IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

EDWARD WARD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 10C-02-170 WCC
	)	
TISHMAN HOTEL & REALTY, L.P.)		
TISHMAN REALTY &	)	
CONSTRUCTION CO., INC.,	)	
WYNDHAM WORLD WIDE CORP.)		
and RIO MAR ASSOCIATES L.P.,	)	
S.E., all d/b/a RIO MAR BEACH	)	
RESORT & SPA, a Wyndham	)	
Grand Resort,	)	
	)	
Defendants.	)	

Submitted: August 24, 2010
Decided: November 30, 2010

OPINION

On Defendants' Motion to Dismiss - GRANTED

Kenneth M. Roseman, Esquire, Kenneth Roseman, P.A., 1300 King Street, Wilmington, DE 19801. Counsel for Plaintiff.

Joseph J. Bellew, Esquire, Cozen O'Connor, 1201 North Market Street, Suite 1400, Wilmington, DE 19801. Counsel for Defendants.

CARPENTER, J.

Before this Court is a Motion to Dismiss on grounds of *forum non conveniens* filed by Defendants Tishman Hotel & Realty, L.P.; Tishman Realty & Construction Co., Inc.; Wyndham World Wide Corp., and Rio Mar Associates L.P. (collectively "Defendants" or "Rio Mar"). The Court must determine whether defending a personal injury suit brought in a Delaware court based on events that allegedly occurred in Puerto Rico would pose an overwhelming hardship for Defendants. For the reasons set forth below, the Court concludes that Defendants have met their burden of demonstrating that this is the rare case where litigating in Delaware would present such hardship and accordingly, the Defendants' Motion to Dismiss is hereby granted.

FACTS

On March 3, 2009, the plaintiff, a Pennsylvania resident, slipped and fell at the Rio Mar Beach Resort & Spa, a Wyndham Grand Resort, in Rio Grande, Puerto Rico. Plaintiff asserted in his Complaint that his fall, which allegedly caused him several unspecified injuries, was caused by Defendants' negligence in maintaining, failing to inspect, and failing to repair the premises. Plaintiff received immediate treatment for his injuries at Hima San Pueblo Hospital in Fajardo, Puerto Rico and received subsequent follow-up treatment at various medical facilities in Pennsylvania. The only Delaware connection to this litigation is the fact that the Defendants are

Delaware corporations. On July 16, 2010, Defendants filed a Motion to Dismiss on grounds of *forum non conveniens* with this Court.

DISCUSSION

I. Introduction: The Doctrine of *Forum Non Conveniens*

The doctrine of *forum non conveniens* permits a court to decline to exercise its jurisdiction over a case where "considerations of convenience, expense, and the interests of justice dictate that litigation in the forum selected by the plaintiff would be unduly inconvenient, expensive or otherwise inappropriate."[1] In Delaware, a motion to dismiss on grounds of *forum non conveniens* will only be granted in the "rare case" where the defendant is able to demonstrate that litigating the case in the plaintiff's chosen forum would create an "overwhelming hardship" for the defendant.[2] To meet its heavy burden, the defendant must show "that the burden of litigating in this forum is so severe as to result in manifest hardship to the defendant."[3] In conducting the *forum non conveniens* analysis, the trial court "should not compare Delaware to the alternative forum to determine 'which is the more appropriate location for this dispute to proceed.'"[4] Instead, the Delaware Supreme Court has

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[1] *Monsanto Co. v. Aetna Cas. and Surety Co.*, 559 A.2d 1301, 1304 (Del. Super. 1988).
[2] *Chrysler First Bus. Credit Corp. v. 1500 Locust Ltd. Partnership*, 669 A.2d 104, 105 (Del. 1995).
[3] *Ison v. E.I. DuPont de Nemours and Co.*, 729 A.2d 832, 842 (Del. 1999).
[4] *Aveta v. Colon*, 942 A.2d 603, 608 (Del. Ch. 2008) (quoting *Mar-Land Indus. Contractors, Inc. v. Caribbean Petroleum Ref., L.P.*, 777 A.2d 774, 779 (Del. 2001)).

identified six criteria, known as the *Cryo-Maid* factors, for the trial court to consider in determining whether a defendant has established an "overwhelming hardship":

> (1) The relative ease of access to proof;
> (2) The availability of compulsory process for witnesses;
> (3) The possibility of a need to view the premises;
> (4) The applicability of Delaware law;
> (5) The pendency or non-pendency of a similar action in another jurisdiction; and
> (6) All other practical problems that would make the trial of the case easy, expeditious and inexpensive.[5]

A defendant may succeed by showing "through *any* of the factors that litigating in Delaware would actually cause []… significant hardship and inconvenience."[6] In other words, no single factor is determinative and a defendant need not show overwhelming hardship under a majority of the factors to prevail.[7]

Furthermore, a defendant must make a particularized showing of overwhelming hardship under the *Cryo-Maid* factors. To make such a showing, "a defendant should identify particular, specific evidence necessary to its case that it will be unable to produce in Delaware."[8] But a particularized showing does not "require fact-finding hearings or nuanced details."[9]

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[5] *General Foods Corp. v. Cryo-Maid*, 198 A.2d 681, 684 (Del. 1964). *See also Warburg, Pincus Ventures, L.P. v. Schapper*, 774 A.2d 264, 267 (Del. 2001).
[6] *Aveta*, 942 A.2d at 610 (quoting *Chrysler First Bus. Credit Corp. v. 1500 Locust Ltd. P'ship*, 669 A.2d 104, 108 (Del. 1995)).
[7] *Id.*
[8] *Id.* (citing *Berger v. Intelident Solutions, Inc.*, 906 A.2d 134, 136 (Del. 2006)).
[9] *Id.* at 609.

II. Application of the Cryo-Maid Factors

a. Ease of Access to Proof

The parties appear to agree that none of the relevant evidence in this case is located in Delaware. In their motion, Defendants identify at least ten potential witnesses who reside in Puerto Rico, including an eyewitness to the alleged slip and fall, hotel personnel, paramedics and hospital personnel. Eight of these potential witnesses are identified by name.[10] Defendants further note that they might also seek to call witnesses who provided medical treatment to the plaintiff in his home state of Pennsylvania. In response, Plaintiff concedes that access to liability witnesses favors a Puerto Rico forum but contends that access to damages witnesses, who are all located in Pennsylvania, favors a Delaware forum.

In evaluating the access to proof factor, Delaware courts have considered the location of evidence, the type of evidence sought to be presented, and the circumstances of the defendant. Thus, for example, courts are more likely to grant a motion for *forum non conveniens* where the defendant wishes to present testimonial evidence requiring the testimony of multiple witnesses who reside in a foreign country.[11] However, this factor *alone* is rarely dispositive.[12] In particular, where

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[10] *See* Def.'s Mot. To Dismiss at 4.

[11] *See, e.g.*, *Aveda*, 942 A.2d at 612 (noting that the disputed transaction was conducted in Puerto Rico and that all of the necessary documents and witnesses were either in Puerto Rico or in New Jersey). *See also Nash v. McDonald's Corp.*, No. 96C-09-045-WTQ, 1997 WL 528036, *2 (Del. Super. Feb. 27, 1997) ("Delaware is not home to *any*

defendants are "large national or international corporations which possess substantial financial resources […] the burden created by the fact that witnesses and evidence are located far from Delaware is 'substantially attenuated.'"[13]

Here, it is evident that continuing the litigation in Delaware would be inconvenient for Defendants. They have specifically identified prospective testimonial witnesses who reside in Puerto Rico, and even if they could obtain the witnesses's cooperation, would have to bear the considerable expense of flying those witnesses from Puerto Rico and boarding them in Delaware in order to have them testify live. On the other hand, Defendants here are not private individuals but part of an international hotel chain, which presumably has significant financial resources and the knowledge and means to locate and transport witnesses to other jurisdictions. While clearly inconvenient, the Defendants' burden here is one that could be overcome through the cooperative efforts of the parties and therefore this inconvenience alone would not be sufficient to demonstrate overwhelming hardship.

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known material witnesses, documents, or other items of relevant proof."; *Rudisill v. Sheraton Copenhagen Corp.*, 817 F.Supp. 443, 447 (D. Del. 1993) (noting that "[v]irtually all of the evidence necessary for the prosecution of this case is located in Copenhagen, Denmark" and concluding that the cost of obtaining the attendance of Danish witnesses before the court in Delaware would be "exorbitant").

[12] *Lee v. Choice Hotels Int'l, Inc.*, No. 02C-10-280(CHT), 2006 WL 1148755, *4 (Del. Super. 2006).

[13] *In re Asbestos Litig.*, 929 A.2d 373, 384 (Del. Super. 2006). *See also Ison*, 729 A.2d at 843 (finding that the "cumbersome" process of obtaining evidence located in the United Kingdom and New Zealand would not pose an overwhelming hardship for DuPont). *But see Aveta*, 942 A2d at 612-613 (finding that it would be an overwhelming hardship for a Puerto Rican doctor to bear the "considerable expense of flying his numerous witnesses from Puerto Rico to Delaware and boarding them here.").

b. *Availability of Compulsory Process for Witnesses*

Rio Mar further contends that its hardship is compounded by the fact that compulsory process is not available to bring unwilling Puerto Rico and Pennsylvania non-party witnesses to Delaware. Defendants contend that there are numerous non-party potential witnesses to the suit in Puerto Rico, such as the two paramedics, the two police officers, and hospital physicians and staff, all of whom are outside the compulsory subpoena power of this court and outside of the control of the Defendant.

It is difficult – but not impossible – for a defendant to show an overwhelming hardship under this factor. Defendants first must identify specifically the witnesses not subject to compulsory process and the specific substance of their testimony.[14] Furthermore, it is difficult to establish an overwhelming hardship under this factor "because the 'problem of limited subpoena power will exist in any forum where the litigation is tried.'"[15] However, when conducting its analysis under this factor, the court "must evaluate whether 'another forum would provide a substantial improvement as to the number of witnesses who would be subject to compulsory process.'"[16]

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[14] *In re Asbestos Litig.*, 929 A.2d at 385.
[15] *Id.*
[16] *Friedman v. Alcatel Alsthom*, 752 A.2d 544, 554 (Del. Ch. 1999).

Here, the unavailability of compulsory process favors a finding of overwhelming hardship for Defendants. Defendants have satisfied their burden of specifically identifying non-party witnesses who reside in Puerto Rico, including three paramedics and two police officers.[17] Additionally, Defendants indicate that they would also like to call medical professionals in Puerto Rico and Pennsylvania who provided medical treatment to Plaintiff, all of whom are outside the power of this Court to compel their attendance.[18] Plaintiff's argument that Defendants have failed to allege that any of these witnesses would not appear voluntarily is unavailing. Defendants need only specifically identify the witnesses not subject to compulsory process and the substance of their testimony. It is not necessary to prove that witnesses without a stake in a particular litigation would not voluntarily travel to a foreign jurisdiction to provide testimony in order to demonstrate an overwhelming hardship. Common sense would indicate that these witnesses would not be available to testify in Delaware.

Furthermore, while it is true that there would be difficulties with service of process no matter where this litigation is pursued, it is clear that there are alternate forums available that would provide a substantial improvement in the number of

[17] Def.'s Mot. to Dismiss at 4.
[18] *Id.*

witnesses who would be subject to compulsory process. For example, a Pennsylvania court would at least be able to compel the attendance of medical professionals who reside in Pennsylvania. Puerto Rico courts are also demonstrably superior in this regard, as they would be able to compel the appearance of at least five witnesses who would provide testimony regarding the Plaintiff's condition immediately after his alleged fall and the condition of the location where the fall allegedly occurred. This Court, however, does not have the power to compel the appearance of *any* witness thus far identified in the pleadings. Continuing this litigation in Delaware would place Defendants at a significant disadvantage, as they could conceivably be denied the opportunity to present testimony from all of the non-party witnesses who were present on the scene and who provided Plaintiff with the initial aid and assistance. Accordingly, this factor weighs in favor of dismissal.

c. *Possibility of View of the Premises*

Defendants correctly point out that Delaware jurors would be unable to view the Rio Mar Resort Hotel's premises, the site of the alleged incident, in person. However, Delaware courts have generally not recognized an overwhelming hardship to defendants on this basis where photo or video evidence of the premises would

serve the same purpose equally effectively.[19] In the present case, it is true that a view of the premises where Plaintiff was allegedly injured would perhaps assist the jury in determining the liability of the Defendant. However, Defendants have given no reason why photographic or video evidence of the hotel premises would be inadequate under the circumstances.[20] Accordingly, Defendants have not shown an overwhelming hardship based on this factor.

d. *Whether the Controversy Depends Upon Application of Delaware Law*

Defendants next argue that Delaware law does not apply to this dispute and that there is therefore no special need to litigate this case in Delaware. Defendants contend that the law of Puerto Rico, as the site of the alleged incident, would govern in this case. Defendants further argue that the difficulty of applying Puerto Rico law, which is recorded in Spanish and based on civil law, would present an overwhelming hardship. Finally, defendants contend that it would be an overwhelming hardship to hire Puerto Rico civil law attorneys/experts and Spanish translators to assist Rio Mar's Delaware counsel in preparing its defense. Plaintiff appears to concede for the

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[19] *See, e.g., Lee*, 2006 WL 1148755 at *5 (noting that "little is lost in the way of examining a scene when those alternative mediums [e.g., video, photographs, or other audiovisual aids] are used.") *See also Ison*, 729 A.2d at 843 ("The trial court found [...] that a videotape of the premises where the injuries allegedly occurred would suffice to satisfy this factor."). *But see Rudisill*, 817 F.Supp. at 447 (finding that the possible need for a view of the hotel premises where plaintiff's injury allegedly occurred weighed "strongly in favor of dismissal for forum non conveniens" under the balance of conveniences analysis employed by the federal court).

[20] It may be worth noting that Defendants' shortcomings in this regard are not entirely their fault, as the Plaintiff provided no specific information in his Complaint about what on the Rio Mar premises may have triggered his alleged slip and fall.

purposes of this motion that Puerto Rico law would govern in this dispute because Plaintiff's sole response is to argue that Puerto Rico law governing slip and fall cases is not difficult to locate or understand.[21]

It would be difficult for the parties to argue that Delaware law applies to this case. In a tort case such as this, "Delaware generally follows the 'most significant relationship' test of the Restatement (Second) of Conflicts."[22] Under this test, "*lex loci delicti* is used as a rebuttable presumption."[23] There is nothing in this case – and the parties have presented no evidence to the contrary – to suggest that the law of some jurisdiction other than Puerto Rico applies to Plaintiff's claim.

As with the other *Cryo-Maid* factors, it is very difficult for a defendant to establish an overwhelming hardship under this factor. A defendant usually can only show overwhelming hardship based on the non-applicability of Delaware law to the dispute where the defendant can show that the difficulty of applying the governing law in a foreign jurisdiction would pose an overwhelming hardship to the particular defendant, based on the particular defendant's own circumstances.[24] Thus, a

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[21] To illustrate this point, Plaintiff provides copies of three cases where a U.S. federal court interpreted and applied Puerto Rico law in a tort action. The Court appreciates the Plaintiff's efforts but notes that the resolution of this case will very likely require further research into Puerto Rico law and that many relevant cases may not have been decided by the federal courts.

[22] *Nash*, 1997 WL 528036, *2.

[23] *Id.*

[24] *See Aveta*, 942 A.2d at 610-11 (declaring that this factor "retains some viability" in the forum non conveniens analysis and finding that the potential difficulties of applying Puerto Rico law to the dispute would impose an overwhelming hardship on the defendant).

defendant cannot meet his burden simply by pointing out that the case would require a Delaware court to apply the law of a foreign jurisdiction: "Delaware courts regularly interpret and apply the laws of other states and have consistently held that the 'need to apply another state's law will not be a substantial deterrent to conducting litigation in this state.'"[25] Similarly, the test of overwhelming hardship will not be satisfied by arguing that the law of the foreign jurisdiction would be difficult for the Court to apply. The overwhelming hardship analysis is focused solely on"whether *the defendants* have established that the application of foreign law will cause the defendants to suffer overwhelming hardship, not whether *the Court* will suffer hardship."[26]

The Delaware Supreme Court, in considering the applicability of foreign law to a dispute, held that the defendant had failed to show an overwhelming hardship resulting from a Delaware court applying Argentine law, noting, "[t]he expense and inconvenience of translating pertinent legal precedent, of retaining foreign lawyers, and of producing foreign law experts to testify at trial, has not been shown to be of material weight in an overwhelming hardship analysis in this particular case."[27] In the *Candlewood* case, the Court noted that the defendant was an international

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[25] *In re Asbestos Litig.*, 929 A.2d at 386.
[26] *In re Asbestos Litig.*, 929 A.2d at 387.
[27] *Candlewood Timber Group, LLC v. Pan American Energy*, LLC, 859 A.2d 989, 1002-03 (Del. 2004).

business with tremendous resources at its disposal that had regularly litigated in American courts, including the Court of Chancery.[28] In a case similar to the one presently before this Court, involving a foreign plaintiff's injury at a South Korea hotel owned by an international hotel corporation incorporated in Delaware, this Court held that the potential need to apply the law of another jurisdiction to the case did "not constitute overwhelming hardship."[29]

Here, Defendants have failed to show that the non-applicability of Delaware law to Plaintiff's claims rises to the level of an overwhelming hardship. Defendants properly focus their argument on the inconvenience to them, contending that it would be an "overwhelming hardship to hire Puerto Rico civil law attorneys/experts and Spanish translators so that Rio Mar's Delaware counsel could learn and appreciate the intricacies and nuances of the statutes and case law of Puerto Rico, a civil law jurisdiction."[30] However, given the circumstances of the Rio Mar defendants, this argument is unpersuasive. The Rio Mar defendants are an international hotel business that describes itself as "one of the world's largest hospitality companies across six continents."[31] Although it is not yet clear what additional costs Rio Mar might incur based on litigating in this forum, it is likely that Rio Mar is in a better

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[28] *Aveta*, 942 A.2d at 611.
[29] *Lee ex rel. Lee v. Choice Hotels Int'l*, 2006 WL 1148755, *5 (Del. Super. 2006).
[30] Def.'s Mot. To Dismiss at 6.
[31] http://www.wyndhamworldwide.com/about/

position than the defendant in *Aveta* to absorb the costs associated with retaining foreign lawyers and experts to assist them in preparing their defense. Accordingly, the Court concludes that Defendants have not met their burden of showing an *overwhelming* hardship under this factor.

e. Pendency or Non-Pendency of a Similar Action in Another Jurisdiction

In the *forum non conveniens* analysis, the absence of a prior pending action in another jurisdiction ordinarily weighs heavily against the dismissal of the action.[32] The parties here agree that no other similar action is pending in another jurisdiction at this time. Defendants have stated that they would stipulate to a tolling of the Puerto Rico statute of limitations for the pendency of this Delaware action to allow a similar action to proceed in Puerto Rico. The Defendants' willingness to allow the plaintiff to pursue his claim in Puerto Rico "relates to the convenience of the plaintiffs, not to the inconvenience of the defendant" and is therefore "not probative of the overwhelming hardship issue."[33]

f. All Other Practical Problems

Finally, Defendants argue that numerous other practical considerations warrant the dismissal of this lawsuit from Delaware. This factor focuses on all other

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[32] *See In re Asbestos Litig.*, 929 A.2d at 387; *Taylor*, 689 A.2d at 1199.
[33] *Ison*, 729 A.2d at 846.

considerations that would make litigating the case in Delaware more difficult or expensive. First, Defendants contend that Delaware is not an appropriate forum for this case because this litigation has no nexus to Delaware, other than the fact that Rio Mar is incorporated here. Defendants point out that the Delaware Supreme Court has "expressly disapproved the use of Delaware incorporation as a decisive factor in deciding a *forum non conveniens* motion."[34] Although the Delaware Supreme Court has also declared that Delaware has an interest in providing a neutral forum for disputes involving Delaware corporations, it does not appear that this case involves the sort of corporate law dispute that the Supreme Court likely envisioned when it affirmed Delaware's role as a host to litigation involving corporations registered in this state.[35] This argument therefore weighs somewhat in favor of dismissal of the case..

Next, Defendants argue that the language barrier could pose an exceedingly difficult practical problem because Defendants would likely need to translate relevant Puerto Rico cases and law as well as hire a translator for any Spanish-speaking witnesses. This would represent an additional cost for Defendants. However, it is likely that this cost would arise in any alternative forum. Both parties have indicated

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[34] *Nash*, 1997 WL 528036 at *3.
[35] *Candlewood Timber Group, LLC v. Pan American Energy, LLC*, 859 A.2d 989, 1000 (Del. 2004).

that they may call witnesses from Pennsylvania, where the plaintiff received additional follow-up medical treatment for his injuries. A translator would likely be needed to assist these witnesses in a Spanish-speaking courtroom in Puerto Rico before a Spanish-speaking jury. Practical considerations present in Delaware that would also be present in any other jurisdiction do not support dismissal of the case from this jurisdiction.[36] Accordingly, Defendants cannot establish that continuing to litigate this case in Delaware would present an unreasonable expense or difficulty on the basis of the language barrier.

Defendants also contend that there is no reason to burden the citizens of Delaware with jury duty to help resolve a matter involving Puerto Rico law where the events occurred in Puerto Rico. It is not clear, based on the facts presented here, that this case would impose an unusually heavy burden on Delaware citizens. The litigation appears to be a relatively straightforward slip-and-fall claim rather than a complex commercial litigation involving numerous claims and parties.

III. Application of Public Interest Factors

Defendants have also asked this Court to adopt the reasoning of the federal court in *Rudisill*, which involved a California plaintiff's lawsuit against the operators

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[36] *See Lee* 2006 WL 1148755 at *6 ("There are no practical considerations militating against litigating in Delaware that would not be present if the litigation were removed to a different jurisdiction.").

of a hotel located in Copenhagen, Denmark. In federal court, a defendant seeking a dismissal on the grounds of *forum non conveniens* must show (1) that an adequate alternative forum exists and (2) that both "the private interests of the litigants and the interests of the public are decidedly in favor of the dismissal for *forum non conveniens*."[37] The "private interest" factors used by the federal court "are similar in scope to the *Cryo-Maid* factors previously discussed,"[38] particularly as it relates to the "other practical problems" factor adopted by our courts. The public interest factors, which were set forth by the United States Supreme Court in *Gulf Oil Corp. v. Gilbert*[39] are:

(1) the administrative difficulties caused by court congestion which arise when cases are not litigated at their origins;
(2) the unfairness of imposing jury duty on people of a community with no real relation to the litigation;
(3) the local interest in having localized controversies decided at home;
(4) difficulties associated with the application of foreign law; and
(5) any other burdens imposed on the forum.

The "public interest" factors have not typically been a part of the *forum non conveniens* analysis in Delaware.[40] However, the Delaware Supreme Court has suggested that an analysis of the "public interest" factors could be appropriate "in a

[37] *Rudisill v. Sheraton Corp.*, 817 F.Supp. 443, 446 (D.Del. 1993).
[38] *In re Asbestos Litig.*, 929 A.2d at 388.
[39] 330 U.S. 501, 508 (??).
[40] *In re Asbestos Litig.*, 929 A.2d at 389.

proper case where there is an evidentiary record supporting the burden on the Delaware court and litigation compared to more expeditious and less burdensome litigation in another forum."[41] This appears to be such a case.

First, litigating this case in Delaware would likely pose administrative difficulties to an already overburdened court system. It is true that this is only one case involving a single plaintiff and therefore not the kind of case likely to consume an extraordinary amount of the Court's resources. However, as discussed above, it is likely that the necessity of interpreting and applying Puerto Rico law, which is based on civil law and recorded in Spanish, as well as litigating a case where most of the key witnesses are Spanish speakers, would substantially increase the burden on this Court. Delaware courts are certainly capable of interpreting and applying the law of foreign jurisdictions to suits that are brought in this jurisdiction. However, in a case such as this one, where there is no connection between this jurisdiction and the events giving rise to the claim, there is no particular reason to allocate the Court's limited resources to these potentially burdensome tasks.

Second, litigating this case in Delaware would impose an unfair burden on the citizens of Delaware. In *Rudisill*, which involved a California citizen's suit against an international hotel chain for injuries sustained while staying at one of the chain's

[41] *Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1201 n. 18 (Del. 1997).

hotels in Copenhagen, Denmark, the court observed, "The crux of this action centers around events which occurred in Denmark and the citizens of Delaware should not be required to determine the duty of care that a hotel, operating in Denmark, owes to its guests under Danish law."[42] The same is true here.

Delaware has no interest in this litigation. There is no local interest in protecting the rights of a Pennsylvania resident who was injured in Puerto Rico in a Delaware courtroom. As discussed above, Plaintiff appears to have conceded that Puerto Rico law would govern the standard of care owed by a hotel in Puerto Rico to its guests. Plaintiff's claims have nothing to do with Rio Mar's status as a business incorporated in Delaware. Nor is this a commercial dispute involving a Delaware corporation, where Delaware might arguably have an interest in providing a neutral forum to a business incorporated here.

Finally, this appears to be a situation that the decision to file the litigation in Delaware is simply one done for the convenience of counsel. The plaintiff is a resident of Pennsylvania and was treated for his injuries in Pennsylvania upon his return from Puerto Rico. The real "connection" to Delaware is that for some unknown reason he has chosen Delaware counsel to pursue this litigation. While the Court appreciates Plaintiff's confidence in the excellent counsel provided by

[42] *Rudisill*, 817 F.Supp. at 448.

Delaware lawyers, it raises the question whether we are simply providing the forum most convenient to counsel and not the litigants in this matter.

CONCLUSION

This is one of the rare cases where the plaintiff's choice of forum should be overruled. An analysis of the *Cryo-Maid* factors shows that litigating this case in Delaware would be inconvenient for Defendants and that Puerto Rico or Pennsylvania would in many respects have been a superior forum for this litigation. It is true that Delaware courts, when considering a motion for *forum non conveniens*, must focus on the hardship to the defendant in litigating in the plaintiff's choice of forum rather than comparing the convenience of a Delaware forum to a hypothetical alternative forum. However, the inconvenience to Defendants under each of the *Cryo-Maid* factors, when considered together, suggest that a finding of overwhelming hardship to Defendants if this case is litigated in Delaware is appropriate. Their ability to defend this case will be significantly hampered by a trial in Delaware and the opposite is not true for the Plaintiff if the matter proceeded forward in Puerto Rico or Pennsylvania.

Moreover, the Delaware Supreme Court has indicated that a comparison of the plaintiff's chosen forum and an alternative forum may be appropriate where there is a sufficient evidentiary record supporting the burden on the Delaware court as

compared to litigating in another forum. Defendants have made specific allegations regarding the difficulties of litigating in this forum, such as the unavailability of compulsory process for specifically identified witnesses and the administrative burdens that will be placed on this Court based upon the application of the law of Puerto Rico. Accordingly, this Court concludes that Defendants have met their heavy burden of showing that continuing to litigate Plaintiff's claims in this forum would impose an overwhelming hardship on Defendants, and as such, the Defendants' motion to dismiss on the grounds of *forum non conveniens* is therefore granted. However, the Court will stay the dismissal for 90 days to allow Plaintiff to appropriately file litigation in Puerto Rico or Pennsylvania and will require the Defendant to abide by the representation of their counsel that they would agree to waive a statute of limitation argument if the matter is filed in Puerto Rico.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.