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United States District Court, N.D. Illinois.
 In re **AIR CRASH NEAR ATHENS, GREECE**
 ON AUGUST 14, 2005.
No. 06 C 3439.

Feb. 28, 2007.

Background: Representatives of 92 crew members and passengers killed in crash, near Athens, Greece, of Cypriot airliner on route from Cyprus to Prague, brought seven actions against aircraft manufacturer, alleging wrongful death claims based on strict product liability, negligence, and breach of warranty. The Judicial Panel on Multidistrict Litigation centralized the actions for pretrial proceedings in the Northern District of Illinois. Manufacturer moved to dismiss on grounds of forum non conveniens, in favor of litigation in Cyprus or Greece.

Holdings: The District Court, [Lindberg, J.](#), held that:
 (1) Cyprus and Greece were available fora;
 (2) Cyprus and Greece both provided adequate fora;
 (3) private interest factor of relative ease of access to proof favored dismissal;
 (4) pendency of litigation in Greece, between the Cypriot owner of airliner and its manufacturer, favored dismissal; and
 (5) public interest factor of local interest in deciding the actions in Cyprus or Greece favored dismissal.

Dismissed.

West Headnotes

[1] Federal Courts 170B 45

170B Federal Courts

170BI Jurisdiction and Powers in General
 170BI(B) Right to Decline Jurisdiction; Abstention Doctrine
 170Bk45 k. Forum Non Conveniens. **Most**

Cited Cases

Declarations of two witnesses in support of aircraft manufacturer's brief in response to motion, in product liability actions arising out of the crash of an airliner, to dismiss on grounds of forum non conveniens, would be stricken, where there was no reason why the declarations could not have been offered with manufacturer's initial brief.

[2] Federal Courts 170B 45

170B Federal Courts

170BI Jurisdiction and Powers in General
 170BI(B) Right to Decline Jurisdiction; Abstention Doctrine
 170Bk45 k. Forum Non Conveniens. **Most**

Cited Cases

List of cases, in exhibit to attorney's declaration in support of aircraft manufacturer's brief in response to motion, in product liability actions arising out of the crash of an airliner, to dismiss on grounds of forum non conveniens, would be stricken; list was an improper attempt to evade the page limitation imposed on the reply brief.

[3] Federal Courts 170B 45

170B Federal Courts

170BI Jurisdiction and Powers in General
 170BI(B) Right to Decline Jurisdiction; Abstention Doctrine
 170Bk45 k. Forum Non Conveniens. **Most**

Cited Cases

Supplemental declaration in support of aircraft manufacturer's brief in response to motion, in product liability actions arising out of the crash of an airliner, to dismiss on grounds of forum non conveniens, would be stricken; large portions of the declaration constituted either argument that should have been presented in manufacturer's brief, or information that could have been offered in declarant's original declaration.

[4] Federal Courts 170B 45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

Supplemental declarations of three expert witnesses in support of aircraft manufacturer's brief in response to motion, in product liability actions arising out of the crash of an airliner, to dismiss on grounds of forum non conveniens, would be stricken; experts had had a full opportunity to present their opinions in their original declarations.

[5] Federal Courts 170B ↪45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

Portions of aircraft manufacturer's brief in response to motion, in product liability actions arising out of the crash of an airliner, to dismiss on grounds of forum non conveniens, would be stricken, to extent that they relied on stricken declarations.

[6] Federal Courts 170B ↪45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

Under the doctrine of forum non conveniens, a court may dismiss a case over which it would normally have jurisdiction if it best serves the convenience of the parties and the ends of justice.

[7] Federal Courts 170B ↪45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Ab-

stention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

In a forum non conveniens analysis, a court first examines whether an adequate alternative forum is available; if such a forum exists, the court then balances various private and public interest factors relating to the proper location of the litigation.

[8] Federal Courts 170B ↪45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

Defendant bears burden of persuading the court that a case should be dismissed on the grounds of forum non conveniens.

[9] Federal Courts 170B ↪45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

Cyprus and Greece were available fora, for purposes of forum non conveniens analysis in product liability actions arising out of the crash of a Cypriot airliner in Greece; manufacturer had agreed to consent to the jurisdiction of the Greek or Cyprus courts if the actions in the United States were dismissed, and had offered expert opinions that the courts in Cyprus and Greece would have jurisdiction over it if it appeared voluntarily and did not contest jurisdiction.

[10] Federal Courts 170B ↪45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

[170Bk45](#) k. Forum Non Conveniens. [Most Cited Cases](#)

A forum is “available,” for purposes of forum non conveniens analysis, if all parties are amenable to process and are within the forum’s jurisdiction.

[11] Federal Courts 170B 45

170B Federal Courts

170BI Jurisdiction and Powers in General

[170BI\(B\)](#) Right to Decline Jurisdiction; Abstention Doctrine

[170Bk45](#) k. Forum Non Conveniens. [Most Cited Cases](#)

A forum is “adequate,” for purposes of a forum non conveniens analysis, if the parties will not be deprived of all remedies or treated unfairly.

[12] Federal Courts 170B 45

170B Federal Courts

170BI Jurisdiction and Powers in General

[170BI\(B\)](#) Right to Decline Jurisdiction; Abstention Doctrine

[170Bk45](#) k. Forum Non Conveniens. [Most Cited Cases](#)

For purposes of a forum non conveniens analysis, an alternative forum need not provide the same range of remedies that are available in the United States, as long as it provides some potential avenue for redress.

[13] Federal Courts 170B 45

170B Federal Courts

170BI Jurisdiction and Powers in General

[170BI\(B\)](#) Right to Decline Jurisdiction; Abstention Doctrine

[170Bk45](#) k. Forum Non Conveniens. [Most Cited Cases](#)

Cyprus and Greece both provided adequate fora, for purposes of forum non conveniens analysis in product liability actions arising out of the crash of a Cypriot airliner in Greece; courts in both countries offered potential avenues for redress and adequate procedural safeguards, including a right to appeal,

existed in both countries.

[14] Federal Courts 170B 44

170B Federal Courts

170BI Jurisdiction and Powers in General

[170BI\(B\)](#) Right to Decline Jurisdiction; Abstention Doctrine

[170Bk44](#) k. Plaintiff’s Choice of Forum and Forum-Shopping. [Most Cited Cases](#)

Ordinarily, there is a strong presumption in favor of a plaintiff’s choice of forum, but a foreign plaintiff’s choice to bring suit in the United States is entitled to less deference because trial of a foreign plaintiff’s claims in the U.S. is likely to be less convenient.

[15] Federal Courts 170B 45

170B Federal Courts

170BI Jurisdiction and Powers in General

[170BI\(B\)](#) Right to Decline Jurisdiction; Abstention Doctrine

[170Bk45](#) k. Forum Non Conveniens. [Most Cited Cases](#)

The presence of American plaintiffs, by itself, does not bar forum non conveniens dismissal.

[16] Federal Courts 170B 45

170B Federal Courts

170BI Jurisdiction and Powers in General

[170BI\(B\)](#) Right to Decline Jurisdiction; Abstention Doctrine

[170Bk45](#) k. Forum Non Conveniens. [Most Cited Cases](#)

Fact that approximately five of the plaintiffs, in product liability actions arising out of the crash of a Cypriot airliner in Greece might be Greek, whereas only two were American, militated in favor of dismissal on forum non conveniens grounds; it was likely to be less convenient for the Greek plaintiffs to pursue their claims in the United States.

[17] Federal Courts 170B 45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

For purposes of a forum non conveniens analysis, the ability to implead other entities is an additional private interest factor.

[18] Federal Courts 170B 🔑45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

In light of aircraft manufacturer's agreement to produce its documents and witnesses in Cyprus or Greece, private interest factor of relative ease of access to proof favored dismissal, on forum non conveniens grounds, of product liability actions arising out of the crash of a Cypriot airliner in Greece; most information relating to the aircraft owner and its maintenance records was in Cyprus, and most information relating to the crash was in Greece.

[19] Federal Courts 170B 🔑45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

Availability of compulsory process for the attendance of unwilling witnesses slightly favored dismissal, on forum non conveniens grounds, of product liability actions arising out of the crash of a Cypriot airliner in Greece, where aircraft manufacturer had agreed to produce its documents and witnesses in Cyprus or Greece; witnesses in Cyprus and Greece would not be subject to compulsory process in the United States.

[20] Federal Courts 170B 🔑45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

Cost of transporting witnesses was a neutral factor for purposes of forum non conveniens analysis in product liability actions arising out of the crash of a Cypriot airliner in Greece; costs would be incurred no matter where the litigation proceeded.

[21] Federal Courts 170B 🔑45

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk45 k. Forum Non Conveniens. [Most Cited Cases](#)

Possibility of viewing the crash site was a neutral factor for purposes of forum non conveniens analysis in product liability actions arising out of the crash of a Cypriot airliner in Greece, since neither side argued that it would be useful to view the site.

[22] Federal Courts 170B 🔑417

170B Federal Courts

170BVI State Laws as Rules of Decision

170BVI(C) Application to Particular Matters

170Bk417 k. Federal Jurisdiction. [Most Cited Cases](#)

A federal district court may exercise personal jurisdiction only if a court of the state in which it sits would have such jurisdiction.

[23] Constitutional Law 92 🔑3964

92 Constitutional Law


92XXVII Due Process

92XXVII(E) Civil Actions and Proceedings

92k3961 Jurisdiction and Venue

92k3964 k. Non-Residents in General. [Most Cited Cases](#)

(Formerly 92k305(5))

Courts 106  **12(2.10)**

106 Courts

106I Nature, Extent, and Exercise of Jurisdiction in General

106k10 Jurisdiction of the Person

106k12 Domicile or Residence of Party

106k12(2) Actions by or Against Non-residents; “Long-Arm” Jurisdiction in General

106k12(2.10) k. Defendant's Activities in Forum State; Cause of Action Arising Therefrom. **Most Cited Cases**

A Washington court has specific personal jurisdiction over a party if: (1) the party purposefully committed some act or consummated some transaction in Washington, (2) the cause of action arose from, or was connected with this act or transaction, and (3) the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.

[24] Federal Courts 170B  **45**

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Ab-stention Doctrine

170Bk45 k. Forum Non Conveniens. **Most Cited Cases**

For purposes of forum non conveniens analysis in product liability actions arising out of the crash of a Cypriot airliner in Greece, factor of aircraft manufacturer's ability to implead aircraft owner did not weigh in favor of dismissal, where it was possible that owner had sufficient contacts with Washington, the State of manufacturer's domicile, to support exercise of specific personal jurisdiction over owner by a federal court in Washington.

[25] Federal Courts 170B  **45**

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Ab-stention Doctrine

170Bk45 k. Forum Non Conveniens. **Most Cited Cases**

Pendency of litigation in Greece, between the Cypriot owner of airliner which crashed in Greece and the manufacturer of that aircraft, favored dismissal, on forum non conveniens grounds, of product liability actions brought by representatives of passengers killed in the crash; proceeding with the litigation in the United States would result in inefficient and duplicative fact-finding and risked the possibility that the Greek and American courts would reach inconsistent results.

[26] Federal Courts 170B  **45**


170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Ab-stention Doctrine

170Bk45 k. Forum Non Conveniens. **Most Cited Cases**

Need to translate documents was a neutral factor, for purposes of forum non conveniens analysis, in product liability actions arising out of the crash of a Cypriot airliner in Greece.

[27] Federal Courts 170B  **45**

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Ab-stention Doctrine

170Bk45 k. Forum Non Conveniens. **Most Cited Cases**

Administrative difficulties stemming from court congestion in the United States, as compared to Cyprus or Greece, did not favor dismissal, on forum non conveniens grounds, of product liability actions against manufacturer of Cypriot airliner which crashed in Greece, where neither party offered useful evidence relating to the lengths of time to trial in Cyprus or Greece.

[28] Federal Courts 170B  **45**

170B Federal Courts

170BI Jurisdiction and Powers in General

170BI(B) Right to Decline Jurisdiction; Ab-

stention Doctrine

[170Bk45](#) k. Forum Non Conveniens. [Most Cited Cases](#)

Public interest factor of local interest in deciding, in Cyprus or Greece, product liability actions against manufacturer of Cypriot airliner which crashed in Greece, favored dismissal of the actions on forum non conveniens grounds; Cyprus had a strong interest in the litigation since nearly all of the decedents were residents of that country, Greece had a strong interest, since the crash occurred on Greek soil and killed several Greek residents, and both countries were conducting criminal investigations, whereas only one of the decedents was an American citizen and the only U.S. interest lay in deterring production of defective products.

[29] Federal Courts 170B  **45**

170B Federal Courts

170BI Jurisdiction and Powers in General

[170BI\(B\)](#) Right to Decline Jurisdiction; Abstention Doctrine

[170Bk45](#) k. Forum Non Conveniens. [Most Cited Cases](#)

The doctrine of forum non conveniens is designed in part to help courts avoid conducting complex exercises in comparative law.

[30] Federal Courts 170B  **45**

170B Federal Courts

170BI Jurisdiction and Powers in General

[170BI\(B\)](#) Right to Decline Jurisdiction; Abstention Doctrine

[170Bk45](#) k. Forum Non Conveniens. [Most Cited Cases](#)

Public interest factors point towards dismissal, on forum non conveniens grounds, where the court would be required to untangle problems in conflict of laws, and in law foreign to itself.

[31] Federal Courts 170B  **45**

170B Federal Courts

170BI Jurisdiction and Powers in General

[170BI\(B\)](#) Right to Decline Jurisdiction; Abstention Doctrine

[170Bk45](#) k. Forum Non Conveniens. [Most Cited Cases](#)

Public interest factor of choice of law issues did not outweigh other factors that favored dismissal, on forum non conveniens grounds, of product liability actions against manufacturer of Cypriot airliner which crashed in Greece.

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[Michael Patrick Verna](#), Bowles & Verna LLP, Walnut Creek, CA, [Robert A. Clifford](#), Clifford Law Offices, P.C., Chicago, IL, for **Air Crash Near Athens**, Greece on August 14, 2005.

[LINDBERG](#), District Judge.

STATEMENT

I. Background

On August 14, 2005, Helios Airways (“Helios”) Flight 522 took off from Cyprus. The flight was to stop in Athens, Greece, prior to continuing to its ultimate destination of Prague, Czech Republic. During the flight to Athens, the airplane, a Boeing 737-300, failed to pressurize. As a result of the failure to pressurize, the pilots were either rendered unconscious or killed. The airplane crashed near Athens, and all of the 121 crew members and pas-

sengers were killed.

The ninety plaintiffs in this multidistrict litigation are representatives of ninety-two of the individuals killed in the crash. These plaintiffs brought a total of seven actions against Boeing in the district courts for the Northern District of Illinois, the Central District of California, and the Eastern District of Pennsylvania. Plaintiffs' master complaint alleges wrongful death claims based on strict product liability, negligence, and breach of warranty. Defendant contends that pilot and maintenance errors by Helios, which is not a party to these actions, were to blame for the crash. Pursuant to the orders of the Judicial Panel on Multidistrict Litigation, this Court is handling the pretrial proceedings for all of the actions.

Defendant has moved to dismiss these actions on the grounds of forum non conveniens. Defendant argues that either Cyprus or Greece would provide a more convenient forum for this litigation than an American court.

II. Motion to Strike Reply Brief

[1][2][3][4][5] As an initial matter, the Court considers plaintiffs' motion to strike defendant's reply brief and supporting declarations. The declarations of Dionysios Kondylis and Dimitris Emvalomenos are stricken, since there is no reason these witnesses' information could not have been offered with defendant's initial brief. See *Black v. TIC Inv. Corp.*, 900 F.2d 112, 116 (7th Cir.1990). The lengthy list of cases in Exhibit D to the supplemental declaration of Allison Kendrick is stricken as an improper attempt to evade the page limitation this Court imposed on defendant's reply brief. The supplemental declaration of Richard Breuhaus is stricken, on the basis that large portions of it constitute either argument that should have been presented in defendant's brief, or information that could have been offered in Breuhaus's original declaration. The supplemental declarations of Dimitrios (Dimitrakis) Stylianides, Alecos Markides, and

Stelios Koussoulis are stricken, because these expert witnesses had a full opportunity to present their opinions in their original declarations. The portions of defendant's reply brief that rely on the stricken declarations are also stricken.

III. Forum Non Conveniens Analysis

[6][7][8] Under the doctrine of forum non conveniens, a court may dismiss a case *797 "over which it would normally have jurisdiction if it best serves the convenience of the parties and the ends of justice." *In re Bridgestone/Firestone, Inc.*, 420 F.3d 702, 703 (7th Cir.2005) (quoting *Kamel v. Hill-Rom Co.*, 108 F.3d 799, 802 (7th Cir.1997)). In a forum non conveniens analysis, a court first examines whether an adequate alternative forum is available. *Id.* at 704. If such a forum exists, the court then balances various private and public interest factors relating to the proper location of the litigation. *Id.* The defendant bears the burden of persuading the court that a case should be dismissed on the grounds of forum non conveniens. *In re Ford Motor Co., Bridgestone/Firestone N. Am. Tire*, 344 F.3d 648, 652 (7th Cir.2003).

A. Existence of an Adequate Alternative Forum

[9][10] The Court first examines whether the Cyprus and Greek courts are "available." A forum is available if "all parties are amenable to process and are within the forum's jurisdiction." *In re Bridgestone/Firestone, Inc.*, 420 F.3d at 704. In this case, defendant has agreed to consent to the jurisdiction of the Greek or Cyprus courts, if the actions are dismissed here. Defendant has offered expert opinions that the courts in Cyprus and Greece would have jurisdiction over it, if it appeared voluntarily and did not contest jurisdiction. Plaintiffs do not dispute the availability of Cyprus or Greece. The Court finds that both of these fora are "available." See *Kamel*, 108 F.3d at 803 (finding Saudi Arabia to be an available forum where defendants consented to the jurisdiction of its courts).

[11][12] Next, the Court considers whether Cyprus and Greece are “adequate.” The standard for establishing the adequacy of a forum is easily met: a forum is adequate if “the parties will not be deprived of all remedies or treated unfairly.” *In re Bridge-stone/Firestone, Inc.*, 420 F.3d at 704. An alternative forum need not provide the same range of remedies that are available here, as long as it provides “some potential avenue for redress.” *Kamel*, 108 F.3d at 803 (quoting *Ceramic Corp. of Am. v. Inka Mar. Corp.*, 1 F.3d 947, 949 (9th Cir.1993)).

[13] Defendant has offered evidence that both Cyprus and Greece offer potential avenues for redress. Although the parties dispute whether plaintiffs could assert their strict product liability claims in Cyprus or Greece, plaintiffs do not dispute that they could assert claims based on a negligence theory in both fora. Recoverable damages in Cyprus include damages for loss of economic support, bereavement damages up to 10,000 Cyprus Pounds (approximately \$23,000 U.S. under the current exchange rate) to a limited class of family members, and funeral expenses; the parties dispute whether damages for pain and suffering are recoverable in Cyprus. Damages may be recovered in Greece for loss of economic support, mental distress, and funeral expenses.

While the procedures in the courts in Cyprus and Greece differ from those of the United States courts, adequate procedural safeguards exist in both Cyprus and Greece. Cases in Cyprus are adversarial proceedings before a judge that include the presentation of documentary evidence and oral or written testimony, and cross-examination. In Greece, cases are tried before a multi-member court, in which each party bears the burden of proving its own arguments and rebutting its opponent's arguments; the court also may question the parties and witnesses. There is a right to appeal in both Cyprus and Greece.

Although plaintiffs argue that certain limitations in the Cyprus and Greek legal *798 systems reflect a lesser public interest in those fora, plaintiffs do not

contend that these limitations render either Cyprus or Greece inadequate. Indeed, the limitations plaintiffs cite would not be enough to establish that the alternative fora are inadequate. *See, e.g., Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981) (smaller potential damages award and absence of strict liability not enough to render forum inadequate); *Mercier v. Sheraton Int'l, Inc.*, 981 F.2d 1345, 1352-53 (1st Cir.1992) (differences in discovery procedures not enough to render forum inadequate); *Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 768 (9th Cir.1991) (lack of jury trial in alternative forum not enough to render forum inadequate). Nor would a lack of prior experience in handling complex aviation accident litigation by the courts and attorneys in Cyprus and Greece render those fora inadequate. The Court finds that Cyprus and Greece are both “adequate.”

B. Plaintiffs' Choice of Forum

[14][15] Having found that both Cyprus and Greece are adequate and available, the Court next weighs various private and public interest factors against the deference that is due plaintiffs' choice of forum. Ordinarily, there is a strong presumption in favor of a plaintiff's choice of forum. *Piper Aircraft Co.*, 454 U.S. at 255, 102 S.Ct. 252. However, a foreign plaintiff's choice to bring suit in the United States is entitled to less deference because trial of a foreign plaintiff's claims in the United States is likely to be less convenient. *Id.* at 256. The presence of American plaintiffs, by itself, does not bar forum non conveniens dismissal. *See Cheng v. Boeing Co.*, 708 F.2d 1406, 1411 (9th Cir.1983).

[16] Of the ninety plaintiffs in this case, only two are United States residents.^{FN1} It appears that approximately five plaintiffs may be Greek.^{FN2} The remaining plaintiffs apparently reside in Cyprus. Although the Greek plaintiffs are entitled to status equal to Americans under a treaty between the United States and Greece, *see Treaty of Friendship, Commerce and Navigation*, Aug. 3, 1951,

U.S.-Greece, 5 U.S.T. 1829, it is appropriate to consider that it is still likely to be less convenient for the Greek plaintiffs to pursue their claims in the United States. See *In re Ford Motor Co.*, 344 F.3d at 653.

FN1. These two plaintiffs are Cyprus citizens who reside in Pennsylvania; the decedent whom they represent was an American citizen residing in Cyprus.

FN2. The parties discuss “Greek plaintiffs,” but do not identify how many of the plaintiffs are Greek. Five of the decedents were residents and citizens of Greece, however, and therefore a similar number of plaintiffs may be as well.

C. Private Interest Factors

[17] The Court next examines the private interest factors. Relevant private interest factors include: 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, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.

In re Bridgestone/Firestone, Inc., 420 F.3d at 704 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S.Ct. 839, 91 L.Ed. 1055 (1947)). The ability to implead other entities is an additional private interest factor. See *Piper Aircraft*, 454 U.S. at 259, 102 S.Ct. 252.

*799 1. Relative ease of access to sources of proof

As an initial matter, both sides attempt to prematurely limit the issues in this litigation. Defendant states that Helios has agreed not to contest liability in any wrongful death or property damage action filed against Helios in Cyprus or Greece. According to defendant, as a result of Helios's agreement, damages are the only remaining issue, and the ma-

ajority of damages evidence is located in Cyprus and Greece.

Meanwhile, plaintiffs contend that there is no real dispute between the parties over facts relating to Helios's conduct, and offer to stipulate to the conclusions of the Greek Air Accident Investigation and Aviation Safety Board (the “AAIASB”). According to plaintiffs, their product liability claim is the focus of these cases, and the evidence and witnesses most critical to that claim are located in the United States, where the airplane was designed and manufactured.

Neither argument is persuasive. Although Helios may have agreed not to contest liability, Boeing-the defendant here-has not. Plaintiffs are entitled to pursue their claims against Boeing instead of settling with Helios. At the same time, defendant is entitled to pursue its defense.

Even putting these arguments aside, the parties disagree over what issues are central to the litigation, and therefore, what evidence is relevant. At this early stage, however, the Court cannot determine what the ultimate focus of the litigation will be. In its forum non conveniens analysis, the Court “must do no more than delineate the likely contours of the case by ascertaining, among other things, the nature of the plaintiff's action, the existence of any potential defenses, and the essential sources of proof.” *Lacey v. Cessna Aircraft Co.*, 932 F.2d 170, 181 (3d Cir.1991).

The Greek investigation into the crash by the AAIASB faulted both Helios and Boeing. Specifically, the AAIASB concluded that the direct causes for the crash were the Helios flight crew's failure to recognize that the cabin pressurization mode selector was in the manual position, and the flight crew's failure to properly identify the reason for the activation of a warning horn. The AAIASB also concluded that a contributing factor to the crash was the failure to return the pressurization mode selector to the automatic position after maintenance on the airplane. The AAIASB concluded that a latent

cause of the crash was the ineffectiveness and inadequacy of measures taken by Boeing in response to previous pressurization incidents in the 737 aircraft, both with regard to modifications to aircraft systems and guidance to crews.

The Court finds that at this point there is support in the record for both plaintiffs' product liability claim against defendant, and for defendant's defense that Helios was responsible for the crash. Therefore, sources of proof on all these issues are relevant.

[18] Most, if not all of the evidence and witnesses with knowledge relating to the design and manufacture of the Boeing 737-300 series aircraft and its component parts is located in the United States, along with defendant's manuals, warnings, pre-flight checklists and subsequent revisions. In addition, documents and witnesses relating to defendant's investigations of, and responses to prior pressurization incidents are located in the United States. Some Boeing employees and United States government officials participated in the investigation of the crash, and are located in the United States. Finally, components of the accident airplane's pressurization and bleed air systems were analyzed in Boeing's laboratory facilities in the United States. Defendant has agreed to make relevant evidence or witnesses in its possession, custody, or control available in Cyprus or Greece.

Most of the damages evidence in this litigation is located in Cyprus. Eighty-six of the ninety-two decedents were residents of Cyprus at the time of the crash, and an additional three decedents were citizens and residents of both Cyprus and Greece.^{FN3} Two hundred eleven of the 287 decedents' beneficiaries identified by plaintiffs during discovery are residents of Cyprus.^{FN4}

FN3. Two of the remaining decedents were residents and citizens of Greece, and the residency and citizenship of one of the remaining decedents is unknown.

FN4. Fifteen of the remaining beneficiaries

are Greek residents, two are residents of the United States, and the residency of the remaining beneficiaries is unknown.

In addition, since Helios is a Cyprus-based airline, most evidence relating to Helios is located in Cyprus. Helios management personnel and witnesses with knowledge relating to the flight crew, the accident airplane, and Helios's treatment of safety issues are located in Cyprus. Information relating to maintenance of the accident airplane,^{FN5} and Helios's manuals are also located in Cyprus. Finally, records and witnesses relating to the Cyprus Department of Civil Aviation's oversight of Helios's operations are located in Cyprus.

FN5. Some witnesses with information relating to maintenance of the accident airplane are also located in the United Kingdom.

Most of the evidence relating to the investigation of the crash is located in Greece. This evidence includes the wreckage of the accident airplane, information relating to the examination of the wreckage, and information relating to the post-mortem examinations of the decedents. Members of the AAIASB who conducted the investigation are located in Greece. Greek Air Force pilots who intercepted the airplane in the air before the crash are located in Greece, along with reports relating to their contact with the airplane. Finally, damages evidence relating to the Greek decedents is located in Greece.

Plaintiffs argue that defendant's participation in the AAIASB's investigation is an adequate substitute for access to records from that investigation in Cyprus and Greece. The Court disagrees. *See Van Schijndel v. Boeing Co.*, 434 F.Supp.2d 766, 777 (C.D.Cal.2006) (stating that "the fact that Boeing may have participated or assisted in some form in the investigation of the crash does not imply that Defendants have access to any of the other records of that investigation"). Given defendant's agreement to produce its documents and witnesses in

Cyprus and Greece, and the location of the vast majority of other evidence in Cyprus and Greece, the Court finds that the relative ease of access to proof favors both Cyprus and Greece over the United States courts in which these cases were brought.^{FN6} See *id.* at 778.

FN6. The Court also notes that plaintiffs have already encountered difficulties getting information from Cyprus and Greece to the United States in this litigation. On October 18, 2006, plaintiffs moved for additional time to respond to defendant's interrogatories and requests for admission. Although these discovery requests sought such basic information as the decedents' citizenship and residency, and the location of employment, banking, and medical records, plaintiffs stated that they had been unable to finalize their responses in a timely fashion, in part "[d]ue to the language and time difference between the plaintiffs and their counsel."

2. Availability of compulsory process for the attendance of unwilling witnesses

The Court next examines the factor of availability of compulsory process and the *801 cost of obtaining attendance of willing witnesses.

As noted above, defendant has agreed to make all relevant witnesses in its control available in Cyprus or Greece. Compulsory process is available in Cyprus and Greece, although plaintiffs contend that this power is limited in practice. European Union regulations would provide the procedure for obtaining evidence from Greece for use in Cyprus, and vice versa.

Helios has declined to voluntarily make its witnesses and evidence available in this litigation, and Helios's witnesses and the other nonparty witnesses in Cyprus and Greece would not be subject to compulsory process here. Therefore, the parties would

need to use the time-consuming procedures prescribed in the Hague Convention to obtain these witnesses' testimony for use in litigation in the United States, and such testimony would not be live. See Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, *opened for signature* Mar. 18, 1970, 23 U.S.T. 2555.

[19] The Court finds that the availability of compulsory process slightly favors dismissal. See *DiRienzo v. Philip Servs. Corp.*, 294 F.3d 21, 30 (2d Cir.2002) (concluding that district court had not abused its discretion in finding that availability of compulsory process factor weighed in favor of forum non conveniens dismissal, given large number of witnesses who would only appear in videotaped depositions obtained through letters rogatory); *Strategic Value Master Fund, Ltd. v. Cargill Fin. Servs., Corp.*, 421 F.Supp.2d 741, 769 (S.D.N.Y.2006) (large number of nonparty witnesses, the court's natural preference for live testimony, and time-consuming nature of using letters rogatory weighed in favor of dismissal).

3. Cost of obtaining attendance of willing witnesses

[20] The Court finds that the cost of transporting witnesses is a neutral factor, since such costs will be incurred no matter where this litigation proceeds.

4. Possibility of view of premises

[21] Neither side argues that it would be useful to view the crash site in Greece. The Court finds that the possibility of view of premises is a neutral factor in this case.

5. Other practical problems that make trial of a case easy, expeditious and inexpensive

a. Ability to implead other entities

Defendant argues that Helios cannot be brought into this action in the United States, and that this

factor favors dismissal. The parties agree that under the Montreal Convention, plaintiffs cannot sue Helios in the United States. *See* Convention for the Unification of Certain Rules for Int'l Carriage by Air, *opened for signature* May 28, 1999, *reprinted in* S. Treaty Doc. No. 106-45, 1999 WL 33292734. Defendant does not argue that the Montreal Convention would prevent it from suing Helios in the United States for contribution or indemnification. *See In re Air Crash near Nantucket Island, Mass., on Oct. 31, 1999*, 340 F.Supp.2d 240, 242-44 (E.D.N.Y.2004) (holding that predecessor treaty to the Montreal Convention would not bar United States jurisdiction over defendant Boeing's contribution and indemnity claims against third-party airline). Instead, defendant argues that it cannot bring Helios into this action here because no United States court has personal jurisdiction over Helios.

Plaintiffs respond that Helios is subject to specific personal jurisdiction in Washington based on Helios's entry into a contract*802 with defendant, and Helios's training activities in Washington. Plaintiffs contend that if defendant sued Helios in the Western District of Washington, these cases could be transferred to that district pursuant to 28 U.S.C. § 1404. Plaintiffs do not dispute that Helios could be sued in either Cyprus or Greece.

[22][23] A federal district court may exercise personal jurisdiction “only if a court of the state in which it sits would have such jurisdiction.” *Klump v. Duffus*, 71 F.3d 1368, 1371 (7th Cir.1995) (quoting *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1243 (7th Cir.1990)). A Washington court has specific personal jurisdiction over a party if: (1) the party purposefully committed some act or consummated some transaction in Washington; (2) the cause of action arose from, or was connected with this act or transaction; and (3) the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *See Raymond v. Robinson*, 104 Wash.App. 627, 15 P.3d 697, 702 (2001).

[24] Helios does not fly to and from the United

States. However, on January 19, 2000, defendant and Helios entered into a Customer Services General Terms Agreement relating to the airplane that is the subject of this action. In addition, Helios employees received flight crew training in Washington. Helios employees also attended meetings in Washington.

Helios's execution of a contract with a Washington resident, without more, is not enough to meet the purposeful act requirement. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478-79, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). To determine whether Helios purposefully established contacts with Washington as a result of the contract, the Court must examine the circumstances of the entire transaction, including prior negotiations, contemplated future consequences, the contract's terms, and the parties' actual course of dealing. *See id. at 479*, 105 S.Ct. 2174. The presence of a choice-of-law provision in a contract is relevant, but not dispositive. *Id. at 482*, 105 S.Ct. 2174.

Helios's contract with defendant is governed by Washington law, and allows for performance in Washington under some circumstances. The contract does not contain a forum selection clause, and there is no evidence in the record before the Court as to defendant and Helios's prior negotiations, contemplated future consequences, or actual course of dealings.

Although three Helios employees attended a “Spares Provisioning Conference” in Washington in late 1999 to early 2000, and one Helios employee attended a “737 NG Fleet Team Meeting” in Washington in May 2001, it is unclear from the record before the Court whether plaintiffs' claims are related to these contacts. Helios employees traveled to Washington to take delivery of an airplane in March 2001, and attended a meeting in Washington in April 2001 regarding that airplane; however, it appears that that airplane is not the airplane that is the subject of this litigation.

Under the record that is before the Court, it is pos-

sible that Helios made sufficient minimum contacts with Washington, related to plaintiffs' claims, that would support concluding that a federal court in Washington could exercise specific personal jurisdiction over Helios. The Court finds that defendant has not established that this factor weighs in favor of dismissal.

b. *Efficiency*

[25] Helios has sued Boeing in Greece, claiming that Boeing was responsible for defects in the accident airplane, and that these defects caused the crash. Defendant *803 argues that proceeding with this litigation in the United States would result in inefficient and duplicative fact-finding, and risks the possibility that the Greek and American courts would reach inconsistent results. Plaintiffs do not respond to this argument. The Court finds that the pendency of litigation between Helios and Boeing in Greece that raises claims similar to those raised in this litigation is a factor that favors dismissal. See *Van Schijndel*, 434 F.Supp.2d at 780.

c. *Translation*

[26] Plaintiffs argue that trial of these actions in Cyprus or Greece would be a "logistical nightmare" because English-language documents would have to be translated into Greek for trial in either forum. Court proceedings in both Cyprus and Greece are conducted in Greek, although it appears that under some circumstances Cyprus courts may permit the submission of documents in English. On the other hand, Greek-language documents would have to be translated into English for trial in the United States. The Court finds that the need to translate documents is a neutral factor.

After weighing the relevant private interest factors, the Court concludes that the private interest factors favor dismissal.

D. *Public Interest Factors*

The Court next weighs the public interest factors. Relevant public interest factors include: the administrative difficulties stemming from court congestion; the local interest in having localized disputes decided at home; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflicts of laws or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

In re Bridgestone/Firestone, Inc., 420 F.3d at 704 (quoting *Kamel*, 108 F.3d at 803).

1. *Administrative difficulties stemming from court congestion*

The Court first considers the administrative difficulties stemming from court congestion in the United States, as compared to Cyprus and Greece. The median time to trial in the Northern District of Illinois between April 1, 2004 and March 31, 2005 was twenty-four months.

Defendant's experts claim that cases generally go to trial within two to three years after summons issues in Cyprus, and within ten to twelve months in Greece (with a decision issuing three to four months after trial in Greece). Defendant's experts provide no basis for their conclusions, although they acknowledge that "it is difficult to estimate how long the proceedings ... will last" (Cyprus) and that "there are many parameters affecting the overall length of the proceedings" (Greece).

Plaintiffs' expert on the Cyprus legal system offers only a "loose[] assess [ment]" that in Cyprus, a case takes eight to ten years from filing to completion of the appeals process, based on a review of only the most recent ten decisions of the Cyprus Supreme Court. Plaintiffs offer no assessment of the length of time to trial in Cyprus. Plaintiffs offer no evidence as to the length of time to trial in Greece, and their expert states that Greek judicial statistics are kept "in only rough terms" and "offer

answers only in limited areas.”

[27] Since neither party has offered useful evidence relating to the length of time to trial in Cyprus or Greece, the Court finds that the factor of administrative difficulties stemming from court congestion does not favor dismissal.

***804** 2. *Local interest in having localized disputes decided at home and the unfairness of burdening citizens in an unrelated forum with jury duty*

Next, the Court examines the local interest in deciding these cases in Cyprus or Greece, as compared to the American courts.

[28] Cyprus has an extremely strong interest in this litigation. As noted above, nearly all of the decedents were residents of Cyprus at the time of the crash, and Helios is a Cypriot airline. *See Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1147 (9th Cir.2001) (interest of New Zealand “extremely high” compared to District of Arizona, in case involving deaths of New Zealand residents in crash of New Zealand airline). Cyprus's interest in the crash is further evidenced by the fact that Cyprus has instituted a criminal investigation into the crash. *See Reers v. Deutsche Bahn AG*, 320 F.Supp.2d 140, 160 (S.D.N.Y.2004) (France's “active interest” evident from pending criminal investigation).

Greece also holds a strong interest in these actions. The crash occurred on Greek soil while the airplane was en route to Athens, and killed several Greek residents. *Piper Aircraft Co.*, 454 U.S. at 260, 102 S.Ct. 252 (interest of Scotland “very strong” compared to Middle District of Pennsylvania, in case involving deaths of Scottish residents in crash of airplane in Scotland). In addition, a Greek agency conducted an official investigation, and Greece has also instituted a criminal investigation.

By contrast, the interest of the United States courts is not nearly as strong as the interest of either Cyprus or Greece. Although one of the decedents was an American citizen, the vast majority of de-

cedents were not. In addition, while the United States has some interest in deterring the production of defective products here, the amount of deterrence that would result from proceeding with the litigation in the United States is “likely to be insignificant.” *See Piper Aircraft Co.*, 454 U.S. at 260-61, 102 S.Ct. 252. Nor is the mere fact that Boeing 737 airplanes regularly fly in American airspace enough to outweigh the interests of Cyprus and Greece. *See Nai-Chao v. Boeing Co.*, 555 F.Supp. 9, 20 (N.D.Cal.1982), *aff'd Cheng v. Boeing Co.*, 708 F.2d 1406 (9th Cir.1983).

Plaintiffs argue that the Court should consider limitations of the legal systems of Cyprus and Greece as a public interest factor showing that the United States has a greater interest in the litigation. Plaintiffs cite no authority for this argument, and the Court finds it unpersuasive. *See Blanco v. Banco Indus. de Venezuela, S.A.*, 997 F.2d 974, 982 (2d Cir.1993) (warning that “[i]t is not the business of our courts to assume the responsibility for supervising the integrity of the judicial system of another sovereign nation”). This Court has already found the legal systems of Cyprus and Greece to be adequate.

The Court finds that both Cyprus and Greece have a much stronger local interest in this litigation than the United States. For that reason, it would be unfair to burden the citizens of Illinois, California, and Pennsylvania with jury duty in these cases.

3. *Familiarity with governing law and avoidance of unnecessary problems in conflicts of law or application of foreign law*

[29][30] These cases, like many aircraft disasters, pose complex choice of law issues. *See In re Air Crash at Belle Harbor, New York on Nov. 12, 2001*, No. MDL 1448, 2006 WL 1288298, at *4 (S.D.N.Y. May 9, 2006) (characterizing the selection of applicable law in aircraft disaster litigation as “a vexing issue”). The doctrine of forum non conveniens “is designed in part ***805** to help courts

avoid conducting complex exercises in comparative law.” *Piper Aircraft Co.*, 454 U.S. at 251, 102 S.Ct. 252. Accordingly, “the public interest factors point towards dismissal where the court would be required to ‘untangle problems in conflict of laws, and in law foreign to itself.’ ” *Id.* (quoting *Gulf Oil Corp.*, 330 U.S. at 509, 67 S.Ct. 839). Although foreign choice of law is a relevant factor favoring dismissal, at this stage the Court need not definitively resolve the issue of which forum’s law will apply. See *Varnelo v. Eastwind Transp., Ltd.*, No. 02 Civ.2084, 2003 WL 230741, at *27 (S.D.N.Y. Feb. 3, 2003) (collecting cases).

[31] Here, although defendant and plaintiffs disagree as to which forum’s law will apply, neither side offers a thorough analysis of the question. Accordingly, the Court will not undertake a lengthy choice of law analysis. Even if it determined that the law of an American state applied, however, the Court would not find that this factor would outweigh the other factors that favor dismissal.

IV. Conclusion

The Court recognizes the deference due plaintiffs’ choice of forum, but finds that this deference is greatly outweighed by other relevant factors. The Court finds that Cyprus would be a far more convenient forum for this litigation than the United States because of the ease of access to sources of proof in Cyprus and the strong public interest in having these actions decided in Cyprus. The Court also finds that Greece would be a far more convenient forum for this litigation than the United States because of the ease of access to sources of proof in Greece, the pendency of related litigation between Helios and Boeing in Greece, and the strong public interest in having these actions decided in Greece. Having carefully weighed the private and public interest factors, the Court concludes that dismissal is appropriate.

Defendant’s motion to dismiss is granted, subject to the following conditions:

1. Defendant shall submit to service of process and jurisdiction in these actions refiled in Cyprus or Greece;
2. Defendant shall waive any statute of limitations defense to any currently pending action that is refiled in Cyprus or Greece within 120 days from the date of the order of dismissal;
3. Defendant shall provide plaintiffs with access, in Cyprus or Greece, to all evidence and witnesses in their custody or control that are relevant to any issue raised in actions refiled in Cyprus or Greece;
4. Defendant shall bear the cost of translating English-language documents in its custody or control into Greek as necessary; and
5. Defendant shall pay any damages awarded by the Cyprus and/or Greek courts in the refiled actions, subject to any right of appeal.

N.D.Ill.,2007.

In re Air Crash Near Athens, Greece on August 14, 2005

479 F.Supp.2d 792, Prod.Liab.Rep. (CCH) P 17,720

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