedings in order to determine, under the standards set out in Air Crash, discussed above, whether the "entire case" can be brought against all of the defendants in a Mexican court and pursuant to Mexican law.

B. Balancing of the Private Interest Factors

After having concluded that the Mexico forum was both available and adequate, the district court listed the private interests at stake, concluding that, primarily because the "bulk" of the evidence and witnesses, as well as the "primary defendants" are in Mexico, the private interest factors favor trial in Mexico. Because the district court failed to explain how it reached these conclusions, we cannot affirm its decision to dismiss the case.

For example, the record contains conflicting evidence regarding Viberg's residence. Although PHC and Inter-Continental insist that he is located in Mexico, CTF provided documentary evidence of a business address of his, as well as of PHC, in Houston, Texas. It is also undisputed that Inter-Continental is located in the United States. Thus, it is not clear that all the

defendants in fact are located in Mexico. Even if some defendants are located in Mexico, moreover, it is disputed that a Houston forum would be less convenient for them than would a Mexican forum.

Further, it is unclear how the district court reached its conclusion that the "important" witnesses are the witnesses who are found in Mexico and speak Spanish, rather than those witnesses who are located in the United States and speak English. CTF insists that the bulk of its witnesses are located in the United States, and evidence in the record reveals that a greater number of the witnesses on the mandatory initial discovery disclosure lists reside in the United States than reside in Mexico. Nonetheless, the district court reached the conclusion that "many important witnesses" who are non-parties reside in Mexico and would therefore not be subject to service of process in this court and "would probably require an interpreter to testify." The court did not explain how it reached its conclusions regarding which witnesses were the most "important" and which defendants were "primary." And, since it also appears that at least half of the contractual documents submitted by the parties to the courts as exhibits are written in English, and, in fact, CTF submitted no documentary evidence whatsoever that was written in Spanish, it is not clear how the court concluded that this was primarily a Spanish or Mexican transaction. Finally, the district court's statement that the jury may need to view CTF's hotels in Mexico is not supported in the record, as there

is no evidence that CTF possesses any hotels in Mexico. All of these ambiguities need to be addressed and resolved on remand to the district court.

Thus, the case must be remanded to the district court in order to allow the court to make findings of fact regarding the private interest factors.[7] The district court is reminded that, with regard to disputed issues of fact in a motion to dismiss for forum non conveniens, the moving party retains the burden of proof regarding all issues.[8] Camejo v. Ocean Drilling & Exploration, 838 F.2d 1374, 1379 (5th Cir. 1988); Air Crash, 821 F.2d at 1164; see also Lacey v. Cessna Aircraft Co., 862 F.2d 38, 44 (3d Cir. 1988).

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[7] Because we find that the record is too incomplete either to affirm or to reverse the district court's conclusion based on the private interest factors, we need not discuss the district court's conclusions regarding the public interest factors.

[8] We agree with CTF that the district court appeared to incorrectly place the burden of persuasion on CTF rather than on the defendant-appellees. For example, the court paid great tribute to the defendants' theory of the case -- namely, that the Mexican hotel corporations cancelled their contracts with CTF because it viewed CTF's having been acquired as a breach of the contracts -- to the detriment of CTF's theory of the case -- that the defendants conspired with each other to deprive CTF of its 20 million dollar investment. As discussed supra, in Air Crash, we emphasized that the defendant bears the burden of persuasion on every element of the forum non conveniens decision. Accordingly, the court must, in keeping a toll of the number of witnesses and other evidence to be presented at trial, take caution not to overemphasize the defendant's ability to defend itself in the action to the neglect of protecting the plaintiff's ability to bring the action altogether. In this regard, the district court must, at the very minimum, make factual findings regarding the actual importance of the proposed witnesses.

C. Deference to the Plaintiff's Forum Choice

Finally, but perhaps most important of all, CTF argues that the district court failed to afford proper deference to CTF's choice of forum in the United States. We agree. It is troubling that the district court's opinion fails to contain even a suggestion of a "nod" in the direction of the importance of CTF's status as a United States citizen seeking to enforce its rights under United States law. Although a district court need not specifically set out the degree of deference it accorded a plaintiff's choice of forum, there must be at least an indication in the opinion that the appropriate weight was accorded the plaintiff's choice of forum.

This requisite deference is significant because there is a "strong presumption in favor of the plaintiff's choice of forum," which is particularly strong where, as here, the plaintiff is a United States citizen. Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 (1981). Furthermore, there is strong evidence that three of the seven defendants are either United States citizens or else are located within the United States, suggesting that suit in the United States may not be overly burdensome for those defendants. Finally, and significantly, there is no evidence in the record that CTF chose to bring suit in order to "vex," "harass," or "oppress" the defendants. Air Crash, 821 F.2d at 1165.

Upon remand, the district court must be sure to supply us with guidance as to how it balances these concerns in its

determination of whether the case should be dismissed on the basis of forum non conveniens.

III. CONCLUSION

Although the district court set out the correct analytical framework in its determination of whether to grant PHC's and Inter-Continental's motions to dismiss on the basis of forum non conveniens, it failed to come to grips with the significant conflicts in the record and to explain how it resolved those conflicts. In this it erred, and it has provided us with an inadequate record for appellate review of its ultimate decision to dismiss the case.[9] We intimate no view whatsoever on the merits of the motions to dismiss.

Accordingly, we VACATE the district court's order dismissing this action with prejudice, and REMAND to the district court for further proceedings consistent with this opinion.

[9] Because we vacate and remand on the grounds discussed above, and because Inter-Continental's and PHC's arguments for confirmance on the basis of CTF's failure to state a claim were not considered by the district court, we need not consider Inter-Continental's arguments for affirmance on alternative grounds.