

## TEXAS SUPREME COURT MAKES FORUM SHOPPING IN TEXAS MORE DIFFICULT

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On December 5, 2008, the Texas Supreme Court issued a landmark ruling interpreting the Texas *forum non conveniens* statute, § 71.051 of the Texas Civil Practice and Remedies Code, which severely limits the discretion of a trial court in determining whether a case should be dismissed based upon *forum non conveniens*. *In Re: General Electric Company, Et Al., Relators*, No. 07-0195 (Tex. 2008). As a result of this ruling, trial court judges **must** dismiss a case on the basis of *forum non conveniens* if the evidence establishes that an adequate alternative forum exists and that the private and public factors have been met. Thus, it will be more difficult for a plaintiff to forum shop and maintain non-Texas claims in Texas.

In December 2005, Austin Richards, a lifelong resident of Maine, was diagnosed with mesothelioma. Richards filed suit in Dallas County against General Electric and over twenty other companies, claiming that they manufactured, sold, or distributed the asbestos which caused his disease. Richards had never worked or lived in Texas, nor was he treated for his disease in Texas. Considering that Richards had absolutely no connection to Texas, certain defendants in the case filed a motion to dismiss based upon *forum non conveniens*. At the trial court level, the court denied the defendants' motion to dismiss. Although the trial court's denial order did not state the grounds for denial, a letter that Judge Mark Davidson sent to counsel suggested that he did not believe MDL 875 was an adequate forum because of the potential for delays in the case getting set for trial, which was the principal argument offered by Richards in opposition to the motion at the trial level.

On appeal, the primary issues before the court were: (1) how much discretion does a trial court have when considering a *forum non conveniens* motion; and (2) is MDL 875 an adequate alternative forum. As to the first issue, the parties battled over the effect of the Texas Legislature's recent amendments to the *forum non conveniens* statute on a trial court's discretion

in ruling on such a motion. Prior to 2003, the statute provided that a trial court "may" dismiss a claim or action if the court found that such was in the interest of justice and for the convenience of the parties, if the action could be more properly heard in a forum outside Texas. However, in 2003, the Legislature amended the statute and replaced the word "may" with the word "shall."

The Legislature amended the statute again in 2005 in a manner the Supreme Court found limited a trial court's discretion even further. Prior to 2005, the statute provided that when determining whether to dismiss an action based on *forum non conveniens*, a trial court "may" consider the factors specified in § 71.051(b). In 2005, the Legislature amended the statute to read that a trial court "shall" consider the factors specified in § 71.051(b). Considering this amendment, the court found that by using the word "shall" in regard to a trial court's consideration of the factors listed in § 71.051(b), the Legislature had defined the terms "interests of justice" and "convenience of the parties" as they are used in the statute. Thus, the court found that a trial court must dismiss a claim if the statutory factors weigh in favor of the claim being more properly heard in a forum outside Texas.

As to whether MDL 875 was an adequate alternative forum, the court held that a forum objection based upon the time it will take to get to trial would not be permitted. The court ruled that speculation as to such comparative analysis of pre-trial procedures and trial settings between two forums should be avoided in *forum non conveniens* analysis. In light of such, the court found that MDL 875 was an adequate forum and found that the evidence weighed in favor of the case being dismissed on the grounds of *forum non conveniens*.

This decision is significant because it will now be much more difficult for a plaintiff to maintain claims in Texas when those claims have no connection to the state. Texas courts are a

popular forum for many Americans who are injured in Mexico or South America, although their claims have no connection to Texas. As a consequence, many American companies find themselves being sued in Texas for events that have no connection to Texas. In situations such as that, this ruling will make it more difficult for a plaintiff to maintain his case in Texas.

*For further information or analysis on this issue, which is vital to many American companies, please contact Tim Headley of Cozen O'Connor's Dallas, Texas, office. Cozen O'Connor is a nationally recognized leader in defending companies in all types of litigation.*

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