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An Empirical Examination of the Adequate Alternative Forum in the Doctrine of Forum Non Conveniens

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I. INTRODUCTION

"Forum non conveniens" is a doctrine that allows a federal court in the United States upon a motion of a party to dismiss a case to a forum in a foreign country even though the court has personal and subject matter jurisdiction.[1] The reason for dismissal is that the current United States federal court forum is inconvenient or not as convenient as the forum in a foreign country to hear the present lawsuit.[2] Forum non conveniens with regards to dismissals to a foreign country is a judicially created doctrine with no statutory basis.

The Supreme Court in *Piper Aircraft Co. v. Reyno*, 455 U.S. 928 (1982) laid out the current three part analysis that federal courts use in evaluating forum non conveniens motions for dismissal to a foreign country forum. The first part of this analysis requires the court to determine whether an adequate alternative forum exists in the country being offered by the defendant.[3] However, the Court in *Piper* did not give much guidance concerning how to determine whether an alternative forum is adequate or what defines an adequate forum.[4]

This paper seeks to determine empirically what factors could be influencing federal courts in determining whether an adequate alternative forum exists. A brief survey of the history of the doctrine of forum non conveniens in United States courts and in literature begins the paper. From that point, an overview of the dataset and the methodology used to construct the dataset is given. Forum non conveniens decisions in federal district courts since *Piper* are analyzed to determine whether factors intrinsic to the case such as the time period

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[1] "Forum non conveniens" is literally Latin for "an unsuitable court." BLACK'S LAW DICTIONARY 280 (8th ed. 2004).

[2] *Id.*

[3] Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255, n.22 (1981).

[4] *See id.*

when the decision was rendered, the area of law that is the subject of the case, the basis of subject matter jurisdiction, the presence of foreign plaintiffs or defendants, the industry of the plaintiff or defendant, and the amount in controversy can predict whether a foreign forum will be considered adequate. In addition, factors extrinsic to the case such as the political and governmental situation in the foreign country, a country's economic development, the legal system in the alternate forum, and the language in the alternate forum are considered. Logistic regression models of various factors that can be used to predict the probability that a district court will decide on an adequate foreign forum is discussed in the last substantive section of the paper. Finally, suggestions are given on how to improve the application of the forum non conveniens doctrine.

II. DEVELOPMENT AND DEFINITION OF THE DOCTRINE OF FORUM NON CONVENIENS

A. Early History and the Supreme Court's First Reference in Gulf Oil Corp. v. Gilbert *and* Koster v. American Lumbermens Mutual Casualty Co.

Although "forum non conveniens" is Latin, there is little evidence of the use of the phrase or the concept in Roman courts.[5] The use of the phrase, "forum non conveniens" by courts and its concept of preventing a defendant from having to litigate in a forum, which was impractical or too expensive, seems to have a Scottish origin in the late 1800s.[6] In the United States, the doctrine was applied primarily in maritime cases.[7] The first mention of the term forum non conveniens by the United States Supreme Court was in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947) and its companion case, *Koster v. American Lumbermen Mutual Casualty Co.*, 330 U.S. 518 (1947).

Gilbert involved a tort claim alleging negligence by Gulf Oil in delivering gasoline, which led to an explosion and fire at Gilbert's warehouse in Virginia.[8] The plaintiff, Gilbert, a resident of the state of Virginia, filed the action in the Southern District of New York.[9] The defendant, Gulf Oil, a Pennsylvania corporation qualified to do business in Virginia and New York, had agents in both states to receive

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[5] *See generally* GARY B. BORN & PETER B. RUTLEDGE, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 290, 347–434 (4th ed. 2007) (discussing the historical origins and application of the doctrine).

[6] *See* WARREN FREEDMAN, FOREIGN PLAINTIFFS IN PRODUCTS LIABILITY ACTION: THE DEFENSE OF FORUM NON CONVENIENS 1–11 (1988) (providing further information on the origins and historical development of forum non conveniens).

[7] *Id.* at 4–6; BORN & RUTLEDGE, *supra* note 5, at 290.

[8] Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 502–03 (1947).

[9] *Id.* at 502.

service of process.[10] Gulf Oil invoked the doctrine of forum non conveniens seeking to have the case moved from New York to Virginia.[11]

The Court agreed with the District Court's ruling granting Gulf Oil's forum non conveniens request and transferring the case from New York to Virginia.[12] The Court based its decision on factors of both private interest and public interest.[13] Private interest factors included, "the relative 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, . . .; and all other practical problems that make trial of a case easy, expeditious and inexpensive."[14] Public interest factors included court congestion in the current forum, jury duty being "imposed upon the people of a community which has no relation to the litigation," local interest in having a case decided at home, and the "state law that must govern the case."[15] Before weighing the private and public interests at hand, the Court expounded a principal that, "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed."[16]

Although the Court did not directly state a requirement for an adequate alternate forum, such a requirement was implied when the Court stated that "[i]n all cases in which the doctrine of forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process."[17] In *Gilbert*, the proposed alternate forum was either a Virginia state court or a federal court in Virginia.[18] With both of these courts being located in the United States, the Supreme Court presupposes that these courts are adequate alternatives.

Koster was a case decided on the same day as *Gilbert* involving a shareholder derivative action filed in a federal district court in New York by a New York policyholder against two Illinois companies and an Illinois citizen.[19] The lower courts granted a motion by the defendants to dismiss under forum non conveniens determining that Illinois was a more suitable forum.[20] The Supreme Court stated a principle that a plaintiff's choice of his home jurisdiction should not be deprived

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[10] *Id.* at 503.
[11] *Id.*
[12] *Id.* at 511–12.
[13] *Id.* at 508–09.
[14] *Gilbert,* 330 U.S. at 508.
[15] *Id.* at 508–09.
[16] *Id.* at 508.
[17] *Id.* at 506–07.
[18] *Id.* at 512.
[19] Kostner v. (American) Lumbermens Mut. Cas. Co., 330 U.S 518, 519 (1947).
[20] *Id.* at 520–21.

"except upon a clear showing of facts which either (1) establish such oppressiveness and vexation to a defendant as to be out of all proportion to plaintiff's convenience,. . . or (2) make trial in the chosen forum inappropriate because of considerations affecting the court's own administrative and legal problems."[21] The Court upheld the dismissal under forum non conveniens by the lower courts.[22]

B. 28 U.S.C. §1404(a) – Forum Non Conveniens for District Court Transfers

In 1948, a year after the *Gilbert* decision, Congress enacted 28 U.S.C. §1404(a). Section 1404 states, "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."[23] This was a codification of the doctrine of forum non conveniens for transfers between federal district courts. Since 28 U.S.C. §1404(a) is used only to seek a transfer to another federal district court, the statute does not address the question of whether the alternate court is adequate. Since the proposed alternate court is another federal district court when the statute is invoked, it is presupposed or assumed that the other court will be adequate.

C. Modern Forum Non Conveniens Doctrine for Alternative Foreign Forums

The modern formulation of the doctrine of forum non conveniens applied to situations where the alternate forum is in a foreign country can be traced to the Supreme Court decision in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235. *Piper* involved a wrongful death action as a result of an air crash in Scotland.[24] The plaintiff, Reyno, was the representative of the estates of several of the Scottish citizens killed in the crash.[25] The defendants, Piper Aircraft Co. and Hartzell Propeller, Inc. were United States manufacturers of the airplane involved in the crash.[26]

The suit was originally filed in the Superior Court of California and removed, by the defendants' motion, to the federal court of the Central District of California.[27] From there the case was transferred to the federal court of the Middle District of Pennsylvania under 28

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[21] *Id.* at 524.
[22] *Id.* at 532.
[23] Change of Venue, 28 U.S.C. § 1404(a) (2006).
[24] *Piper*, 454 U.S. at 238.
[25] *Id.*
[26] *Id.* at 239.
[27] *Id.* at 240.

U.S.C. § 1404(a).[28] Once the case was in the Middle District of Pennsylvania, the defendants sought dismissal of the case to Scotland on the grounds of forum non conveniens.[29] The trial court granted the dismissal using the private and public interest balancing test set forth in *Gilbert*.[30] The appeals court reversed the trial court finding an abuse of discretion in application of the balancing test and concluding that an alternative forum is not adequate when the law of the alternative forum is less favorable to the plaintiff.[31]

The Supreme Court disagreed with the appeals court and granted dismissal based on forum non conveniens.[32] It made clear that the first step in a forum non conveniens analysis is the determination of an adequate alternative forum.[33] "At the outset of any forum non conveniens inquiry, the court must determine whether there exists an alternative forum."[34] The Court made clear that existence of an alternative forum would normally be satisfied, "when the defendant is "amenable to process" in the other jurisdiction."[35] In *Piper*, although the damages available to the plaintiffs would be smaller in Scotland then the United States, this did not make Scotland an inadequate forum.[36] "The possibility of a change in substantive law should ordinarily not be given conclusive or even substantial weight in the forum non conveniens inquiry."[37] The court concluded that a less favorable alternative was not an inadequate alternative, but with a caveat that "[i]n rare circumstances, however, where the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate alternative."[38] Thus, an alternative forum is normally considered adequate if the defendant is subject to jurisdiction in the alternative forum even if the alternative forum has laws that are less favorable as long as there is still a satisfactory remedy.

In *Gilbert*, the plaintiff was a United States resident and the plaintiff's choice of forum in the United States was given more deference because of his United States citizenship.[39] In *Piper*, the ultimate plaintiffs were not United States citizens but were Scottish citizens.[40]

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[28] *Id.* at 235.
[29] *Id.* at 241.
[30] *Piper*, 454 U.S. at 241.
[31] *Id.* at 244.
[32] *Id.* at 247–51.
[33] *Id.* at 255 n. 22.
[34] *Id.*
[35] *Id.*
[36] *Piper*, 454 U.S. at 255.
[37] *Id.* at 247.
[38] *Id.* at 255 n. 22.
[39] *See Gilbert*, 330 U.S. at 508.
[40] *Piper*, 454 U.S. at 235.

The Court stated that in this situation, "a foreign plaintiff's choice deserves less deference."[41] After finding the existence of an adequate alternate forum in Scotland and less deference required for foreign plaintiffs, the Court proceeded to use the private interests and public interests balancing test espoused in *Gilbert* and dismissed the case to Scotland.[42]

D. Recent Supreme Court Decision Regarding Forum Non Conveniens

In *Sinochem International Co. v. Malaysia International Shipping Corp.*, the Supreme Court rendered a decision regarding whether subject matter and personal jurisdiction were first required to dismiss a case based on forum non conveniens.[43] *Sinochem* involved a dispute between a Chinese state-owned importer and a Malaysian shipping company where the state-owned importer alleged, in a Chinese admiralty court, that the Malaysian shipping company had falsely backdated the bill of lading.[44] The Malaysian shipping company filed suit in the Eastern District of Pennsylvania, claiming misrepresentations by the Chinese importer in the admiralty court and seeking damages from the detention of its ship in China.[45] In a unanimous decision, the Supreme Court affirmed the District Court decision to dismiss the case on forum non conveniens grounds, even though subject matter and personal jurisdiction in an alternate forum had not been conclusively established.[46] *Sinochem* clarified that jurisdictional issues do not necessarily need to be established in order to dismiss a case based on forum non conveniens.[47] However, *Sinochem* did not clarify what constitutes an adequate alternative forum.

E. Literature on Forum Non Conveniens

Although the *Gilbert* decision is over fifty years old and the *Piper* decision is over twenty, the doctrine of forum non conveniens remains a subject of current interest. Recent literature remains critical of the doctrine in various areas. Professor Allan R. Stein recommends replacing forum non conveniens doctrine with a requirement that the court be convenient in order to vest jurisdiction.[48] Professor

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[41] *Id.* at 256.
[42] *Id.* at 257
[43] Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 425 (2007).
[44] *Id.* at 426.
[45] *Id.* at 427.
[46] *Id.* at 427–36.
[47] *Id.* at 436.
[48] Allan R. Stein, *Forum Non Conveniens and the Redundancy of Court-Access Doctrine*, 133 U. PA. L. REV. 781, 842 (1985).

William L. Reynolds believes that the standard of review of the trial judge's decision on forum non conveniens should be subject to full review instead of reversal only for a "clear abuse of discretion."[49] Professor Martin Davies suggests that the private interest factors in a forum non conveniens evaluation need to be modernized to reflect current telecommunications technology, and the public interest factors need to be reformed to reflect the present day international context.[50] Professor Elizabeth T. Lear argues that the judicially created forum non conveniens doctrine is unconstitutional and is an area where Congress has Constitutional authority to assert control.[51] Professor Christopher A. Whytock is currently conducting an empirical examination of the doctrine of forum non conveniens and judicial decision making.[52]

F. The Lack of Guidance on an Adequate Alternate Forum

There is little guidance concerning what constitutes an adequate alternative forum. The Supreme Court requires that "[a]t the outset of any forum non conveniens inquiry, the court must determine whether there exists an alternative forum,"[53] but has given little guidance on how to conduct that analysis. The lack of clarity on what constitutes an adequate alternative forum contributes to the criticism surrounding the forum non conveniens doctrine.[54] It can determined from *Gilbert* and *Piper* that, at a minimum, a defendant must be "amenable to process" in an adequate alternative forum.[55] Logically, this condition should be true in all motions for forum non conveniens. Defendants will not bring a motion for forum non conveniens in an alternative foreign forum where they are not amenable to process, because they know courts will not dismiss a case based on forum non con-

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[49] William L. Reynolds, *The Proper Forum for a Suit: Transnational Forum Non Conveniens and Counter-Suit Injunctions in the Federal Courts*, 70 TEX. L. REV. 1663, 1686 (1992).

[50] Martin Davies, *Time to Change the Federal Forum Non Conveniens Analysis*, 77 TUL. L. REV. 309, 384–85 (2002).

[51] Elizabeth T. Lear, *Congress, the Federal Courts, and Forum Non Conveniens: Friction on the Frontier of the Inherent Power*, 91 IOWA L. REV. 1147, 1205–06 (2006).

[52] *See* Christopher A. Whytock, *Transnational Law, Domestic Courts, and Global Governance*, UNIVERSITY OF UTAH LEGAL STUDIES PAPER No. 07-05, Mar. 15, 2007, *available at* http://ssrn.com/abstract=976274; Christopher A. Whytock, *Politics and the Rule of Law in Transnational Judicial Governance: The Case of Forum Non Conveniens*, Department of Political Science, Duke University, Feb. 28, 2007, *available at* http://ssrn.com/abstract=969033.

[53] *Piper*, 454 U.S. at 255, n.22.

[54] *See* Megan Waples, *The Adequate Alternative Forum Analysis in Forum Non Conveniens: A Case for Reform*, 36 CONN. L. REV. 1475, 1476 (2004).

[55] *Gilbert*, 330 U.S. at 507; *Piper*, 454 U.S. at 255 n.22.

veniens if they are not amenable to process in the alternate forum. Additionally, from *Piper* it can be deduced that an unfavorable change in the laws or a difference in laws does not make an alternative forum inadequate.[56] The law of the alternative forum must come close to leaving the plaintiff without a remedy to render an alternate foreign forum inadequate.[57]

Beyond this, the Supreme Court has offered little guidance on the definition of an adequate alternative forum in forum non conveniens analysis. The following sections of this paper seek to provide an empirically based definition of what is an adequate alternate forum based on decisions of federal district courts. Examining forum non conveniens decisions in federal district courts since *Piper* may provide an answer to what factors influence the court when making a determination of what constitutes an adequate alternative forum. The desired result is a greater understanding of what is an adequate alternative forum in the forum non conveniens analysis.

III. DATA METHODOLOGY

The data set of forum non conveniens decisions in federal district courts was assembled by performing a LexisNexis search in the "U.S. District Court Cases, Combined" database for the terms "conveniens", "adequate" and "alternate."[58] The search was restricted to cases decided between January 1, 1982 and December 31, 2006. The January 1, 1982 start date was chosen to give district courts time to incorporate the analysis in *Piper*, because the Supreme Court decided *Piper* on December 8, 1981. The result of this search was a total of 1,083 cases with decisions from United States District Courts or recommendations from United States Magistrate Courts. Nearly all of the 1,083 cases were United States District Court decisions.

The search attempted to discover all decisions since *Piper* regarding forum non conveniens dismissal motions to a foreign forum. The search terms, "adequate" and "alternate" were added to the search to distinguish between decisions regarding forum non conveniens where the alternate forum was foreign from decisions where the alternate forum was a domestic federal district court. Although, motions for transfer to another district court are guided by the 28 U.S.C. § 1404(a), frequently these decisions will still mention the term, "forum non conveniens." However, since 28 U.S.C. § 1404(a) involves the transfer to another federal district court, in cases where it is invoked there will be no discussion whether the "alternate" federal district

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[56] *Piper*, 454 U.S. at 255 n.22.

[57] *Id.* at 254–55.

[58] The actual terms and connectors search string was "conveniens and adequate and alternat!".

court is "adequate," because it is presumed that all district courts in the United States are "adequate alternatives." Thus, by including the terms "adequate" and "alternative," greater precision can be achieved by excluding forum non conveniens cases where the alternate forum is a United States District Court.

Each of the 1,083 cases was then analyzed to determine whether a decision was reached regarding forum non conveniens with an alternative forum in a foreign country. Cases regarding transfer to another United States District Court were excluded from the data set as well as cases that did not come to a decision on the question of forum non conveniens. These cases included those resolved or dismissed on other grounds or where a decision regarding forum non conveniens was rendered moot.

The remaining cases were constructed into a data set based on the foreign country being offered as the alternate forum for the litigation. The alternative foreign country forum was classified as adequate if the court granted the request to dismiss the case based on forum non conveniens or if the court denied the request to dismiss the case based on balancing the private and public interests. The first part of a forum non conveniens analysis is to determine the existence of an adequate alternative forum,[59] thus a case should be dismissed based on balancing the private and public interests only after the existence of an adequate alternative forum has been determined to be affirmative.

Decisions, which determined that the foreign alternative forum was inadequate or that the United States law at issue was too important to be given to a foreign court to decide, were classified as an inadequate alternate forum decision.[60] Cases in which multiple foreign countries were being offered as multiple alternative forums were incorporated into the dataset as multiple observations with one observation for each separate country.

Other factors which may play a role in the adequate alternative forum decision were included in the data set. These factors included: whether subject matter jurisdiction was based on diversity or federal question jurisdiction; whether a majority of the plaintiffs were foreign; whether a majority of the defendants were foreign; the industry of the plaintiff; the industry of the defendant, the area of law the lawsuit involved; and the amount in controversy. These variables will be described in greater detail when they are analyzed further, but Table 1 gives a listing of the variables drawn from the cases.

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[59] *Piper*, 454 U.S. at 255 n.22.

[60] *See, e.g.*, Laker Airways Ltd. v. Pan American World Airways, 568 F.Supp. 811, 818 (D.D.C. 1983) (deciding that American Antitrust laws were too essential to allow an English court to adjudicate the case).

Table 1: Variables Drawn from the Cases

Dependent Variable
- Is the foreign forum adequate? (Yes/No)

Independent Case Variables
- Country for the Alternative Foreign Forum
- State of the District Court
- Diversity or Federal Question Jurisdiction
- Majority Foreign Plaintiffs
- Majority Foreign Defendants
- Plaintiff's Industry
- Defendant's Industry
- Area of Law of the Litigation
- Amount in Controversy

From the initial 1,083 cases identified, the final dataset resulted in 692 cases with a total of 769 observations. 47 cases involved decisions that offered alternate forums in multiple foreign countries. These 769 observations were then linked with variables from other datasets, which were thought to be able to help predict whether an alternative foreign forum would be considered adequate. These other variables were linked to the dataset primarily based on the country of the foreign forum and on the year that the motion was decided. The variables were chosen with the thought that they may influence a judge's perception of a foreign court. These external case variables included measures of political rights, civil liberties, political stability, government effectiveness, rule of law, and corruption. In addition, the system of law (common, civil, or mixed), the real gross domestic product per capita, and the official language of the foreign country were incorporated into the dataset. These variables and their sources will also be discussed in detail when they are analyzed further. Table 2 provides a listing of data from sources external to the cases.

Table 2: Variables Drawn from Sources External to the Cases

- Political Rights Index
- Civil Liberties Index
- Political Stability Index
- Government Effectiveness Index
- Rule of Law Measure
- Corruption Measure
- System of Law (Civil, Common, or Mixed)
- Real Gross Domestic Product Per Capita
- Official Language

IV. DATA OVERVIEW

A. *Data Limitations*

There are two important limitations on the data and analysis that may bias the results of this paper. The first limitation involves which cases actually reach a decision rendered by a judge regarding forum non conveniens. The dataset does not include all cases where an issue of forum non conveniens may or does arise, but only those where the parties have submitted the issue for decision and are available on LexisNexis. For example, a defendant may seek a forum non conveniens dismissal only if he or she thinks that the probability of success is high enough. Thus, a court may never hear or decide forum non conveniens cases where the perception among defendants is that the alternative foreign forum is inadequate. One may hope that with the lack of certainty regarding the definition of an adequate forum, this perception is not widespread and has not affected defense litigants' decisions to bring a motion for dismissal under forum non conveniens.

In addition, the litigants may settle the forum non conveniens issue or settle the entire case between themselves before a judge renders a decision on forum non conveniens. The law and economics literature on litigation and settlement attributes a failure to reach a settlement to information asymmetries and transaction costs.[61] With greater informational asymmetries between the parties, there is a lower likelihood for settlement. With greater transactional costs of litigation for the parties, there is a greater likelihood of settlement.[62]

When considering the presence of information asymmetries and transactional costs, one would expect parties to be more likely to settle after a forum non conveniens decision is rendered rather than before. Thus concerns regarding the selection of cases where a forum non conveniens decision is reached are diminished. Before a forum non conveniens decision is rendered one would expect there to be greater information asymmetries, as the defendant, who would bring the forum non conveniens motion, is more likely than the plaintiff to know how litigation conducted in the foreign forum might result. The defendant is more likely to have greater financial resources than the

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[61] *See generally,* Lucian Arye Bebchuk, *Litigation and Settlement Under Imperfect Information*, 15 RAND J. ECONS. 404 (1984) (modeling how informational asymmetry influences parties' decisions and how it might lead to parties' failure to settle); John P. Gould, *The Economics of Legal Conflicts*, 2 J. LEGAL STUD. 279 (1973) (describing the expected utility hypothesis); George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984) (discussing the relationship between litigated disputes and disputes settled before or during litigation).

[62] *See* Bebchuk, *supra* note 61, at 409.

plaintiff, which would probably lead to a greater knowledge of the foreign forum. Therefore, before a forum non conveniens decision is rendered, the plaintiff has greater uncertainty than the defense regarding the outcome of the case due to this lack of knowledge regarding the possible foreign forum. This greater uncertainty would decrease the likelihood of settlement as the case could be tried in the foreign forum or in the United States. Once a decision on forum non conveniens is rendered, there is less informational asymmetry as the plaintiff would be better able to judge the probability of success as the forum would have been determined.

Transaction costs of litigation are greater before a forum non conveniens decision because of the cost needed to litigate a forum non conveniens motion. However, these costs should be small relative to the costs of litigating the entire case. In addition, the transaction costs of negotiating a settlement should be the same before and after a forum non conveniens decision. Consequently, the greater informational asymmetry existing before the forum non conveniens decision should outweigh the smaller effect of a modest increase in litigation costs and result in a lower incentive to settle before a forum non conveniens decision is rendered. With lower incentives for the parties to reach a settlement before a forum non conveniens decision, few prospective forum non conveniens decisions should be lost because of settlement by the parties.

Another source of potential basis is not selection by the litigants or parties, but a decision by the court to include a particular decision in the LexisNexis database. LexisNexis includes all published decisions by federal district judges and even some unpublished decisions. However, some unpublished decisions regarding forum non conveniens are almost certainly not included in LexisNexis. This could potentially bias the results if the reasons why certain decisions were not included in LexisNexis could be explained by the same factors in this study. It would be impossible to incorporate the decisions not included in LexisNexis as those decisions could only be had by requesting a copy from the clerk of the rendering court.[63] However, since LexisNexis does include all published decisions and some unpublished decisions, this paper will operate on the assumption that the dataset is an unbiased representative sample of the universe of all forum non conveniens decisions in United States district courts.

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[63] *See* Joseph L. Gerken, *A Librarian's Guide to Unpublished Judicial Opinions*, 96 LAW LIBR. J. 475, 478 (2004) (providing information on published and unpublished opinions in federal district courts).

B. Where are the Alternate Foreign Forums?

From 1982 through 2006, 105 different countries were offered as an alternate forum for foreign non conveniens motions. Table 3 presents the top twenty-four countries in terms of how often they were offered as an alternate forum and the frequency with which they were offered as an alternate forum in the dataset.

Table 3

Country	Number of Times Offered as Alternate Forum	Frequency
United Kingdom	104	14%
Canada	90	12%
France	30	4%
Mexico	26	3%
Italy	25	3%
Germany	24	3%
Greece	18	2%
Netherlands	17	2%
Brazil	17	2%
Switzerland	16	2%
Hong Kong	16	2%
Australia	15	2%
India	14	2%
Spain	13	2%
Taiwan	13	2%
Venezuela	12	2%
Japan	11	1%
Nigeria	11	1%
Philippines	11	1%
Israel	11	1%
Russia	11	1%
Bahamas	10	1%
Columbia	10	1%
China	9	1%

The United Kingdom and Canada were the most popular alternate forums in the dataset. Below Canada, the number of times any particular country was offered as an alternate forum drops dramatically. The high frequency of the selection of the United Kingdom and Canada as alternate fora among defense litigants is not surprising given that both countries are similar to the United States in terms of language and legal systems. In addition, Canada is geographically close to the United States. Also, as will be discussed later, a great number of forum non conveniens motions take place in New York district courts, geographically closer to the United Kingdom than most other countries.

V. EMPIRICAL ANALYSIS ON THE ADEQUATE ALTERNATIVE FORUM REQUIREMENT WITH INTRINSIC CASE DATA

A. Decisions on the Adequacy of the Forum

Slightly over one-half of motions for dismissal based on forum non conveniens since 1982 in the dataset have been granted. Table 4 presents the number of observations and percentages of those observations by how the district court resolved the motion forum non conveniens.

Table 4

Federal District Court Decision	Number of Observations	Percentage of Total
Granted	403	52%
Denied based on inadequate forum	137	18%
Denied based on balancing private and public interests	229	30%

Overall, defendants were likely to be successful if they sought a dismissal based on forum non conveniens in federal district court. If unsuccessful, the district court usually denied dismissal to the foreign forum based on balancing the private and public interests rather than finding the foreign forum to be an inadequate alternative. Given the lack of definition by the Supreme Court concerning what constitutes an adequate alternate forum,[64] it is not surprising that district courts were unlikely to determine that a foreign forum is inadequate. Table 5 presents information on the overall proportion and the number of observations in the dataset where district courts decided a forum was adequate over various periods of time.

Table 5

Time Period	Number of Observations	Percentage of Total Judged to be Adequate
1982–2006 (Entire Dataset)	769	82%
1982–1989	103	80%
1990–1999	318	84%
2000–2006	348	81%

Overall, a foreign forum was judged to be adequate 82% of the time through out the period of 1982 through 2006. Within this period, the percentage variation of forums judged to be adequate was consistent, from a low of 80% of decisions during 1982–1989 to a high of 84% of decisions during 1990–1999. These results indicate that the willing-

[64] Waples, *supra* note 54, at 1476.

ness of a district court to decide a foreign forum as adequate has changed little over time.

B. Geographic Location and Circuit

Forum non conveniens decisions may not be uniformly distributed among the states and circuits. Only thirty-nine states and territories in the dataset had foreign forum non conveniens decisions during the period in question. Table 6 lists the top ten states or territories in terms of the number of forum non conveniens decisions in the dataset as well as the percentage of those observations where the foreign forum was judged to be adequate.

Table 6

State	Number of Observations	Percent Adequate
New York	296	83%
Texas	80	89%
California	60	80%
Illinois	48	88%
Florida	46	89%
Louisiana	45	82%
Pennsylvania	30	70%
District of Columbia	22	64%
New Jersey	16	69%
Massachusetts	13	85%

An overwhelming number of forum non conveniens decisions are decided in New York. About 38% of all forum non conveniens decisions in the dataset were decided in New York. The state with the next greatest total was Texas with only 10% of the total number of forum non conveniens decisions. There is a great deal of difference in the percent of foreign forums determined to be adequate when comparing Texas with Pennsylvania, District of Columbia, or New Jersey. Explaining this difference may be a subject worthy of further investigation, but is best dealt with by examining the individual decisions in detail instead of a broad empirical study.

Table 7 aggregates the various federal district courts by circuit, and presents the number of observations and the percentage of those observations where a decision was rendered that the alternate foreign forum was adequate. Among the five federal circuits with the greatest amount of decisions, there is not a large difference in the percentage of adequate forums.

Table 7

Circuit	Number of Observations	Percent Adequate
1st	27	85%
2nd	302	83%
3rd	56	73%
4th	38	61%
5th	126	87%
6th	22	82%
7th	55	86%
8th	17	82%
9th	74	80%
10th	3	67%
11th	49	90%

One would not expect the geographical location where a motion of forum non conveniens is heard to have a causal effect on whether the foreign forum is judged to be adequate. If a difference in geographical location indicates a significant difference in the frequency of whether a foreign forum is adequate, then one would suspect the difference is caused by the differences in law between the geographical locations or possibly the differences in attorney practice between the locations.

C. Jurisdiction and Area of Law

For each case in the dataset, subject matter jurisdiction was classified as either based on diversity jurisdiction or federal question jurisdiction. Cases where subject matter jurisdiction could be based on both diversity and federal question were classified as federal question jurisdiction in the dataset. Cases were also classified based on the area of law at the center of the dispute. These areas were: antitrust, bankruptcy, contract, corporate, defamation, employment, intellectual property, personal injury, property, RICO,[65] securities, and tort. Corporate claims included piercing the corporate veil, fiduciary duties of officers, and alter ego type claims. Employment claims included employment discrimination and wrongful termination claims. Tort claims were further distinguished from personal injury claims in that the former involved claims alleging loss but with no bodily or emotional injury. Personal injury claims involved wrongful death or claims of negligence with a resultant physical injury. Many cases involved multiple types of claims and possibly could have been classified under multiple areas of law. A decision for each of these cases was made to classify it under the one area of law that was most central to the dispute.

[65] Racketeer Influenced and Corrupt Organizations, 18 U.S.C. § 1961 (2006).

One may posit that the area of law which is the subject of the lawsuit may effect a judge's view of the adequacy of an alternate forum if the judge believes that American law in a certain area allows remedies not available in the foreign forum or if the American view in a particular area of law is vastly different from the view in the foreign forum. Cases where subject matter jurisdiction is based on federal question jurisdiction could involve issues that judges consider to be of greater importance to the United States and less likely to be adjudicated fairly and accurately in a foreign forum. Thus, one might expect that cases based on federal question jurisdiction would be less likely to find a foreign forum adequate than cases based on diversity jurisdiction.

Table 8 presents the number of observations and the percent of those observations found to be adequate for cases based on federal question jurisdiction and cases based on diversity jurisdiction. The majority of cases (almost two-thirds) were based on diversity jurisdiction. Federal question jurisdiction cases were about fifteen percentage points less likely to find an adequate foreign forum than cases based on diversity jurisdiction.

Table 8

Subject Matter Jurisdiction	Number of Observations	Percent Adequate
Diversity	503	87%
Federal Question	266	72%

To determine whether the fifteen-percentage point difference is statistically significant when viewing the dataset as predictive of future forum non conveniens decisions, the z-test statistic was calculated for the difference in proportions between diversity and federal question jurisdiction with regard to adequacy of foreign forums.[66] The p-value[67] for the z-test statistic for the difference was less than 0.001, statistically significant even at the 1% level. Thus, there is evidence that district court judges may consider that questions of federal law cannot be adjudicated as adequately in a foreign forum and it is possi-

[66] The z-test statistic is based on a normal distribution which reasonably approximates the distribution of the differences in proportions as sample sizes grow large. With 503 observations for diversity jurisdiction and 266 observations for federal question jurisdiction, the sample size should be large enough. *See generally* DAVID FREEDMAN, ROBERT PISANI & ROGER PURVES, STATISTICS (4th ed. 2007) (explaining z-test statistics and their use in testing differences in proportions).

[67] The p-value represents the probability of getting such a difference or greater between the two percentages based on chance.

ble that this consideration influences their decisions on the adequacy of the foreign forum.

Table 9 presents the proportions of foreign forum observations that were considered adequate when viewed with a specific area of law in mind. There may be areas of law that district judges are hesitant to give to a foreign forum because of concerns that the law is too complex or an area uniquely treated in America. This may lead to a finding of an inadequate foreign forum. There is much contrast between areas of law that are typically federal in nature versus those that are usually subject to state law jurisdiction and reach the federal courts only in diversity situations. The four areas of law with the lowest percentages of adequate forums—antitrust, intellectual property, RICO, and securities—are all areas where questions of federal law dominate. Personal injury, the next to lowest area of law in terms of adequacy, also had numerous cases involving federal law questions from maritime and admiralty claims for injuries sustained while at sea.[68]

Table 9

Area of Law	Number of Observations	Percent Adequate
Antitrust	4	50%
Bankruptcy	6	83%
Contract	250	84%
Corporate	13	100%
Defamation	13	85%
Employment	19	89%
Intellectual Property	43	65%
Personal Injury	261	83%
Property	7	86%
RICO	30	73%
Securities	43	77%
Tort	80	88%

The other categories of law, besides contract and tort, did not have many observations. The lack of observations make it difficult to predict whether district court judges actually favor specific areas of law in making their adequacy determinations or whether the current results are simply due to small sample sizes. In contrast, contract and tort have numerous observations. Over two-thirds of forum non conveniens decisions involved a dispute in either contract or tort. Table 10 presents the adequacy proportions for contract observations and tort claim observations.

[68] See, e.g., Bautista v. Cruise Ships Catering & Serv. Int'l N.V., 350 F. Supp. 2d 987 (D. Fla. 2003).

Table 10

Contract / Tort	Number of Observations	Percent Adequate
Contract	250	83.6%
Tort (includes personal injury, defamation, and tort)	354	83.9%

From Table 10 it is readily apparent that there is no difference in the percent of observations where a foreign forum is considered adequate in contract cases versus tort cases. The p-value for the difference is 0.50, which is not statistically significant at any reasonable level.[69] It can be concluded that whether a case involves a tort claim as opposed to a contract claim does not predict whether a foreign forum is considered adequate. This result is consistent with the view that district judges do not find foreign forums more likely to be adequate in resolving contract claims versus tort claims.

D. Domestic versus Foreign Plaintiffs and Domestic versus Foreign Defendants

In *Piper* the Supreme Court agreed with the district court's distinction between resident or citizen plaintiffs and foreign plaintiffs.[70] The Supreme Court also referred to such a distinction in an early case involving forum non conveniens, *Koster*,[71] indicating "that a plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum."[72] A United States plaintiff is to be given greater deference for his or her choice of forum in the United States than a foreign plaintiff. This deference should be reflected during the balancing of the private and public interests portion of the forum non conveniens analysis. "When the home forum has been chosen, it is reasonable to assume that this choice is convenient."[73] Factors of convenience to the plaintiff should be reflected in the private interests at stake and not in the standards of adequacy for a foreign forum. However, one may wonder whether district court judges are being influenced in their determination of adequacy of a foreign forum by whether the plaintiff is a foreigner or not.

In the dataset a determination was made for each case whether the majority of the plaintiffs and defendants were foreign. An individual plaintiff or defendant was considered foreign if his or her citizen-

[69] With such a p-value, the implication is that there was about a 50-50 chance that tort claims have a higher adequacy rate then contract claims.
[70] *Piper*, 454 U.S. at 255.
[71] *Kostner*, 330 U.S at 518.
[72] *Piper*, 454 U.S. at 255.
[73] *Id.* at 255–56.

ship was outside of the United States. A company was considered foreign if its headquarters was outside of the United States. In cases with multiple plaintiffs, the case was classified as majority foreign plaintiffs if the number of foreign plaintiffs was greater than the number of United States plaintiffs. A similar classification was done with respect to foreign defendants.

Table 11

Majority Foreign Plaintiffs	Number of Observations	Percent Adequate
Yes	387	83%
No	382	81%

Table 11 gives the percentages of observations in which a foreign forum was found to be adequate for observations where a majority was foreign plaintiffs versus where a majority was not. As can be seen by the observations, the number of cases with a forum non conveniens decision with a majority of foreign plaintiffs is about equal to the number of decisions involving primarily domestic plaintiffs. The percentage of these cases where the foreign forum has been found adequate is also very close, 83% to 81% respectively. This difference is not statistically significant.[74] This evidence would seem to indicate that district judges are not expressing a preference for a domestic plaintiff by concluding that a foreign forum is inadequate. If there is more deference being given to a domestic plaintiff, then it is being given through the balancing test of the private and public interest factors and not through the adequacy of the foreign forum.

Table 12 provides the adequacy proportions in relation to the majority of foreign defendants in an observation. With regard to defendants, there seems to be more cases involving a majority of foreign defendants than non-foreign defendants. Over 60% of the cases involve a majority of defendants that are foreign.

Table 12

Majority Foreign Defendants	Number of Observations	Percent Adequate
Yes	479	86%
No	290	80%

When there is a majority of foreign defendants, district courts have been more likely to find the foreign forum to be adequate than with a non-majority of foreign defendants, 86% to 80%. This 6% differ-

[74] The p-value for the difference is 0.18.

ence turns out to be statistically significant at any level above 2%. Although a 6% difference may not seem to be a lot, there is some evidence then that district court judges may be disfavoring domestic defendants slightly by finding an adequate foreign forum less often, and thus reducing the likelihood of domestic defendants having their case dismissed on forum non conveniens grounds.

E. Plaintiff and Defendant Industry

Tables 13 and 14 present the adequacy percentages for foreign forums across different industries of the plaintiff and defendant. Perhaps legal issues in certain industries are more complex thus leading to a finding that a foreign forum is inadequate to adjudicate the claims. Otherwise, another possibility is that there are industries where judges want to resolve claims here in the United States, because the industry could be considered of great importance to the nation and thus there is an incentive to keep the litigation in the United States by finding a foreign forum as inadequate.

Industries for plaintiffs and defendants were classified according to the Standard Industrial Classification[75] system at the highest or most general level of classification with an additional category for persons (individual plaintiffs or individual defendants with no particular industry). In cases with multiple plaintiffs or multiple defendants, a judgment was made as to what industry best fit the majority of plaintiffs or defendants or which plaintiff or defendant should be considered primary and thus the industry be based on that particular plaintiff or defendant. The manufacturing classification was quite broad and included manufacturers such as automobiles, airplanes, biotechnology, pharmaceuticals, chemicals, and technology. The mining and construction classification also included oil. Public administration referred to governments and government agencies. The service classification was also quite broad and included consulting, entertainment, healthcare, hotels, legal, media, nonprofits, and software.

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[75] *See* U.S. DEPARTMENT OF LABOR OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, SIC DIVISION STRUCTURE, http://www.osha.gov/pls/imis/sic_manual.html# (last visited Feb. 20, 2007).

Table 13

Plaintiff's Industry	Number of Observations	Percent Adequate
Agriculture, Forestry, and Fishing	28	79%
Finance, Insurance, and Real Estate	145	85%
Manufacturing	76	82%
Mining & Construction	31	77%
Person	333	83%
Public Administration	5	80%
Services	63	70%
Transportation, Communications, Electric, Gas, and Sanitary Services	52	87%
Wholesale and Retail Trade	36	83%

From Table 13 it is interesting to note that the plaintiffs in forum non conveniens decisions are most often persons or individuals. Many forum non conveniens cases involving individuals involved personal injuries while on a ship[76], plane[77], or at a hotel.[78] Among the three plaintiff industries with the most observations, persons, finance, and manufacturing, there was not a large difference in the percentage of foreign forums found to be adequate. In the services industries the percentage found to be adequate, 70%, was quite a bit lower than any other industry.

Table 14

Defendant's Industry	Number of Observations	Percent Adequate
Agriculture, Forestry, and Fishing	33	85%
Finance, Insurance, and Real Estate	150	83%
Manufacturing	184	89%
Mining & Construction	61	77%
Person	28	72%
Public Administration	20	45%
Services	107	82%
Transportation, Communications, Electric, Gas, and Sanitary Services	157	82%
Wholesale and Retail Trade	18	89%

From Table 14 one can see that the number of individual persons who are defendants in forum non conveniens decisions is much lower than the number of individual persons as plaintiffs. In fact the

[76] *See* Ioannidis/Riga v. M/V Sea Concert, 132 F. Supp. 2d 847 (D. Or. 2001) (involving an injury on a boat).

[77] *See In re* Air Crash over the Taiwan Strait on May 25, 2002, 331 F. Supp. 2d 1176 (C.D. Cal. 2004) (involving a plane crash).

[78] *See* Doe v. Sun Int'l Hotels, 20 F. Supp. 2d 1328 (S.D. Fla. 1998) (involving an injury at a hotel).

category "person" is one of the lowest numbers of observations for defendant industries. Most likely this is the result of plaintiffs seeking the deep pocket in litigation, and generally individuals relative to companies do not have as much available in terms of financial resources. For industries with a lot of observations, finance, services, and transportation, the percent adequacy rates are very close, 82% or 83%. The one exception is manufacturing with a high number of observations and a high adequacy percentage of 89%. The defendant industry of public administration, which consists of governments and government agencies, has a strikingly low adequacy rate of 45% although it does not have a lot of observations. A possible explanation for this finding is that in many cases involving a public administration defendant, the desired alternative foreign forum is the country where the defendant government or government agency is located. Judges may be fearful that courts in that defendant's country may be biased in favor of the government or government agency, and thus the judge may be more willing to decide that the foreign forum is inadequate.[79]

F. Amount in Controversy

This next section looks at whether the amount in controversy in a case influences whether a foreign forum is judged to be adequate. Perhaps judges do not wish to send cases abroad by finding a foreign forum inadequate when there tends to be a lot more at stake. In addition, cases with larger amounts at stake may also involve more complex legal issues, which a judge may think an alternate foreign forum may not be adequate to adjudicate. Unfortunately for our data analysis purposes, most of the published LexisNexis decisions regarding forum non conveniens do not mention the amount in controversy. The amount in controversy was incorporated into the dataset for the decisions where it was mentioned. One hundred and six observations out of the 769 observations had information on the amount in controversy.

Table 15

Amount in Controversy	Number of Observations	Percent Adequate
$0 to $500,000	23	87%
$500,001 to $2,000,000	29	83%
$2,000,001 to $10,000,000	22	86%
$10,000,001 to $100,000,000	24	92%
Greater than $100,000,000	8	88%

[79] *See* Flatow v. Islamic Republic of Iran, 999 F. Supp. 1 (D.D.C. 1998) (finding that the proposed alternative foreign forum of Iran of a foreign government defendant was inadequate).

Table 15 breaks down the amount in controversy into five monetary ranges and gives the number of observations and the percentage of those observations found to be adequate. If federal judges were retaining the large amount in controversy cases by judging foreign forums to be inadequate, we would expect the percent adequate to decline as the amounts increase; however, the table indicates no discernible pattern. In fact, there is no statistical significant difference at the 5% level between any of the differences in percentages between the five monetary categories.[80]

The monetary category with the highest percentage of adequate findings is one of the larger categories, $10,000,001 to $100,000,000, which is counter-intuitive to the belief that the larger the case the more likely a judge will retain the case by finding a forum inadequate. The correlation coefficient[81] was 0.05 for the amount in controversy and adequacy of a forum with an adequate forum as 1 and an inadequate forum as 0. If judges were declaring foreign forums to be inadequate as the amount in controversy of the cases were going up, then the correlation coefficient should be negative and close to –1. With a slight positive correlation coefficient that is close to 0, this indicates that there is no relationship between the amount in controversy and the decision of the adequacy of a foreign forum. Thus, amount in controversy is not a good predictor of whether a district judge will decide whether a foreign forum is adequate.

VI. EMPIRICAL ANALYSIS ON THE ADEQUATE ALTERNATIVE FORUM REQUIREMENT WITH EXTRINSIC DATA

This section of the paper examines the impact on the existence of an adequate alternative forum using data from external sources. Using the year of the decision from each case as well as the country proposed as the alternate forum and linking that with data about that country during the year that the decision was issued, additional data was incorporated that may have an influence on a judge's perception of the adequacy of the alternate forum. These variables from external sources include measures on political rights, civil liberties, political

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[80] The p-value for the greatest difference between the $10,000,001 to $100,000,000 category and the $500,001 to $2,000,000 category is 0.075, which is not statistically significant.

[81] The correlation coefficient measures how well two variables vary together on a scale from –1 to +1. Two variables that vary negatively (one going up and the other going down) together perfectly will have a correlation coefficient of –1. Two variables that vary positively (both going up at the same time) together perfectly will have a correlation coefficient of +1. Two variables that are unrelated and move randomly of each other will have a correlation coefficient of 0.

stability, governmental effectiveness, rule of law, and corruption. Other variables include the system of law in the country, the official language, and the real gross domestic product per capita of the country.

A. *Political Rights and Civil Liberties*

Countries with a greater degree of political rights and civil liberties for its citizens may have courts that are considered to be more fair than countries with more repressive and less free regimes. Freedom House, a non-profit non-partisan organization, produces an annual measurement of the degree of political rights and civil liberties for countries around the world.[82] Freedom House produces a measure for political rights and a separate measure for civil liberties. The separate measures for political rights and civil liberties are averaged and, based on that average, a country is classified as free, partly free, or not free.[83] The Freedom House data on free, partly free, and not free for the year of the foreign non conveniens decision and for the foreign country proposed was used to examine whether the alternate forum proposed was considered adequate.[84]

Table 16 presents the results of the adequacy findings by the courts broken down by observations in free, partly free, and not free country classifications. There is a steady decline in the percentage of cases where courts find a foreign forum as adequate as one transitions from countries that are free to countries that are not free. Free countries have an adequacy rate of 86%, where partly free countries have an adequacy rate of 78%, and contrast with not free countries which have the lowest adequacy rate of 64%. The difference between these adequacy rates between free, partly free, and not free are all statistically significant for at least the 2% level.[85] Given the pattern of decline in the adequacy rate and the statistical significance of the differences, it can be concluded that district courts are less apt to find

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[82] *See* Freedom House, About Us, http://www.freedomhouse.org/template.cfm?page=2 (last visited Feb. 21, 2007).

[83] *See* Freedom House, Methodology, http://www.freedomhouse.org/template.cfm?page=35&year=2006 (last visited Feb. 21, 2007) (detailing how the measures of political rights and civil liberties are determined and calculated).

[84] The separate measures for political rights and civil liberties were not used because they were highly correlated (correlation coefficient = 0.91). Thus, countries with a high degree of political rights almost always had a high degree of civil liberties. Using these measures separately would yield similar results to each other and to the free, partly free, and not free classification.

[85] The highest p-value was 0.014 for the difference in proportion between the free and the partly free proportions which is still statistically significant at the 2% level.

an adequate forum in countries with fewer political rights and fewer civil liberties.

Table 16

Degree of Civil Liberties and Political Rights	Number of Observations	Percent Adequate
Free	565	85%
Partly Free	143	78%
Not Free	61	64%

From Table 16 the number of observations from free countries is much greater when compared to the number of observations from partly free or not free countries. 73% of all observations come from free countries. From this high proportion it could be inferred that defendants are choosing to file forum non conveniens motions seeking dismissal to foreign forums that are primarily located in free countries. Defendants may prefer to litigate in the United States than in a country where political rights and civil liberties are not respected, and thus there will be few forum non conveniens motions seeking dismissal to those countries. To help ascertain the truth of this hypothesis, the number of possible countries that are considered free should be compared to the number of observations in the dataset from free countries. A high rate of observations from free countries could very well be the result of a high proportion of free countries around the world.

Table 17

Degree of Civil Liberties and Political Rights	Percent of Case Observations	Percent of Countries in the world in 2006
Free	73%	46%
Partly Free	19%	30%
Not Free	8%	24%

Table 17 presents the proportion of free, partly free, and not free observations in the data set compared with the proportion of free, partly free, and not free countries in the world as classified by Freedom House in 2006.[86] Although 46% of the countries in the world were considered free in 2006, the proportion of forum non conveniens observations in the dataset was much greater at 76%. There is a much higher proportion of forum non conveniens decisions in the dataset with free country forums than the proportion of free countries in the world. Likewise, the percentage of cases involving countries that are not free are at the other extreme. Although not free countries make up

[86] *See* Freedom House, Tables and Charts, http://www.freedomhouse.org/template.cfm?page=25&year=2006.

24% of the countries in the world, the number of forum non conveniens cases in the dataset with one of those countries as an alternate forum makes up only 8% of the total forum non conveniens cases. These numbers are consistent with the thought that defendants may not want to litigate in countries that lack political freedoms and civil liberties, which results in defendants not filing motions for forum non conveniens seeking dismissal to these not free countries. The other possible reason is that the lower likelihood of a district court finding an adequate forum in a not free country reduces the incentive for defendants to bring a forum non conveniens motion seeking dismissal to one of these countries in the first place. However, this second possible reason would require defense litigants to already know that district courts are more likely to consider forums in not free countries inadequate. This seems unlikely given the lack of clarity regarding what constitutes an adequate forum.

B. Political Stability

District courts may be apt to consider a foreign country forum inadequate when that foreign country may be subject to a great degree of political instability. Political instability in a nation, where there is a real risk that the government could be overthrown or a real risk of civil war, could leave the courts malfunctioning or unable to adjudicate disputes, and thus render them inadequate alternative forums for dismissal. The World Bank has created a measure of political instability for countries of the world starting from 1996.[87] The World Bank measure of political instability attempts to measure the perception that the government in power will be overthrown.[88] The World Bank measures political stability by assigning a score of political stability that is normally distributed with a mean score of 0 and a variance of 1. The greater the number of this score the more stable the political situation. The World Bank measures of political instability were incorporated into the dataset based on the country and the year of the decision regarding forum non conveniens in the case. Prior to year 2002, the World Bank only produced ratings for countries every other year, so for those years prior to 2002 and for the year 2005, ratings for those years would cover two years worth of forum non conveniens decisions.[89]

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[87] *See* World Bank, Worldwide Governance Indicators: 1996–2007, http://go.worldbank.org/ATJXPHZMH0.

[88] *See* Governance Matters 2008, Worldwide Governance Indicators: 1996–2007, http://info.worldbank.org/governance/wgi/index.asp.

[89] *See* World Bank, Questions and Answers – How frequently are the Worldwide Governance Indicators updated?, http://info.worldbank.org/governance/wgi/faq.htm.

For analysis purposes in this section, the data on political instability was classified into three tiers. The first tier consists of countries rated as the most politically unstable by being in the bottom third of the ratings assuming a normal distribution. The second tier consists of the middle third and the third tier consists of those countries that scored in the top third of countries rated as the most politically stable. Table 18 presents the adequacy percentages for these three tiers.[90]

Table 18

Degree of Political Instability	Number of Observations	Percent Adequate
Unstable (Bottom 1/3 in ratings)	99	73%
Medium stability (Middle 1/3)	133	84%
Stable (Top 1/3 in ratings)	274	84%

From Table 18, the most politically unstable countries were also the countries with the lowest percentage of findings of an adequate forum as determined by the district courts. Countries with a medium degree of instability had essentially the same percentage of adequate forums as countries that were considered the most stable. Only the most politically unstable countries had a greater percentage of inadequate forums.

As with the situation regarding political rights and civil liberties, defendants may avoid filing forum non conveniens motions when the alternate forum is a politically unstable country. Although the most politically unstable countries represented in Table 18 make up about one-third of the total number of countries in the world, the number of forum non-conveniens decisions in the dataset involving these countries is only about 20%. There is a lower proportion of decisions involving the most politically unstable countries, than there is the proportion of these countries in the world. This result is again consistent with a belief that defendants may avoid seeking a forum non conveniens dismissal when the alternate forum is in a politically unstable country.

C. Governmental Effectiveness, Rule of Law, and Corruption

The World Bank Governance dataset also included separate measures for government effectiveness, rule of law, and control of cor-

[90] See World Bank, Aggregate Governance Indicators 1996–2007 – Political Stability & Absence of Violence/Terrorism, http://info.worldbank.org/governance/wgi/pdf/wgidataset.xls.

ruption.[91] Government effectiveness measures the quality of the civil servants in a country and the independence of the civil service from political pressures.[92] Rule of law seeks to measure the confidence to which individuals have that the rules of law in a country will be obeyed and enforced as well as the effectiveness and predictability of the judiciary.[93] Control of corruption is a measure of how well a society controls the use of public power for private gain.[94] These measures are all based on a normal distribution with a mean of 0 and a variance of 1. The greater the number of the measure, the more effective the government, the more the rule of law is respected, and the more corruption is controlled. These measures were available starting in the year 1996.

Government effectiveness, rule of law, and control of corruption are all highly related. Effective governments go hand-in-hand with confidence that the rule of law governs society and a lack of corruption within government institutions. The World Bank measures of government effectiveness, rule of law, and control of corruption are all highly correlated with correlation coefficients of at least 0.97.[95] Since these measures are so highly related and correlated, separate individual analysis of each would basically yield similar results and it would not be possible to distinguish the effects of government effectiveness from rule of law and control of corruption. Thus, government effectiveness, rule of law, and control of corruption are considered together as one overall measure. This was done by taking the average of the three measures and creating a combination government effectiveness-rule of law-control of corruption measure.[96]

The average of the three measures was again broken into three tiers with each tier containing about one-third of the distribution of countries. The bottom tier would consist of the average of the least effective governments, the least respect for the rule of law countries, and the most corrupt countries. The top tier would consist of the average of the most effective governments, the countries where the rule of

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[91] Governance Matters 2008, Worldwide Governance Indicators: 1996–2007, http://info.worldbank.org/governance/wgi/index.asp.

[92] World Bank, Questions and Answers, http://info.worldbank.org/governance/wgi/faq.htm.

[93] *Id.*

[94] *Id.*

[95] The correlation coefficient between government effectiveness and rule of law was 0.97. The correlation coefficient between government effectiveness and control of corruption was 0.97. The correlation coefficient between rule of law and control of corruption was 0.98.

[96] Incidentally, the distribution of an average of three normally distributed variables with a mean of 0 and a variance of 1 is also a normal distribution with a mean of 0 and a variance of 1.

law is respected, and where corruption is most under control. Table 19 presents the results of these three tiers as related to how often district courts find an adequate alternate forum in those countries.

Table 19

Degree of Government Effectiveness, Rule of Law and Control of Corruption	Number of Observations	Percent Adequate
Worst (Bottom 1/3 in average)	70	67%
Medium (Middle 1/3 in average)	89	76%
Best (Top 1/3 in average)	344	86%

In Table 19 there is a steady progression from the worst countries in terms of government effectiveness, rule of law, and control of corruption to the best countries when considering the rate where they are determined to be adequate. The worst bottom one-third of countries were found to be adequate only 67% of the time. The medium countries were adequate 76% of the time. The best countries were found to be adequate 86% of the time. The differences in adequacy rates between the best countries and the other two tiers are statistically significant.[97] Thus, even though the definition of an adequate forum does not explicitly require it, there is evidence that district courts are less likely to find foreign forums adequate in countries with ineffective and corrupt governments and countries that lack the rule of law.

As with the civil liberties, political rights, and political stability measures, the results seem to indicate a preference among defendants to file forum non conveniens motions when the alternate forum is located in a country characterized by an effective government, the rule of law, and a lack of corruption. Assuming a normal distribution of the average of these three measures, each of the three tiers should consist of roughly one-third of the countries of the world. Therefore, although the best countries in the world in the areas of effective government, rule of law, and control of corruption are only one-third of the countries of the world, these countries make up over two-thirds of the decisions in the dataset on forum non conveniens in the district courts. The worst and medium countries in these areas make up two-thirds of the world's countries, but less than one-third of the decisions in the dataset on forum non conveniens have these countries as the alternate forum. Again, there may be two sources for the lack of forum non conveniens decisions from these countries. One, the defendant may not want to litigate in countries that are corrupt, ineffectively governed,

[97] The p-value for the difference in proportions between the best tier and the medium tier was 0.014. The p-value for the difference in proportions between the best tier and the worst tier was less than 0.001.

and where the rule of law is not respected, so motions for forum non conveniens involving these countries are rarely brought. The other possible source is that defendants may know that district courts are more apt to declare these countries as inadequate forums, and thus it is not worth it for defendants to bring motions of forum non conveniens involving these countries when they are subject to a high rate of inadequate alternate forum findings. The second reason would require defense litigants to have prior knowledge during the 1982–2006 time period that these forums are likely to be found inadequate, which seems unlikely given the lack of clarity on what constitutes an adequate forum.

D. Real Gross Domestic Product Per Capita

Gross domestic product (GDP) refers to the value of production and services produced in a country during a given year.[98] GDP per capita refers to this value per person in a country during a given year and the level of economic development in a country.[99] Examining the GDP per capita of a country and decisions regarding the adequacy of a foreign forum is useful in determining whether the level of economic development in a country may influence determinations of the adequacy of a foreign forum.

Data on GDP per capita for the years 1982 through 2006 was taken primarily from International Monetary Fund's "World Economic Outlook Database."[100] Data from a few countries and territories such as the former Soviet Union, the British Virgin Islands, and French Polynesia, were not available from the International Monetary Fund. In these instances, data from the Central Intelligence Agency's "The World Factbook"[101] was used.

GDP per capita calculated based on purchasing power parity was used, which seeks to equalize differences in different currencies purchasing power. GDP per capita based on purchasing power parity will have smaller swings due to short-term exchange rate fluctuations and more accurately reflects the purchasing power of a country's citizens in a given year. The data on GDP per capita was adjusted for

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[98] Yoram Margalioth, *Not a Panacea for Economic Growth: The Case of Accelerated Depreciation*, 26 VA. TAX REV. 493, 497 (2007).

[99] *See* Note, *The Twenty Dollars Clause*, 118 HARV. L. REV. 1665, 1673 n.47 (2005).

[100] INTERNATIONAL MONETARY FUND, WORLD ECONOMIC OUTLOOK REPORT (2006), *available at* http://www.imf.org/external/ns/cs.aspx?id=29 (last visited Apr. 6, 2009).

[101] Central Intelligence Agency, The 2007 World Factbook, *available at* https://www.cia.gov/cia/publications/factbook/ (last visited Apr. 6, 2009) [hereinafter World Factbook].

inflation and incorporated into the dataset in United States Dollars as GDP per capita for each country in 2000.

The observations in the dataset were classified into three tiers using the GDP per capita data. Each tier represents approximately one-third of the world's countries in the year 2000 by GDP per capita. In 2000, the bottom one-third was countries with GDP per capita of $2,550 or less.[102] The middle-third consisted of countries with GDP per capita greater than $2,550 but less than or equal to $8,700.[103] The top-third countries in year 2000 consisted of countries with GDP per capita greater than $8,700.[104] Table 20 presents the results for the adequacy rate of the foreign forum by GDP per capita in the three tiers.

Table 20

GDP Per Capita	Number of Observations	Percent Adequate
GDP per capita <= $2,550 (Lowest 1/3)	50	54%
$2,550 < GDP per capita <= $8,700 (Middle 1/3)	185	78%
$8,700 < GDP per capita (Top 1/3)	534	86%

There is an increasing likelihood that a foreign forum will be found adequate as the country of the alternate foreign forum progresses from countries in the lowest third of GDP per capita to the middle third countries of GDP per capita to the top third of countries based on GDP per capita. The difference between the lowest third and the top third of countries is quite extreme, 54% versus 86%. The differences in the adequacy rates between all the tiers were all statistically significant even at the 1% level.[105] These results indicate that district courts may be influenced by the level of economic development in the country of the alternate foreign forum with foreign forums in less economically developed countries more likely to be considered inadequate. There may be a belief in the district courts that less-devel-

[102] Representative countries in this category included Bolivia, Myanmar, and Nigeria. International Monetary Fund, The September 2006 World Economic Outlook Database, http://www.imf.org/external/pubs/ft/weo/2006/02/data/weoselgr.aspx.

[103] Representative countries in this category included Egypt, Jamaica, Philippines, and Russia. *Id.*

[104] Representative countries in this category included Argentina, Japan, Mexico, Saudi Arabia, and the United Kingdom. *Id.*

[105] The p-values for the differences between any of the two tiers were all less than 0.001.

oped countries may not have the financial resources to devote to their judicial systems and thus, these forums are inadequate.[106]

The other striking result is the number of observations within each tier. If we assume that cases where there is possibility of a foreign forum arise equally between the three tiers based on GDP because each tier consists of approximately one-third of the countries in the world, then we would expect the number of observations within the three tiers to be equally distributed between the three tiers. Each tier then should consist of approximately one-third of the observations. However, the lowest third of countries based on GDP contained only 50 observations out of the total of 769. The lowest one-third of countries by GDP was approximately 7% of the total number of decisions in the dataset. The highest third of countries based on GDP contained 534 observations out of the total of 769. The highest third of countries were over 69% of the total decisions on forum non conveniens although being only about one-third of the total number of countries in the world. There is a preference in forum non conveniens motions for the more economically developed countries and there is evidence of avoidance of forum non conveniens motions in the least economically developed countries.

This avoidance may be the result of defense litigants not wishing to litigate in the less economically developed countries or a realization that motions of forum non conveniens offering these less economically developed countries as an alternate forum are more likely to fail based on an inadequate forum, and thus a disincentive for defense litigants from bringing such forum non conveniens motions in the first place. It is more plausible that the disinclination to litigate in the less economically developed forum is having the greater effect. It is uncertain whether defense litigants in forum non conveniens motions are aware of the greater likelihood of an inadequate forum finding for less economically developed countries. If defense litigants do not know that less economically developed countries are more likely to be found inadequate, then there must be another reason why motions for forum non conveniens are not filed seeking these less developed countries as their forum. This reason would probably be a desire among defense litigants not to litigate in less economically developed countries.

E. Language

Does the fact that the alternate foreign forum conducts its proceedings in a language other than English impact the district's court view on whether that foreign forum is adequate? If yes, one would

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[106] *See* Megan Waples, Note, *The Adequate Alternative Forum Analysis in Forum Non Conveniens: A Case for Reform*, 36 CONN. L. REV. 1475, 1512–13 (2004).

expect that forums conducted in English would have a higher rate of adequate alternate forum findings. Table 21 gives the percentages where an adequate alternate forum was found for observations where English is an official language in a country versus observations where English is not one of the official languages. Data on the official language of various countries was taken from the CIA's "The World Factbook 2007."[107]

Table 21

Official Language	Number of Observations	Percent Adequate
English	289	83%
Non-English	480	81%

Most of the observations, over 60%, come from non-English speaking countries, which is not unexpected given that most of countries of the world do not have English as an official language. English speaking countries only have a slightly higher percentage of adequate forums than non-English speaking countries, 83% to 81% respectively. This difference is not statistically significant.[108] The data indicates that district courts are not giving forums in English speaking countries more deference when determining whether a forum in that country is adequate or not.

F. Legal System

The final external variable considered is the legal system in the foreign country. In the United States, the system of law can be traced to the common law system originating in England. It may be reasonable to believe that district courts in the United States would be more apt to find a foreign forum adequate when it is based on a legal system similar to the one found in the United States, the common law system. Data on the legal systems of countries around the world was taken from University of Ottawa.[109] Countries were classified according to whether they were more similar to a common law system, a civil law system, or whether the system was a mixture of common and civil law. Table 22 gives the adequacy rates for forum non conveniens observations based on the system of law.

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[107] See World Factbook, *supra* note 101.

[108] The p-value for the difference is 0.14, which is not statistically significant.

[109] UNIVERSITY OF OTTAWA, WORLD LEGAL SYSTEMS, http://www.juriglobe.ca/eng/sys-juri/class-poli/droit-civil.php (last visited Apr. 7, 2009).

Table 22

System of Law	Number of Observations	Percent Adequate
Common	303	82%
Civil	415	82%
Mixed	51	82%

There is basically no difference in how likely a foreign forum is going to be found adequate based on its system of law. This would indicate that district courts do not consider the system of law in a foreign country in determining its adequacy. The existence of a common law system in the alternative forum, which is similar to the United States system, does not increase the likelihood that a court will find the alternate forum adequate. Thus, district courts do not seem to favor common law countries as adequate alternate forums over civil law based countries.

In addition, about 35% of the world's population is under a system similar to common law where as about 59% of the world's population is under a system similar to civil law.[110] For the dataset, about 39% of the decisions involved common law system countries and about 54% of the decisions involved civil law system countries. The proportions of decisions in the dataset from the respective legal systems are close to the proportions of the world's population under the respective legal systems. This seems to indicate that there is no preference among defense litigants regarding the preferred legal system to seek a forum non conveniens motion. Defense litigants do not avoid common law or civil law systems as an alternate forum in forum non conveniens motions.

VII. LOGISTIC REGRESSION MODELS

In the previous sections, factors were considered in isolation. In this section, logistic regressions were preformed on some of the previously discussed significant factors. Logistic regressions are used in models with a binary or a 0 or 1 response.[111] In this dataset 1 equals a decision of an adequate forum and 0 equals a decision of an inadequate forum. In a logistic regression model, coefficients will be estimated for each of the factors in the model. These coefficients can be used to predict the probability that a district court will find a foreign forum to be adequate given various factors,[112] which may be useful for a defense

[110] This was calculated using the data from the University of Ottawa. *See supra* text accompanying note 108.

[111] For a further discussion of logistic regression, see THOMAS H. WONNACOTT & RONALD J. WONNACOTT, REGRESSION: A SECOND COURSE IN STATISTICS 137 (1981).

[112] Given various independent variables $X_1,\ldots,X_i$ the predicted probability, P, that a foreign forum will be found adequate is $P = 1/(1 + \exp(-\acute{a} - \hat{a}_1X_1 - \ldots - \hat{a}_iX_i)$, where á

litigant's consideration whether or not to file a motion for forum non conveniens. In addition, the logistic regressions will allow us to consider the significance of various factors given the presence of other factors being held equal.

Table 23 presents logistic regression results[113] using the entire dataset of 769 observations for several of the significant factors discussed previously. Coefficients predicting the probability of a decision of an adequate alternative foreign forum are listed for each variable. P-values indicating the significance of each coefficient are also listed. Odds ratios are given for each of the factors. The odds ratios represent the ratio change in the odds of an adequate forum decision for a one-unit change in the predictor variable.

Table 23

N = 769 Observations

Variable	**Coefficient**	**P-Value**	**Odds Ratio**
Constant	1.478	0.001	
3rd Circuit	-0.839	0.015	0.395
4th Circuit	-0.928	0.022	0.395
Diversity Jurisdiction	0.920	0.000	2.509
Plaintiff in Service Industry	-1.041	0.001	0.353
Majority Foreign Defendants	-0.200	0.381	0.819
Defendant in Public Administration	-0.550	0.306	0.577
Free Country (Freedom House)	0.288	0.419	1.334
Partly Free Country (Freedom House)	0.674	0.073	1.963
Bottom Third in GDP per Capita	-1.949	0.000	0.142
Middle Third in GDP per Capita	-0.914	0.002	0.401

As described in a previous section of this paper, decisions from the Third and Fourth Circuits have a lower percentage of decisions where the foreign forum was found to be adequate, 73% and 61% respectively. The logistic regression results in Table 23 indicate that whether a forum non conveniens decision comes from the Third or Fourth Circuits, it still has a negative significant effect on the predicted probability of finding an adequate forum, when considered with other factors in the model.

Cases based on diversity jurisdiction increase the predicted probability that a foreign forum will be found adequate and the coefficient in the logistic regression is highly significant. A case being based on diversity jurisdiction increases the odds that the foreign forum will be found adequate by about two and a half times. It was suggested previously that cases based on federal question jurisdiction involve le-

is the constant generated in the logistic regression and $\hat{a}_1, \ldots, \hat{a}_i$ are the coefficients generated in the logistic regression.

[113] The logistic regressions were calculated using SPSS Graduate Pack 15.0.

gal issues and subjects more unique to the United States and to an American understanding of the law, and judges would be less apt to dismiss these cases to a foreign forum. Thus, district courts would be more likely to find an adequate forum in a foreign country, when jurisdiction is based on diversity and does not involve federal question jurisdiction.

A plaintiff being in the service industry had a statistically significant negative effect on the predicted probability of finding an adequate forum. However, having a majority of the defendants being foreign or the defendant being in public administration was not statistically significant in the logistic regression model. The difference in the percentage being adequate between a majority of defendants being foreign versus not was modest to begin with, only 6%. Also, there may not have been enough observations in the public administration category to provide a statistically significant result.

Using the Freedom House[114] classifications of a free country and partly free country for political rights and civil liberties, these variables had positive coefficients in the logistic regression, which indicate an increased predicted probability of an adequate foreign forum in a free country or a partly free country. However, neither of the coefficients for a free country or a partly free country was statistically significant at the 5% level. These results are likely due to free countries and partly free countries being countries that also tend to be more developed and have higher GDP per capita, which was statistically significant. The effect that a country being partly free or free may be picked up by a country's GDP per capita in a judge's decision on the adequacy of a foreign forum.

Finally, the results of the initial logistic regression with indicator variables for countries being in the bottom third of countries based on GDP per capita or in the middle third of countries based on GDP per capita indicate highly statistically significant results of the effect of GDP per capita on the predicted probability of an adequate foreign forum. Being in the bottom third of countries or in the middle third of countries based on GDP per capita both had a negative effect on the predicted probability of finding an adequate foreign forum, with the bottom third having a more negative effect than the middle third. The foreign forum being in a country in the bottom third of GDP per capita had odds of finding an adequate forum about 0.142 times the odds of finding an adequate forum in a country not in the bottom third. The foreign forum being in a country in the middle third in GDP per capita had odds of finding an adequate forum about 0.401 times the odds of finding an adequate forum in a country not in the middle third. The results regarding GDP per capita seem to confirm that judges are less

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[114] *See supra* note 86.

likely to find an adequate forum in foreign countries with low levels of economic development, low GDP per capita.

Table 24 presents logistic regression results using the statistically significant variables from the previous regression and including the variables available from the World Bank. The variables from the World Bank measuring political stability, degree of government effectiveness, rule of law, and control of corruption were only available starting in 1996, and thus not all observations, which start in 1982, contain these variables. As previously discussed, due to the high degree of correlation between government effectiveness, rule of law, and control of corruption measures, these three were combined into one measure by taking the average of the three.[115] The new regression included a variable indicating whether a country was in the bottom one-third of countries in terms of political stability. Indicator variables were also included for countries that were in the bottom one-third or in the middle one-third in terms of the average of government effectiveness, rule of law, and control of corruption.

Table 24

N = 503 Observations

Variable	**Coefficient**	**P-Value**	**Odds Ratio**
Constant	1.740	0.000	
3rd Circuit	-1.005	0.019	0.366
4th Circuit	-1.328	0.004	0.265
Diversity Jurisdiction	0.812	0.001	2.252
Plaintiff in Service Industry	-1.279	0.001	0.278
Bottom Third in GDP per Capita	-2.596	0.000	0.075
Middle Third in GDP per Capita	-1.142	0.038	0.319
Bottom Third in Political Stability	0.432	0.300	1.540
Bottom Third in Average Government Effectiveness, Rule of Law, and Corruption	-0.209	0.734	0.811
Middle Third in Average Government Effectiveness, Rule of Law, and Corruption	0.010	0.985	1.010

The results, when including data from the World Bank, do not differ much from the results without the World Bank variables. All the variables that were previously significant are still significant in this regression with roughly similar values. None of the World Bank variables were statistically significant as the smallest p-value was 0.300, which is not significant. In addition, the predicted coefficients for the World Bank variables were smaller in absolute magnitude than any of the other variables.

[115] *Supra* Part VI(B).

Also, the positive coefficient for the bottom third in political stability indicator is contrary to theory. It would be counterintuitive to think that judges would find forums in politically unstable countries to be more adequate then forums in politically stable ones. Most likely what is occurring in the model is that the degree of political stability, the level of governmental effectiveness, the rule of law, and the control of corruption are related to the level of GDP per capita, with countries having higher levels of GDP per capita being more politically stable, having more effective governments, having a greater rule of law, and controlling corruption more effectively. This relationship causes the regression model unable to distinguish the effects measured by the World Bank data from GDP per capita.

Table 25 contains the results of the final logistic regression model using only variables that were previously found to be statically significant in the previous regressions. The coefficients in this model are similar in magnitude to the coefficients given previously for the same variables, and the coefficients are all statistically significant.

Table 25

N = 769 Observations

Variable	Coefficient	P-Value	Odds Ratio
Constant	1.601	0.000	
3rd Circuit	-0.860	0.012	0.423
4th Circuit	-1.142	0.002	0.319
Diversity Jurisdiction	0.963	0.000	2.621
Plaintiff in Service Industry	-1.038	0.001	0.354
Bottom Third in GDP per Capita	-1.814	0.000	0.163
Middle Third in GDP per Capita	-0.753	0.001	0.471

For defense litigants considering a motion for forum non conveniens with an alternate forum in a foreign country, this logistic regression model may be used to predict the probability that the alternate forum will be considered adequate. Further investigation may be warranted as to the reasons why in the Third and Fourth Circuit forum non conveniens decisions regarding adequacy differ, as well as why plaintiffs in the service industry are more likely to have a forum considered inadequate. However, the logistic regression models do help establish that subject matter jurisdiction and the level of economic development in a foreign country can predict district courts decisions on the adequacy of a foreign forum.

VIII. SUGGESTION FOR CLARIFYING THE ADEQUATE ALTERNATIVE FORUM REQUIREMENT

Without discussing whether the doctrine of forum non conveniens doctrine should be abandoned, the empirical results presented

suggest a need for the courts to clarify what constitutes an "adequate alternative forum." The empirical results show that when district courts decide whether an alternative forum is adequate, they are influenced by factors that may not be readily evident in the guidance given by the Supreme Court in the *Piper* decision. The courts should make clear to litigants that their determination of the adequacy of the alternative forum depends on the complexity of the law at issue as well as the political, social, and economic conditions of the foreign country being offered as the alternative forum. In fairness, litigants should know that these factors are being considered in evaluating whether a foreign forum is adequate, and the litigants should be given an opportunity to brief and address these factors.

IX. CONCLUSION

The Supreme Court, in setting guidelines for granting a motion for forum non conveniens, has required the existence of an alternate adequate forum. However, beyond the condition that an adequate alternate forum is one where the defendant is "amenable to process,"[116] the Supreme Court has not provided much further guidance. Various factors have been examined to determine whether there is any empirical evidence of what may constitute an adequate alternate forum. For example, there is evidence that district courts in the Third and Fourth Circuits are less likely to find a foreign forum to be adequate. District courts are more likely to consider cases based on diversity jurisdiction to be adequate to resolve in a foreign forum than cases based on federal question jurisdiction. Defense litigants themselves indicate a preference of litigating in the United States versus litigating in countries that lack civil liberties, lack political rights, are politically unstable, have ineffective governments, disregard the rule of law, cannot control corruption, and are not as economically developed. In addition, district courts have been less likely to find an adequate forum in countries with these conditions. Ultimately, there is not evidence that would suggest the legal system in another country, the foreign language spoken, or the amount in controversy have an effect in influencing a district court's view on the adequacy of the foreign forum.

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[116] Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 506 (1947).