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## *Forum Non Conveniens Dismissal in Austrian Ski Train Fire Case*

Victims of accidents outside the United States sometimes attempt to sue product manufacturers or distributors in courts in the United States. A common response to such suits is a motion to dismiss based on *forum non conveniens* grounds. Recently New York federal court Judge Shira Scheindlin granted such a motion in a case arising out of a 2000 ski train accident in Kaprun, Austria which resulted in a fire which killed 155 people.

The motion was brought by five American corporate defendants against plaintiffs representing deceased victims from Germany, Austria, Slovenia and Japan. Judge Scheindlin's 32-page decision granting the motion is well-written and instructive. As she explained, the three analytical steps which must be taken when ruling on this issue are (1) determination of the degree of deference due the plaintiffs' choice of forum; (2) examination of whether there is an adequate alternative forum for the dispute in another country; and (3) assessment of the competing private interests of the parties in the choice of forum and the public interest of the possible alternative forums.

As to (1), Judge Scheindlin determined that she would "accord very little deference to plaintiffs' choice of forum" because she was convinced that the plaintiffs were "forum shopping"—i.e., coming to the U.S. in an attempt to gain tactical advantages and potentially significantly larger damage awards and attorney contingent fee awards than would be possible in another forum.

As to (2), she found that "Austria has an effective and efficient judicial system." She

also noted that "the fact that all foreign plaintiffs presently are pursuing actions in Austrian courts ... dramatically undercuts any argument that Austria is an inadequate forum."

As to (3), Judge Scheindlin assessed various private and public interest factors. As to private factors, she found that "no relevant evidence is located in this country and most key defendants and key witnesses...are found in Austria or elsewhere in Europe." Additional factors included translation difficulties, subpoena availability, and the ability to implead additional defendants if necessary. Furthermore, because "Austria does not recognize foreign judgments...no decision rendered in this litigation [in the U.S.] would be accorded *res judicata* effect in Austria." Thus, a victorious U.S. defendant could still suffer a defeat in Austria.

Finally, with regard to public factors, Judge Scheindlin held that because (a) the accident occurred in Austria, (b) many of the victims were Austrian and (c) Austrian substantive law would apply even in a U.S. court, Austria had a significant public interest in any litigation arising out of the ski train fire.

Although the ruling in this case breaks no new ground, it is significant in that it recognizes that the U.S. court system is ill-equipped to resolve disputes involving foreign witnesses, foreign evidence and foreign laws.

I hope this is helpful. As always, please let me know if you have questions or comments.