SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0028-15T1

ROBERT D. FERGUSON, KANSA INTERNATIONAL CORPORATION, LTD., BANKRUPTCY ESTATE, MILO FAMILY LIMITED PARTNERSHIP, IMIPOLEX LLC, and OMPHALOS, LLC,

Plaintiffs-Appellants,

v.

TRAVELERS INDEMNITY COMPANY and EXECUTIVE RISK SPECIALTY INSURANCE COMPANY,

Defendants-Respondents.

Submitted November 16, 2016 – Decided March 10, 2017

Before Judges Alvarez and Manahan.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-2911-11.

Szaferman, Lakind, Blumstein & Blader, P.C., C. Darryl Cordero (Payne & Fears, LLP) of the California bar, admitted pro hac vice, and Francis J. Menton, Jr. (Willkie, Farr & Gallagher, LLP) of the New York bar, admitted pro hac vice, attorneys for appellants (Arnold C. Lakind, on the briefs).

Kaufman Borgeest & Ryan, LLP, attorneys for respondent Travelers Indemnity Company (Brian M. Sher and Bassel Bakhos, on the brief).

White and Williams LLP, attorneys for respondent Executive Risk Specialty Insurance Company (Michael O. Kassak, of counsel and on the brief; Edward M. Koch and Edward F. Beitz, on the brief).

PER CURIAM

Plaintiffs Robert D. Ferguson, Kansa International Corporation, Ltd., Milo Family Limited Partnership, Imipolex, LLC, and Omphalos, LLC, appeal the Law Division's July 22, 2015 dismissal of their complaint against defendants Travelers Indemnity Company and Executive Risk Specialty Insurance Company (ERSIC). For the reasons that follow, we reverse and remand.

I.

We repeat much of the basic information regarding the parties and the claims in dispute set forth in our first reversal and remand. Ferguson v. Travelers Indem. Co., A-3530-12 (App. Div. Aug. 4, 2014). Plaintiffs "are former shareholders of Lion Holding, Inc.[], an insurance holding company. Lion's principal operating companies were Clarendon America Insurance Company and Clarendon National Insurance Company[.]" Id. at 2. In 1993, Clarendon engaged Bermuda-based Raydon Underwriting Management Company Limited (Raydon) as a managing general agent. Id. at 2-3.

In 1994, Raydon encouraged Clarendon to write reinsurance policies in a program known as LMX. LMX's reinsurance program involved "direct insurance policies that provided personal accident and death benefits to individuals." Id. at 3 n.1. Raydon's assessment of the program was fatally flawed, generating significant losses to Clarendon as a reinsurer. "By the end of 1995, Clarendon ceased participating in LMX." Ibid.

When plaintiffs sold Lion and its subsidiaries, including Clarendon, it indemnified the new owners for up to $50 million in losses related to the LMX program and reduced its sale price by $25 million. Plaintiffs became contractually subrogated to Clarendon, including claims against Raydon. As a result of the reinsurance problems generated by the LMX program, nearly $24 million was withheld from the sale of the Clarendon companies and deposited in escrow. Id. at 4. By 2005, Raydon was defunct. Id. at 3-4. In 2011, plaintiffs obtained a judgment in the amount of $92.137 million in Bermuda, where Raydon was incorporated and functioned, for damages as a result of reinsurance losses. The judgment obtained by default was uncollectible, as Raydon not only failed to participate in the proceedings, it no longer existed and had no known assets. Ibid.

In order to serve as Clarendon's managing general agent, Raydon was required by New Jersey law to obtain an "errors and

omissions" liability insurance policy. Id. at 4. That policy, purchased in July 1997 through Gulf Insurance Company, ensured Raydon for losses up to $15 million incurred as a result of errors and omissions in rendering professional services. Id. at 5. Defendant Travelers Indemnity is the successor company to Gulf Insurance. Defendant ERSIC issued an excess indemnity policy providing coverage of $10 million to Raydon to the extent losses exceeded $25 million. Id. at 5.

The following procedural history is key to our decision, as it was to the earlier opinion:

> Neither Travelers nor ERSIC took any action after plaintiffs filed their lawsuit against Raydon in the Supreme Court of Bermuda in December 2005. However, two days before a September 28, 2011 court hearing on plaintiffs' damage application following the default judgment against Raydon, Travelers informed plaintiffs "that it was refusing to cover [p]laintiffs' losses under [the Gulf Policy]." Allegedly, Travelers maintained that it regarded the Gulf Policy as void for breach of warranty and that Travelers, alternatively, "'hereby avoids/rescinds the policy.'" . . . . Likewise, ERSIC disputes plaintiffs' claim that the Bermuda judgment is a covered loss under its Excess Policy.
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> On September 28, 2011 — the same day that the Bermuda Court set plaintiffs' damages at $92 million — Travelers commenced a civil action against Raydon in the Bermuda courts, seeking a declaration that the Gulf Policy was obtained by fraud and thus void, and that Travelers therefore possessed no obligation to indemnify Raydon.

[Id. at 5-6.]

The first excess coverage policy was issued by Reliance Insurance Company, which is not a party to the action. ERSIC's policy applies only after the first layer of excess by Reliance has been exhausted. The terms of Travelers' policy were incorporated into ERSIC's policy.

On December 23, 2013, Travelers obtained a judgment from a Bermuda court voiding the Raydon errors and omissions policy. The appendix includes a certification which appears to be the basis for judgment being awarded in the Bermuda action to Travelers. It recites that Travelers' issuance of the errors and omissions policy was "induced" by Raydon's principals arranging for "irregular and unsustainable reinsurance for Clarendon that Clarendon's reinsurers may have been entitled to avoid or rescind." In other words, the basis for Travelers' Bermuda judgment was not a material fraud in the inducement, but the claim that had Travelers known about the flawed reinsurance products that Raydon was offering, Travelers would have declined to extend policy coverage. Travelers does not dispute that Clarendon suffered substantial losses as a result of Raydon's representation.

On November 23, 2011, plaintiffs filed a "complaint for breach of contract and for declaratory relief" against defendants. They

alleged that Clarendon was a New Jersey domiciled property/casualty insurance company that was obligated, pursuant to New Jersey insurance regulation, to compel their managing agent to "maintain substantial errors and omissions liability insurance." The complaint also alleges that after "handling the claim for twelve years, Travelers has repudiated its policy commitments and has lodged a litany of excuses to avoid compensating plaintiff."

Plaintiffs further allege that Clarendon terminated its reinsurance business through Raydon in 1995. In 1999, Raydon reported to Gulf, Travelers' predecessor, and to ERSIC, that Clarendon had made claims against the company alleging errors and omissions arising from the LMX program.

Plaintiffs claimed that it was not until September 26, 2011, two days before their default hearing, that Travelers informed Raydon's broker and plaintiffs that no coverage would be extended for plaintiffs' losses, as Travelers considered the policy void for breach of warranty and intended to rescind it. Plaintiffs seek general and specific damages, prejudgment interest, and a judicial determination that the Bermuda Raydon judgment is insurable both by Travelers and ERSIC. Plaintiffs also seek attorney's fees and costs.

Plaintiffs' complaint was first dismissed by the court for lack of standing; no other issues were reached. Id. at 2. We found that plaintiffs did have standing, and that they alleged a valid cause of action to recover damages from defendants. We remanded the matter to the Law Division for further proceedings. Having reversed the entry of the dismissal order, we directed that on remand "the Law Division [] first address that aspect of defendant's motions to dismiss based on forum non conveniens, and, depending on that ruling, thereafter take up the parties' various discovery applications which were determined to be moot." Id. at 18.

Following our decision, a second Law Division judge ordered the parties to supplement their briefs on the issue of forum non conveniens. On remand, that second judge dismissed the complaint again. Because plaintiffs were on notice of the proceedings filed by Travelers, even though not joined in the suit, the trial judge found they had an adequate opportunity to be heard. He therefore concluded that since "notice and an opportunity to be heard is . . . the bedrock of due process," plaintiffs could not argue that the judgment voiding the policies could not be held against them.

Although not entirely clear, the Law Division judge also appears to have found that Travelers' judgment, regardless, was "the end of the plaintiffs' case." The judge reasoned that had

plaintiffs addressed the matter in Bermuda, they could have intervened, sought to set aside the judgment, and had "a fighting chance." During oral argument, plaintiffs pointed out that in order to bring suit against Travelers directly in Bermuda, they would have had to liquidate Raydon and stand in its shoes. The judge responded that since there was nothing to liquidate, in his view, it would not be a complex process, would not "take very long[,]" and "that if anything, it might be a small pebble to get over and not a mountain." He added:

> all of the issues could have been satisfied all in one single place in Bermuda if the plaintiffs had bothered to go there to litigate the rescission action and then bring their claim directly there, go through the process of essentially taking over Raydon.
>
> There was an argument by the plaintiffs that the court should just very narrowly stick to the forum non conveniens arguments even though the — and then argued that the court really shouldn't address it because we should go through discovery first . . . . I find the arguments to be unpersuasive as they are contradictory.
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> The plaintiffs also argue that the first to file doctrine does not apply because there's no pending action.

The judge also said:

> The plaintiffs want to come here and see if they can get a judgment against the insurance companies clearly to get an inconsistent judgment. The whole idea of principles of [comity], the foreign judgment

> act under N.J.S.A. 2A:49(a)-25, -33, the entire controversy doctrine, all of those things are designed to prevent exactly what the plaintiffs are attempting to do.

He then analyzed the factors under the doctrine of forum non conveniens, finding defendants' arguments "persuasive[.]" The judge granted defendants' application, and dismissed the matter without prejudice.

With regard to the collateral estoppel argument, the judge concluded it applied because plaintiffs were in privity with Raydon. Although he was dismissing the matter, and directing the parties to litigate the claims in Bermuda, he said that should the Bermuda court bar proceedings there, the matter could be reinstated in New Jersey.

Plaintiffs raise the following two points for our consideration on appeal:

> POINT I
> THE TRIAL COURT ERRED IN CONCLUDING THAT THE JUDGMENT TRAVELERS OBTAINED IN BERMUDA AGAINST RAYDON IS BINDING UPON PLAINTIFFS EVEN THOUGH THEY WERE NOT JOINED AS PARTIES TO THAT ACTION
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> A. Even Though This Court Remanded the Case Solely to Consider Defendants' Forum Non Conveniens Argument, the Trial Court on Remand Dismissed the Complaint Partly on the Ground That Travelers' Ex Parte Bermuda Judgment Was Binding Upon Plaintiffs Even Though They Were Not Joined as Parties to That Action

B. Under the Due Process Clauses of the United States Constitution, a Judgment Is Not Binding Upon Parties Who Were Not Joined in the Action

C. The Constitutional Requirement of Joinder of any Party Sought to Be Bound by a Judgment May Not be Circumvented by Simply Giving a Non-Party Notice of the Action

D. The Privity Exception to the Joinder Requirement Does Not Apply Because Plaintiffs, as Tort Claimants and Judgment Creditors of Raydon, Did Not Have the Type of Relationship to Raydon That Could Support a Finding of Privity

E. Plaintiffs Are Not Bound By Travelers' Bermuda Judgment Because that Judgment Was Entered as a Result of an Ex Parte Proceeding in Which Plaintiffs' Interests Were Not Adequately Represented

F. Because the Due Process Clauses Protect a Party From Being Bound by a Judgment in an Action in Which It Was Not Joined, a United States Court Will Not Enforce a Foreign Judgment Entered in Violation of This Constitutional Guarantee

G. Even if Enforcement of Travelers' Bermuda Judgment Were Not Barred by the Due Process Clauses of the United States Constitution, the Judgment Would Not Be Given Preclusive Effect Under the New Jersey Common Law Doctrines of Claim and Issue Preclusion

POINT II

THE TRIAL COURT ERRED IN CONCLUDING, AS AN ALTERNATIVE GROUND OF DECISION, THAT DEFENDANTS ARE ENTITLED TO DISMISSAL OF THIS

ACTION UNDER THE DOCTRINE OF FORUM NON CONVENIENS

A. Defendants Failed to Establish the Threshold Requirement of Their Amenability to Process in the Alternative Bermuda Forum Where Defendants Claim This Action Should Be Heard

B. Even if Defendants Had Established Their Amenability to Service of Process in Bermuda, the Trial Court's Weighing of the Private and Public-Interest Factors Relevant to Forum Non Conveniens Would Not Be Entitled to Any Deference Because It Was Based on the Court's Erroneous Legal Assumption That Plaintiffs Are Bound by Travelers' Bermuda Judgment

C. A Correct Analysis of the Private and Public-Interest Factors That Govern a Forum Non Conveniens Motion to Dismiss Demonstrates that Plaintiffs' Choice of New Jersey as the Forum to Hear This Action Is Not Demonstrably Inappropriate

II.

It is well-established that "a trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty LP v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995). Since principles of forum non conveniens are "equitable in nature," a trial court's decision to dismiss an action on those grounds is reviewed under the abuse of discretion standard. Paradise Ents., Ltd. v. Sapir, 356 N.J. Super., 96, 102 (App. Div. 2002) (citing Kurzke v. Nissan Motor Corp., 164 N.J. 159, 165 (2000)).

III.

In their first point, plaintiffs challenge the determination that the judgment Travelers obtained against Raydon in Bermuda is binding upon them. That determination was essential to the judge's analysis of forum non conveniens.

It is undisputed that plaintiffs were not made a party to Travelers' action in Bermuda. We therefore consider the doctrine of comity, the means by which the judge concluded the Bermuda judgment was "binding." Our courts' recognition of judgments from foreign countries is not automatic, and requires analysis under the doctrine. Sajjad v. Cheema, 428 N.J. Super. 160, 180 (App. Div. 2012). Comity is "a principle involved in the relationships of nations or states with each other," that, "[w]hen exercised by a court[,] leads to the recognition and enforcement of the laws of a foreign state . . . ." Ibid. (quoting In re Fischer, 119 N.J. Eq., 217, 223 (Prerog. Ct. 1935)).

In seeking dismissal on the basis of comity, the moving party has the burden of proving: "(1) there is a first-filed action in another state [or country]; (2) both cases involve the same parties, the same claims and the same legal issues; and (3) the plaintiff will have the opportunity for adequate relief in the prior jurisdiction." W.H. Industries Inc. v. Fundico Balancins, Ltd, 397 N.J. Super. 455, 461 (2008)(quoting Exxon Research &

Eng'g Co. v. Indus. Risk Insurers, 341 N.J. Super. 489, 506 (App. Div. 2001)). The burden then shifts to the non-moving party "to demonstrate that 'special equities' exist that are sufficiently compelling to permit the action to proceed." Id. at 461-462.

We do not agree that the doctrine applies in this case. Plaintiffs were not made a party to Travelers' action in Bermuda seeking rescission of the insurance contract, although Travelers had known for years that plaintiffs were pursuing substantial claims against its insured.

With regard to the second and third factors, that Raydon's assessment of the quality of the reinsurance risks assumed by plaintiffs may have been grossly inaccurate does not in and of itself constitute a basis for Travelers' rescission of its errors and omissions policy. The extent to which the risks were miscalculated during the relevant timeframe is an issue that requires close scrutiny.

Potential misrepresentations by Raydon to plaintiffs are different, and reviewable by different standards, than potential misrepresentations to Travelers that would rise to the level that the insurance contract should be voided. The misrepresentations result in different claims and raise different legal issues. See W.H. Industries, supra, 397 N.J. Super. at 461. And if Travelers' judgment stands, plaintiffs' judgment becomes completely

uncollectible. See ibid. Therefore, dismissal premised on comity, due to the mere existence of Travelers' Bermuda judgment, is not warranted.

Plaintiffs argue that binding them to the Bermuda court's judgment in favor of defendants would violate constitutional due process. The United States Supreme Court has held that: "one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." Hansberry v. Lee, 311 U.S. 32, 40, 61 S. Ct. 115, 117, 85 L. Ed. 22, 26 (1940). Such a judgment is "not entitled to full faith and credit which the Constitution and statute of the United States, 28 U.S.C. § [1738], prescribe." Ibid. Judicial action enforcing that judgment "against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require." Ibid.

However, there are six exceptions to "the rule against nonparty preclusion." Taylor v. Sturgell, 553 U.S. 880, 893 128 S. Ct. 2161, 2172, 171 L. Ed. 2d 155, 168 (2008). First, a nonparty can be bound by an action between others if the party agreed to be bound. Ibid. Second, a non-party may also be bound if there was a "substantive legal relationship," such as assignee and assignor, between the non-party and a party to the action. Id. at 894, 128 S. Ct. at 2172, 171 L. Ed. 2d at 169. Third, a

non-party may be "bound by a judgment because she was 'adequately represented by someone with the same interests who was a party.'" Ibid. (quoting Richards v. Jefferson County, 517 U.S. 793, 798, 116 S. Ct 1761, 1766, 135 L. Ed. 2d. 76, 84 (1996). Fourth a non-party may be bound by a judgment if he or she "'assumed control' over the litigation in which that judgment was rendered." Id. at 895, 128 S. Ct. at 2173, 171 L. Ed. 2d at 169. Fifth, a non-party can be bound by a judgment if he or she is a designated representative to one of the parties. Ibid. Lastly, a non-party may be bound if a "special statutory scheme" applies that specifically prohibits non-parties from relitigating issues decided in an earlier judgment. Ibid.

Taylor is noteworthy because it disapproved the doctrine of preclusion exception "by 'virtual representation.'" Id. at 885, 128 S. Ct. at 2167, 171 L. Ed. 2d at 163. The exception had become a source of "disagreement among the Circuits. . . ." Id. at 891, 128 S. Ct. at 2170, 171 L. Ed. 2d at 167. By way of preface, the Court touched upon the "'deep-rooted historic tradition that everyone should have his own day in court.'" Id. at 892, 128 S. Ct. at 2171, 171 L. Ed. 2d at 168 (citing Richards, supra, 517 U.S. at 798, 116 S. Ct. at 761, 135 L. Ed. 2d at 76). After outlining the six exceptions, the Court went on to say, that the doctrine of "virtual representation" should be rejected because

it "authorize[d] preclusion based on identity of interests and some kind of relationship between the parties and non-parties, shorn of [] procedural protections . . . ." Id. at 901, 128 S. Ct. at 2176, 171 L. Ed. 2d at 173.

Moreover, the Court defined "adequate representation" for preclusion purposes where "(1) [t]he interests of the nonparty and her representative are aligned and (2) either the party understood herself to be acting in a representative capacity or the original court took care to protect the interests of the nonparty . . . [and] (3) notice of the original suit to the persons alleged to have been represented[.]" (internal citations and emphasis omitted) Id. at 900, 128 S. Ct. at 2176, 171 L. Ed. 2d at 173. Plaintiffs were not adequately represented in the Travelers suit——their interests are and were inimical to Travelers. Travelers acted to protect its own interests, it was certainly not acting to protect plaintiffs. Since plaintiffs did not have adequate representation and none of the other factors are remotely applicable, plaintiffs cannot be bound by Travelers' judgment.

Defendants made no attempt to join or to serve plaintiffs in the suit. There may not have been a basis to implead them as the dispute was solely between Raydon and Travelers. Binding plaintiffs to that action, although they had notice of the proceedings, would therefore violate constitutional due process.

Notice alone is not an enumerated exception to the rule against non-party preclusion.

Travelers also argues that the exception for non-parties with a substantive legal relationship applies here. But these plaintiffs had not had a legal relationship to the long-defunct Raydon for years preceding the Bermuda action. That plaintiffs were judgment creditors did not create the type of legal relationship that constitutes an exception to issue preclusion. As plaintiffs were not parties to defendants' Bermuda action, and none of the six exceptions apply, binding plaintiffs to the judgment in that action would violate fundamental due process.

IV.

Plaintiffs also claim the judge erred in dismissing their suit because they were not in privity with the parties to the prior action, the issue was not fairly litigated in the prior action, and they are not collaterally estopped from proceeding in this state. Defendants respond that collateral estoppel bars plaintiffs from further litigation and warranted the trial judge's dismissal of the complaint.

Generally, "the preclusive 'effect of a foreign judgment is determined by the law of the jurisdiction that rendered it.'" Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 423 (2011) (quoting Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 411 (1991)).

"[I]f there is a substantive conflict in the preclusion laws of the international and domestic courts, the estoppel laws of the latter should generally control." Id. at 425. In Bondi, we affirmed the trial judge's application of New Jersey collateral estoppel principles. Ibid. Even if there was a conflict between New Jersey and foreign laws, this state's laws would apply. Ibid.

In New Jersey, collateral estoppel, also known as issue preclusion, "prohibits relitigation of issues if its five essential elements are met." Allen v. V & A Bros., Inc., 208 N.J. 114, 137 (2011). The elements are that:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated . . .; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.
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> [Ibid. (quoting Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006).]

Even where the five essential elements are satisfied, the doctrine of collateral estoppel will not be held to bar additional litigation if it would be inequitable to do so. Id. at 138. Some of the factors the Allen Court identified as weighing against the application of collateral estoppel included that

> the party against whom preclusion is sought could not have obtained review of the prior judgment; the quality or extent of the procedures in the two actions is different; it was not foreseeable at the time of the prior action that the issue would arise in subsequent litigation; and the precluded party did not have an adequate opportunity to obtain a full and fair adjudication in the prior action.
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> [Ibid. (quoting Olivieri, supra, 186 N.J. at 523.]

As the Allen Court noted, the commentary in the Restatement (Second) of Judgments posed the real question——whether "there is good reason" to allow relitigation to take place. Restatement (Second) of Judgments § 29, comment j (1982).

We do not agree with defendants that the issue in this case is identical to that decided in the prior proceeding. The issue in the Bermuda proceeding is, as we have said, whether Raydon knew the quality of the products they sold to Clarendon was so poor as to constitute actual fraud in the inducement when they obtained an errors and omissions policy from Travelers.

The issue to be decided in this case is whether Travelers and ERSIC should be compelled to provide coverage and satisfy the judgment. The question of coverage was obviously not litigated in the prior proceeding. Where defendants' argument clearly fails is that plaintiffs were not a party to the prior proceeding and were certainly not in privity with a party to the prior proceeding.

As acknowledged in Allen, the concept of privity is difficult and imprecise. As restated in that case, however, privity is considered adequate when a party is a virtual representative of the non-party, or when the non-party actually controls the litigation. Allen, supra, 208 N.J. at 139. In this case, by seeking to void its errors and omissions policy, Travelers was not a virtual representative of plaintiffs. Plaintiffs, whose interests in the Bermuda action were adverse to Travelers, certainly did not control that litigation. Furthermore, turning again to the Restatement of Judgments, plaintiffs had no ability to obtain review of the judgment. Restatement (Second) of Judgments § 39, comment c (1982). There was no privity between the parties which warrants dismissal of plaintiffs' complaint.

The trial court in this case assumed that defendants' judgment in Bermuda "wipes out the plaintiffs' case." Collateral estoppel does not apply, however. The trial judge's assumption constitutes legal error and warrants reversal.

V.

A court can decline to exercise jurisdiction over a defendant under the doctrine of forum non conveniens if "that defendant can demonstrate that the plaintiff's choice of forum is 'demonstrably inappropriate.'" Yousef v. General Dynamics Corp., 205 N.J. 543, 548 (2011) (citing Kurzke v. Nissan Motor Corp. in U.S.A., 164

N.J. 159, 171-72 (2000)). Courts are to consider two categories of factors in determining whether a forum is "demonstrably inappropriate," public-interest factors and private-interest factors. Id. at 558 (citing Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-9, 67 S. Ct. 839, 843, 91 L. Ed. 1055, 1062-63 (1991)).

> The private-interest factors include the relative ease of access to sources of proof; the availability of compulsory process; the cost of obtaining the attendance of witnesses; the ability to view an accident scene, if that would be beneficial to the factfinder; the enforceability of a judgment; and all other practical problems that make trial of a case easy, expeditious and inexpensive. The public-interest factors include consideration of trial delays that may occur because of backlogs in a jurisdiction; whether jurors should be compelled to hear a case that has no or little relationship to their community; the benefit to a community of having localized controversies decided at home; and whether the law governing the case will be the law of the forum where the case is tried.
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> [Ibid. (internal citations omitted)]

Although the trial court said it was dismissing the case based only on forum non conveniens, it did so primarily because it wrongfully factored into the analysis the purported binding effect of defendants' judgment in the Bermuda court on the plaintiffs. The court addressed each of the above public-interest and private-interest factors individually, but explained that "while I find most of the public and private interest factors not

to be persuasive, the weight of the ones that are persuasive clearly weighs very heavily in favor of the jurisdiction of Bermuda."

The only factor the judge actually found to be persuasive was the factor concerning "practical problems that make trial of a case easy, expeditious and inexpensive including the enforceability of the ultimate judgment." It explained that this factor weighed heavily in favor of having the case heard in Bermuda because "we have a judgment from Bermuda already which is enforceable in New Jersey that says that there is no insurance policy." The judge thus found that plaintiff's best option would be to "go to Bermuda and get that lifted if they can and litigate their case there where essentially their case here was the answer and counterclaims that they should have filed in Bermuda in the first place."

Thus the trial court, by assuming that the judgment was binding on plaintiffs because of a mistaken application of the concepts defining privity and of fundamental principles of due process, erred in its application of the doctrine of forum non conveniens. By assuming that the judgement was "enforceable," his analysis of the factors was fatally flawed.

VI.

Since the Bermuda judgment should not have been found to be binding upon plaintiffs, the judge's basic balancing of the equities was erroneous. The Clarendon companies were New Jersey domiciled insurance companies, and compelled their general manager to obtain and maintain errors and omissions coverage pursuant to New Jersey law. Travelers is a Connecticut corporation licensed to do business in New Jersey. ERSIC, a member of the Chubb Insurance Group, is domiciled in New Jersey. The private interest factors thus tip the scale slightly to plaintiffs, because the entities which plaintiff stands in the interest of are New Jersey corporations. The witnesses are scattered around the country, and in Bermuda. Realistically, in weighing the private interest factors, whatever the jurisdiction, it will be relatively difficult to produce the necessary proofs for resolution of the dispute.

The public interest factors are tipped slightly in the balance of defendants as this matter will consume substantial judicial resources. Nonetheless, there simply is no basis for concluding that the choice of New Jersey as the forum for resolution is demonstrably inappropriate.

Reversed and remanded.