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COMMENTARY



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Miami-based trial attorney Robert L. Parks says a decision by the U.S. Court of Appeals for the Eleventh Circuit allowing litigation in Florida for a lawsuit alleging an assault at a Marriott resort in Mexico could open the doors to more trials in the state. **A5**

OPINION & COMMENTARY

FROM DAILY BUSINESS REVIEW EDITORS & GUESTS

Ruling may open door to more overseas negligence suits

Commentary by Robert L. Parks

When a U.S. woman was severely injured while vacationing with her husband in Costa Rica in 2006, our law firm filed her personal injury lawsuit against Marriott International in U.S. District Court in Miami. That's



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because the defense invariably raises the issue of forum non conveniens, arguing it is more convenient for the case to be heard overseas than in a U.S.

courtroom.

Fortunately, the U.S. Court of Appeals for the Eleventh Circuit (Florida, Georgia and Alabama) has taken a close look at balancing the relevant factors involved in the choice of forum. In our case and in other matters, the appellate court has ruled that U.S. citizens should have their cases heard in a U.S. courtroom.

However, state courts have usually taken a different approach to forum non conveniens arguments, frequently ruling in favor of the defendant's request to move the cases from Florida to a foreign jurisdiction even if the victim is a U.S. resident or citizen.

Moving the forum to a foreign country, though, poses an almost insurmountable problem for a U.S. plaintiff who must overcome a series of major legal hurdles. Consider the difficulties associated with engaging a local attorney who will need to be paid on an hourly rather than a contingency basis, as well as the cost and time associ-



A decision by the U.S. Court of Appeals for the Eleventh Circuit allowing litigation in Florida for a lawsuit alleging an assault at a Marriott resort in Mexico could make way for more trials in the state.

ated with traveling back and forth to a foreign courtroom. It can also be difficult to obtain documents and testimony for the trial, and compensatory or punitive damages may be severely limited under a foreign law.

Clearly, the forum non conveniens issue is a critical issue for U.S. citizens hoping to attain a just and equitable settlement in a personal injury, wrongful death, or other negligence-related accident that occurs in a foreign country.

That's why the Florida Supreme Court's recent decision in *Cortez v. Palace Resorts* is so important. A California woman who was assaulted at a resort in Mexico sued several

Florida-based companies involved with the management and promotion of the property. The trial court and appellate court felt the case should be tried in Mexico. The Florida Supreme Court reversed those rulings and sent the case back to the trial court.

That's a clear signal to the state's judges to change direction when considering forum non conveniens matters. Until the June rule, Florida's state courts have taken a stricter approach to balancing the fac-

tors and given less weight to the question of U.S. citizenship than the federal courts have done. In many cases, state courts ruled in favor of moving these negligence-related cases overseas, and the state appellate courts upheld those rulings.

On a practical level, that made it difficult for plaintiffs to bring suit against a negligent overseas party in state court. A victory on the forum issue in the trial court was not enough since the defendant could

appeal that ruling and feel confident the case would be dropped by the plaintiff once it was moved out of a U.S. courtroom.

The Supreme Court's ruling on *Cortez* clearly instructed state courts to follow the rules of the Eleventh Circuit. In cases involving U.S. citizens, the defendant must show "evidence of unusually extreme circumstances" sufficient to convince a Florida court that "material injustice" will take place if the case were to be litigated in Florida.

This is a very important step forward for our court system since so many South Floridians as well as other U.S. citizens travel frequently to the Caribbean, Latin America and other foreign destinations for business or leisure purposes. Because it is often easier to bring a personal injury suit in a Florida district court rather than in a federal courtroom, the *Cortez* ruling can open the door to victims in non-catastrophic cases as well as those involving millions of dollars in damages.

Personally, I believe that U.S. citizens, residents or corporations should be presumptively entitled to bring suit in a U.S. court. Only in matters of extreme hardship should these types of cases go to a foreign court.

Robert L. Parks is a Miami-based trial attorney specializing in aviation, resort litigation, premises liability, negligent security, commercial litigation, maritime/admiralty, and general wrongful death and negligence claims.

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