

2004 WL 1462451

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United States District Court,
N.D. Illinois, Eastern Division.

Linda Marlin LIE, et al., Plaintiffs,

v.

THE BOEING COMPANY, et al., Defendants.
CFM INTERNATIONAL, INC., Third Party Plaintiff,

v.

P.T. Garuda INDONESIA, Third Party Defendant.

THE BOEING COMPANY, Third Party Plaintiff,

v.

P.T. Garuda INDONESIA, Third Party Defendant.

No. 04 C 2460.

|

June 29, 2004.

Attorneys and Law Firms[Donald J. Nolan](#), Nolan Law Group, Chicago, IL, for Plaintiffs.[Allison Roseman Kendrick](#), Perkins Coie, Seattle, WA, for Defendants.[Jennifer Bates McIntyre](#), [William Thomas Cahill](#), Perkins Coie, LLC, [Sheila Ann Sundvall](#), [Lory Barsdate Easton](#), [Brent G. Tabacchi](#), Sidley Austin Brown & Wood LLP, Chicago, IL, for Defendants and Third-Party Plaintiff.[Larry S. Kaplan](#), [Richard Alan Walker](#), [Daniel V. Santiago](#), [Telly Andrews](#), Kaplan & von Ohlen, Chicago, IL, for Third-Party Defendant.**MEMORANDUM ORDER**[SHADUR](#), Senior J.

*1 This action was initiated by a host of non-United States plaintiffs¹ in the Circuit Court of Cook County, advancing claims arising out of a January 16, 2002 emergency landing in the Bengawan Solo River, Indonesia of an aircraft owned and operated by P.T. Garuda Indonesia (“Garuda”). Plaintiffs sued only the Boeing Company (“Boeing,” manufacturer of the aircraft) and CFM International, Inc. (“CFM,” seller of the aircraft

engine), asserting a variety of alleged product defects and deficient operating procedures. Airline Garuda (a “foreign state” as defined in [28 U.S.C. § 1603\(a\)](#))² was conspicuously absent from the case caption, plaintiffs having elected not to sue it as a codefendant.

Boeing and CFM, which were unable to remove the action to the federal courts on their own because Boeing is an Illinois citizen under Section 1332(c)(1) (see Section 1441(b)), promptly advanced a Third Party Complaint against Garuda. And—to no one's surprise—Garuda, which as a “foreign state” had an express right of removal under Section 1441(d), just as promptly filed a timely Notice of Removal to this District Court. Then, after some further procedural back-and-forth, this Court remanded the principal claims against Boeing and CFM to plaintiffs' preferred forum in the Circuit Court, retaining only the third-party claims by Boeing and CFM against Garuda (see this [Court's memorandum opinion at 311 F.Supp.2d 725 \(N.D.Ill.2004\)](#)).

As with any conventional chess opening, each of the moves up to that point had been quite predictable. And that pattern has continued with the filing of Garuda's motion for dismissal of the retained claims on forum non conveniens grounds. Garuda's motion has now been briefed by the highly able counsel on both sides of the dispute—but the difficulty for Boeing and CFM is that (to mix metaphors in a way that would probably cause Hoyle to blanch) Garuda holds all of the legally relevant high cards, while the Boeing–CFM position is at best a busted straight.

There is of course no question that plaintiffs' counsel *could* have charged Garuda as a joint tortfeasor in the first instance (and perhaps Garuda may in fact be such, although no findings either way are appropriate—or even hinted at—here). But no tort plaintiff is duty-bound to place all potential defendants in its crosshairs, and if plaintiffs' counsel had instead done what Boeing and CFM would have preferred in that respect:

1. Plaintiffs would have been deprived of the forum of their choice in the first instance. In that respect it should be noted that they deliberately chose to sue in the state court, even though federal jurisdiction was clearly available to them against Boeing and CFM on diversity of citizenship grounds (see Section 1332(a)(2) and (c)(1)).

2. If Garuda *had* been added as a direct defendant, it would have been plaintiffs rather than Boeing and CFM who would then have had to respond to the same forum non conveniens contentions that Garuda has now advanced—an added hurdle that was avoided by plaintiffs having sued only Boeing and CFM.

*2 In any event, what is conclusive for present purposes is that plaintiffs *did not* opt to sue Garuda, so that only Boeing, CFM and Garuda are before this Court at this time.

To turn at last to the unpersuasive efforts of Boeing and CFM to avoid dismissal, they ask that this Court hold off on its ruling until the state court rules on *their* forum non conveniens motion (filed only a week ago, on June 21, in that forum), a motion that they hope will result in dismissal of plaintiffs' case against them so that all the litigants can do battle in Indonesia. But there is no good reason that this action should be held hostage pending an uncertain result at an uncertain time on another court's as-yet-unannounced schedule. And as for the remaining contentions that Boeing and CFM advance here, all of them share the skewed perception that the relevant doctrine is somehow “Boeing–CFM non conveniens” rather than “forum non conveniens.”

This Court has conducted the balancing test prescribed in the seminal opinion in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947) and elaborated on in such other leading cases as *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981), and it holds that the balance of convenience tips heavily in favor of Garuda. On that score it would be an act of supererogation to extend this opinion by repeating the arguments that have been presented so ably in Garuda's

15–page memorandum in support of its motion. In sum, the motion to dismiss is granted for the reasons so well advanced by Garuda.³

There is however one final matter to be dealt with, posed as a last-ditch position at Boeing–CFM Joint Resp. 11–12: the potential imposition of conditions on this forum non conveniens dismissal (for which purpose Boeing and CFM cite to *Baris v. Sulpicio Lines, Inc.*, 932 F.2d 1540, 1551 (5th Cir.1991)). To that end Garuda has already voluntarily agreed to appropriate conditions, but Boeing and CFM request a number of added commitments. This Court has considered the Boeing–CFM additions, finding some acceptable and others not. Hence Garuda is ordered, as conditions of the dismissal ordered here:

1. to accept service of process of the complaint or complaints in the nature of third-party actions that Boeing and CFM may hereafter bring against Garuda in Indonesia;
2. to submit to the jurisdiction of the Indonesian courts in such actions;
3. to waive the application of any statute of limitations that would not have run if Boeing and CFM had sued Garuda in Indonesia at the same time that they brought their third party complaints in this action; and
4. to make witnesses who have relevant knowledge and who are within Garuda's control available not only during a trial in Indonesia but also, prior to trial, at such times and in such fashion as Indonesian law permits.⁴

All Citations

Not Reported in F.Supp.2d, 2004 WL 1462451

Footnotes

- 1 According to the most recent filing by the defendants-third party plaintiffs (Joint Resp. 2 n. 1), their information is that 41 of the 48 plaintiffs are (unsurprisingly) citizens or residents of Indonesia. In any event, “None is a U.S. citizen or resident” (*id.*).
- 2 All further references to Title 28's provisions will simply take the form “Section—.”
- 3 This dismissal on forum non conveniens grounds calls for the denial, on mootness grounds, of Garuda's substantive dismissal motions. This Court so orders.
- 4 Although this Court has no familiarity with Indonesian law and is of course unable to prescribe how United States practices as to pretrial discovery may or may not have parallels there, it is also expected that Garuda will cooperate with any effort that Boeing and CFM are required to undertake there to avoid the cumbersome procedures involving in obtaining and enforcing letters rogatory.

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