Court Opinions

Instituto Mexicano Del Seguro Soc. v. Stryker Corp., No. 1:19-cv-857, 2021 BL 458161 (W.D. Mich. Jan. 04, 2021), Court Opinion

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

INSTITUTO MEXICANO DEL SEGURO SOCIAL, Plaintiff, v. STRYKER CORPORATION, Defendant.

Case No. 1:19-cv-857

January 4, 2021, Filed

January 4, 2021, Decided

For Instituto Mexicano del Seguro Social, plaintiff: Mark Maney, Maney & Gonzalez-Felix PC, Houston, TX USA.

For Stryker Corporation, defendant: D. Andrew Portinga, David J. Gass, Laci Resendiz, Miller Johnson PLC (Grand Rapids), Grand Rapids, MI USA.

HON. JANET T. NEFF, United States District Judge.

JANET T. NEFF

OPINION AND ORDER

Plaintiff Instituto Mexicano del Seguro Social (Plaintiff or "IMSS") filed this case against Defendant Stryker Corporation (Defendant or "Stryker") in this Court. Defendant filed a Motion to Dismiss (ECF No. 27), arguing, in pertinent part, that this case belongs in Mexico, not Michigan. For the following reasons, the Court grants Defendant's motion to dismiss based on application of the doctrine of forum non conveniens.

I. BACKGROUND

Plaintiff is the main social service agency of the Mexican government, providing public services and medical care to the majority of Mexicans (Compl. [ECF No. 1] ¶¶ 1, 3, 12, 13). Plaintiff also manages the purchases of medical supplies and medical products that are provided by the Mexican government to most Mexican citizens through various governmental agencies, including the Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE), Petroleos Mexicanos (Pemex), the Mexican military, and IMSS itself (*id.* ¶¶ 3, 9, 14).

Defendant is a multinational corporation principally involved in the manufacture and marketing of medical devices (*id.* ¶ 10). Defendant operates from its home office in Kalamazoo, Michigan and has subsidiaries that it controls in nations around the world, including in Mexico (*id.*). Defendant distributes its products both domestically in the United States and internationally in multiple countries (*id.* ¶ 16). According to Plaintiff, Defendant used bribery as an integral part of its world-wide marketing strategy for years (*id.* ¶¶ 2, 18). Plaintiff alleges that Defendant's international bribery strategy has been established in actions by the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ) (*id.* ¶¶ 2, 19).

On October 18, 2019, Plaintiff filed this case, alleging that Defendant paid bribes to Mexican officials through its wholly-owned Mexican subsidiary, Stryker Mexico, S.A. de C.v. ("Stryker-

Mexico"), to sell medical equipment (*id.* ¶¶ 1 & 3). Plaintiff alleges that between at least 2003 and 2015, Stryker paid millions in bribes to government officials in Mexico and several other countries to secure even greater amounts in illicit profits (*id.* ¶ 20). Plaintiff alleges that in Mexico in particular, Defendant, acting through Stryker-Mexico, "paid tens of thousands of dollars in bribes to illicitly obtain contracts with IMSS" and earned more than $2.1 million in profits on the contracts illicitly obtained in Mexico (*id.* ¶¶ 21-22). According to Plaintiff, many of the bribes were paid using a Mexican law firm as Defendant's "bag man," where the law firm would include [*2] the bribe amounts on its invoices so that Defendant could conceal the bribes, and Stryker-Mexico recorded these improper payments as legitimate legal expenses in its books and records (*id.* ¶ 23).

Plaintiff alleges that Defendant had "direct knowledge and approved of its own illegal activities and the illegal activities of its wholly-owned subsidiaries throughout the world and specifically including Mexico" (*id.* ¶ 25). Alternatively, Plaintiff alleges that Defendant acted with "willful ignorance of the bribery scheme, using its wholly-owned subsidiaries as bagmen for payments that benefited Stryker" (*id.* ¶ 26). Plaintiff alleges that to control the international scheme, Defendant's personnel "necessarily communicated with Stryker personnel around the world, including within Mexico," and personnel would also travel to and from Mexico in support of the scheme (*id.* ¶ 27).

Plaintiff alleges that to obtain IMSS contracts, Defendant had to represent that it was complying with all of IMSS' requirements, including that no improper inducements were being made to obtain the contract (*id.* ¶ 28). Plaintiff alleges that it relied on Defendant's false, material statements and omissions to consummate business transactions with Defendant (*id.* ¶ 29). According to Plaintiff, Defendant's unlawful conduct harmed Plaintiff in numerous ways, including inflated contract prices and economic harm to Plaintiff and "violence to IMSS' contracting process and IMSS' ability to impartially evaluate potential medical device providers" (*id.* ¶¶ 31-36). Plaintiff alleges that because Defendant also "subverted the fiduciary duties of the IMSS officials responsible for ensuring that IMSS' procurement procedures were followed," the same officials "who should have challenged Stryker's illegal conduct," Plaintiff was unable to bring this lawsuit until the recent change in governmental administration (*id.* ¶ 40).

In its October 18, 2019 Complaint, Plaintiff alleges four claims. First, Plaintiff alleges "Inducement of, and Participation in, Breach of Fiduciary Duties" (Count I) and "Fraud" (Count II). In these first two counts, which are brought pursuant to both Mexican and United States law (*id.* ¶¶ 45, 51), Plaintiff alleges that it is entitled to "the avoidance of all contracts approved by a compromised IMSS official and a return of all consideration paid to Stryker apart from any proven quantum meruit benefits to IMSS" (*id.* ¶¶ 44, 50).

Plaintiff's Count III is a claim for "Violation of the Law of Acquisitions, Leases and Services of the Public Sector." Plaintiff's Count III is brought pursuant to Articles 50 and 60 of the Mexican Law of Acquisitions, Leases and Services of the Public Sector, which prohibits bribes to public sector officials and also prohibits false statements made to obtain government contracts and calls for the avoidance of contracts obtained in violation of its provisions (*id.* ¶¶ 52, 54). In Count III, Plaintiff also alleges that it is entitled to "the avoidance of all contracts approved by a compromised IMSS official and a return of all consideration paid to Stryker" [*3] (*id.* ¶ 54).

Last, Plaintiff presents a "Breach of Contract" claim in Count IV. In Count IV, Plaintiff alleges that "[a]ll of the Stryker/IMSS contracts contain covenants prohibiting violations of anti-corruption and government contracting laws" and that Defendant "breached those warranties in all of its IMSS contracts after the payment of the first bribe through violation," entitling Plaintiff to its actual damages (*id.* ¶¶ 55-56). Plaintiff's Breach of Contract claim is brought pursuant to "the Mexican law that governs the IMSS' purchases" (*id.* ¶ 57).

In June 2020, Defendant filed the pending Motion to Dismiss (ECF No. 27), to which Plaintiff filed a response (ECF No. 29) and Defendant filed a reply (ECF No. 30). Having considered the parties' submissions, the Court concludes that oral argument is unnecessary to resolve the issues presented. *See* **W.D. Mich. LCivR 7.2(d)** .

II. ANALYSIS

Defendant's motion is primarily based on the doctrine of forum non conveniens.[1] Under the common law doctrine of forum non conveniens, "a federal trial court may decline to exercise its jurisdiction, even though the court has jurisdiction and venue, when it appears that the convenience of the parties and the court and the interests of justice indicate that the action should be tried in another forum." *Associação Brasileria de Medicina de Grupo v. Stryker Corp.*, **891 F.3d 615** , **618** (6th Cir. 2018) (citation omitted). Given the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them," *Colo. River Water Conservation Dist. v. United States*, **424 U.S. 800** , **817** , **96 S. Ct. 1236** , **47 L. Ed. 2d 483** (1976), forum non conveniens should be invoked only in "rather rare cases," *Gulf Oil Corp. v. Gilbert*, **330 U.S. 501** , **509** , **67 S. Ct. 839** , **91 L. Ed. 1055** (1947). ***Id.***

In the Sixth Circuit, courts apply the following three-step test to determine whether dismissal is appropriate: "After [1] the court determines the degree of deference owed the plaintiff's forum choice, the defendant carries the burden of [2] establishing an adequate alternative forum and [3] showing that the plaintiff's chosen forum is unnecessarily burdensome based on public and private interests." ***Id.* at 618-19** (citation omitted). The Court will consider the parties' arguments on each step, in turn.

A. Degree of Deference Owed to Plaintiff's Forum Choice

Defendant argues that where Plaintiff, a Mexican agency, did not choose to litigate in Mexico, its home forum, the "convenience [of the forum] cannot be presumed" (ECF No. 28 at PageID.132, quoting *Stewart v. Dow Chem. Co.*, **865 F.2d 103** , **106** (6th Cir. 1989)).

Plaintiff responds that because Defendant did not present "any evidence of burden or inconvenience," "the level of deference is irrelevant" (ECF No. 29 at PageID.303, citing *DiRienzo v. Philip Servs. Corp.*, **294 F.3d 21** , **30** (2d Cir. 2002) ("[T]he district court committed a legal error by failing to hold defendants to their burden of proof.")). Conversely, Plaintiff also argues that its choice of forum is entitled to "deference by treaty" and as a "matter of international comity" (*id.* at PageID.305-306). Plaintiff argues that the deference accorded its choice of forum is also "enhanced" because Plaintiff chose Defendant's home forum (*id.* at PageID.308, citing *Mercier v. Sheraton Intern., Inc.*, **981 F.2d 1345** , **1354** (1st Cir. 1992)).

Defendant's argument has **[*4]** merit.

As Defendant sets forth in its Reply (ECF No. 30 at PageID.379), Plaintiff misplaces its reliance upon out-of-circuit case law for its argument that the "level of deference is irrelevant." In *Associação Brasileria*, **891 F.3d at 619** , the Sixth Circuit set forth in detail the manner in which courts should analyze the first step in the forum non conveniens analysis. Specifically, "[w]hen a defendant moves to dismiss on the basis of forum non conveniens, the court must first determine the amount of deference owed to the plaintiff's forum choice based on a 'sliding convenience scale.'" ***Id.*** (citation omitted). "As the amount of deference owed increases, the strength of the showing necessary to overcome that deference necessarily increases as well." ***Id.*** A forum in the United States is generally presumed to be convenient if a plaintiff is "closely connected to the United States," and that presumption applies with diminishing force as the plaintiff's connections to the United States weaken or as evidence of forum shopping mounts. ***Id.*** When the plaintiff is a foreign entity, "the presumption of convenience applies with less force." ***Id.*** *See, e.g., Solari v. Goodyear Tire & Rubber Co.*, **654 F. App'x 763** , **766** (6th Cir. 2016).

Consistent with Sixth Circuit law, the Court concludes that on the "sliding convenience scale," little deference is owed to the forum choice of Plaintiff, a foreign party. Plaintiff's reliance on the treaties or comity between Mexico and the United States does not compel a different conclusion. "These treaties require a nation's courts to give equal treatment to nationals of other nations; they do not establish jurisdiction or require a nation's courts to receive litigation that it reasonably believes would be better conducted in another nation." *Bonzel v. Pfizer, Inc.*, **439 F.3d 1358** , **1365** (Fed. Cir. 2006). S*ee also German Free State of Bavaria v. Toyobo Co.*, No. 1:06-cv-407, *2007 U.S. Dist. LEXIS 42072* , [**2007 BL 30977**], 2007 WL 1701814 , **at*4 n.8** (W.D. Mich. June 11, 2007) (rejecting a similar argument by the plaintiffs). That Plaintiff chose Defendant's home forum also does not compel a different conclusion. *See, e.g., Solari, **supra*** (applying the doctrine of forum non conveniens to dismiss cases against forum defendants); *Stewart, **supra*** (same); *Dowling v. Richardson-Merrell , Inc.*, **727 F.2d 608** (6th Cir. 1984) (same). Therefore, as a threshold matter, the Court affords little deference to Plaintiff's choice of forum.

B. Alternative Forum

"The second step in the forum non conveniens analysis is to determine whether 'the claim can be heard in an available and adequate alternative forum.'" *Associação Brasileria*, **891 F.3d at 619** (quoting *DRFP, L.L.C. v. Republica Bolivariana de Venez.*, **622 F.3d 513** , **518** (6th Cir. 2010)). Identifying an alternate forum is a prerequisite for dismissal, not a factor to be balanced. ***Id.* at 619-20** . If there is no suitable alternate forum where the case can proceed, then the entire inquiry ends. ***Id.* at 620** (citing *Gulf Oil*, **330 U.S. at 506-07** ("[T]he doctrine of forum non conveniens ... presupposes at least two forums in which the defendant is amenable to process....")).

An alternative forum is ordinarily considered to be available "when the defendant is 'amenable to process' in the other jurisdiction." ***Id.*** (quoting *Piper Aircraft*, **454 U.S. at 254 n.22** (quoting *Gulf Oil*, **330 U.S. at 506-07**). The foreign **[*5]** forum is not adequate if the remedy it offers "is so clearly inadequate or unsatisfactory that it is no remedy at all," as, for example, if the other forum "does not permit litigation of the subject matter of the dispute." *Piper Aircraft*, **454 U.S. at 254** & n.22. However, an alternative forum is not inadequate merely because its substantive law is different or less favorable to the plaintiff than that of the United States forum. ***Id.* at 247** .

Here, Defendant identifies Mexico as an available and adequate forum. Defendant argues that Mexican courts are adequate because (1) Plaintiff's claims are governed by Mexican law, and Mexican courts can apply Mexican law; (2) the declarations of Plaintiff's experts demonstrate that Mexican courts can provide a remedy on IMSS's contractual and tort claims, as well as its statutory claim; and (3) federal courts have repeatedly held that Mexico is an adequate forum for litigation (ECF No. 28 at PageID.136-138).

Plaintiff concedes that Mexican courts are "competent and generally present adequate forums for complex commercial matters" (ECF No. 29 at PageID.310-311). However, Plaintiff denies the "availability" of Mexican courts, opining that "subject matter jurisdiction (or liability)" "might" not lie under Mexican law where "Defendant used subsidiaries and agents as bagmen to pay its bribes" (*id.* at PageID.311).

Defendant's argument has merit.

Counts I (Inducement of Breach of Fiduciary Duty) and II (Fraud) are brought under both Mexican and United States law. Counts III (Violation of Mexico's Law of Acquisitions) and IV (Breach of Contract) are based solely on Mexican law. As Defendant points out, if Mexican law is no less favorable to Plaintiff than Michigan law, then Mexican courts cannot be inadequate. *See Hefferan*, **828 F.3d at 497** ("Litigating in Germany would not result in an unfavorable change in the law . . . because the federal court in Ohio would likely apply German law."). *See also Piper Aircraft*, **454 U.S. at 250** (explaining that an unfavorable change in the law does not preclude dismissal on forum non conveniens grounds).

Additionally, there is evidence in the record establishing that Mexican courts would be able to exercise jurisdiction over these parties. Unlike the facts in *Associação Brasileria* , where it was unclear whether Stryker admitted any connections to the proffered alternative forum of Brazil or had effectively consented to jurisdiction of the Brazilian courts, Defendant's corporate officer has consented to submit to Mexican jurisdiction for this dispute, a consent that two Mexican legal experts declare will be honored by Mexican courts (ECF No. 28 at PageID.133-136; Decls. ECF Nos. 28-1 & 28-2). In sum, Defendant has satisfied its burden of identifying Mexico as an alternative forum.

C. Private- and Public-Interest Factors

The final step of the forum non conveniens analysis is the balance of the private- and public-interest factors set forth by the Supreme Court in *Gulf Oil. Hefferan v. Ethicon Endo- Surgery Inc.*, **828 F.3d 488** , **498** (6th Cir. 2016). "The onus of showing that a plaintiff's choice of forum is unnecessarily burdensome falls on the defendant." ***Id.***

1. Private-Interest [*6] Factors

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." *Gulf Oil*, **330 U.S. at 508** . To examine them, "the district court must scrutinize the substance of the dispute between the parties to evaluate what proof is required, and determine whether the pieces of evidence cited by the parties are critical, or even relevant, to the plaintiff's cause of action and to any potential defenses to the action." *Van Cauwenberghe v. Biard*, **486 U.S. 517** , **528** , **108 S. Ct. 1945** , **100 L. Ed. 2d 517** (1988).

Relative Ease of Access to Sources of Proof. Defendant argues that a Mexican court would have easier access to the proofs in this case because most of the witnesses are in Mexico and virtually all of the physical evidence, including any evidence of the alleged bribery and any third-party records of Stryker-Mexico or the Mexican law firm, is in Mexico (ECF No. 28 at PageID.139). Further, Defendant opines that any documents from Mexico and any testimony by Mexican witnesses would likely need to be translated into English and that the cost to translate documents and testimony for litigation in Michigan will be substantial (*id.*).

Plaintiff argues that witnesses and evidence are more available in this forum than in Mexico because under Mexican procedures, "there are virtually no means of obtaining evidence not already in a party's possession" (ECF No. 29 at PageID.312-313). Additionally, Plaintiff asserts that "Mexico has a statutory provision similar to **28 U.S.C. § 1782** , which allows parties to seek discovery directly in Mexican courts in support of a foreign proceedings" (*id.* at PageID.313).

In reply, Defendant points out that while Plaintiff argues that it will be easier to obtain evidence from Mexico for use in Michigan than vice versa, the referenced statute "only applies to oral testimony—not documents or other physical evidence—and that the referenced statute is not a Mexican federal statute; rather, it is a statute that applies to the state courts of Mexico City only" (ECF No. 30 at PageID.382). According to Defendant, Plaintiff also failed to inform the Court that

it has administrative and other proceedings at its disposal, and those proceedings allow for broader discovery (*id.*, citing Ex. 4, Ortiz Decl., § V).

This factor weighs in favor of dismissal.

While Plaintiff alleges that unnamed "Stryker personnel" traveled "to and from Mexico in support of the [bribery] scheme," Compl. ¶ 27, the vast majority of potential witnesses identified in Plaintiff's Complaint are in Mexico. IMSS and its employees and officials are in Mexico. *Id.* ¶ 12. The subsidiary through which Defendant allegedly acted, Stryker-Mexico, is in Mexico. *Id.* ¶¶ 17, 21. The Mexican law firm through which the bribes were allegedly paid is in Mexico. *Id.* ¶ 23. And notably, the Mexican officials to whom the bribes were allegedly paid are in Mexico. *Id.* ¶ 20. Defendant has demonstrated **[*7]** that with regards to the "relative ease of access" to witness and non-witness sources of proof, litigating in Michigan would be more burdensome than litigating in Mexico.

Availability of Compulsory Process for Attendance of Unwilling and the Cost of Obtaining Attendance of Willing Witnesses. Defendant argues that if this Court retains jurisdiction, there is no certainty that the Court will be able to hear live testimony from any of IMSS's witnesses because this Court cannot compel testimony from many of the necessary witnesses (ECF No. 28 at PageID.140). Further, Defendant points out that even if a witness were willing to voluntarily testify, such witness would not be allowed to enter the United States absent a visa (*id.* at PageID.141).

Plaintiff does not expressly address this factor.

"[A]lthough the availability of compulsory process is properly considered when witnesses are unwilling, it is less weighty when it has not been alleged or shown that any witness would be unwilling to testify." *Duha v. Agrium, Inc.*, **448 F.3d 867** , **877** (6th Cir. 2006). Here, Defendant has not identified any particular witnesses who are unwilling to appear and would require compulsory process to ensure their attendance. However, Defendant's point that even willing witnesses face potential obstacles to testifying in Michigan is well taken, particularly on the facts alleged in this case, which indicate that the vast majority of relevant witnesses are in Mexico. *See, e.g., Barak v. Zeff*, **289 F. App'x 907** , **912** (6th Cir. 2008) (concluding that "[e]ven were the Spanish witnesses willing to testify in the United States, the district court acted within its discretion in considering the expense of bringing numerous, willing foreign witnesses to Michigan."). Therefore, this Court finds that this factor weighs in favor of dismissal.

Possibility of View of Premises. This factor appears neutral, although if any physical location would need to be viewed in this case, that location would likely be in Mexico inasmuch as the crux of Plaintiff's Complaint is that Defendant paid bribes to Mexican officials through its Mexican subsidiary, Stryker-Mexico (Compl. ¶¶ 1 & 3).

All Other Practical Problems. The list of private-interest factors includes a catch-all for "practical problems that make trial of a case easy, expeditious and inexpensive," including "a plaintiff's financial ability to practicably bring suit in the alternative forum." *Hefferan*, **828 F.3d at 499** . "However, this factor receives less weight when a plaintiff does not demonstrate its inability to shoulder the cost of litigating in the alternative forum." ***Id.***

Defendant argues that where Plaintiff, a Mexican organization, cannot show that it lacks the ability to shoulder the cost of Mexican litigation, this final private-interest factor favors dismissal (ECF No. 28 at PageID.141). Indeed, Plaintiff does not expressly address this factor, and the Court consequently gives it less weight.

In sum, the private-interest factors weigh in favor of dismissing this action for forum non conveniens.

2. Public-Interest Factors

Public-interest factors include "administrative **[*8]** difficulties flowing from court congestion; the 'local interest in having localized controversies 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 conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty." *Piper Aircraft*, **454 U.S. at 241 n. 6** (quoting *Gulf Oil*, **330 U.S. at 509**). To evaluate them, district courts "must consider the locus of the alleged culpable conduct, often a disputed issue, and the connection of that conduct to the plaintiff's chosen forum." *Van Cauwenberghe*, **486 U.S. at 528** .

Administrative Difficulties Flowing from Court Congestion. Defendant argues that there are administrative difficulties with defending this action in Michigan where this Court was short a judge for more than three years and has an overloaded civil docket (ECF No. 28 at PageID.141-142). In response, Plaintiff asserts that trial in Mexico will take up to 15 years and be more

burdensome than trial in the United States (ECF No. 29 at PageID.312). Defendant points out in reply that while some cases do take a long time in Mexican federal court, most cases resolve within three to five years, a result that is "not substantially different from litigating in the Western District of Michigan" (ECF No. 30 at PageID.381-382, citing Ex. 4, Ortiz Declaration, § IV.1). Given the parties' arguments, the Court determines that this factor does not weigh in favor of, or against, dismissal.

Local Interest in Having Localized Controversies Decided at Home. Defendant emphasizes that "[v]irtually all of the relevant acts—from allegedly paid bribes to IMSS officials, to alleged misconduct by a Mexican law firm—occurred in Mexico, and almost all of the alleged actors are in Mexico" (ECF No. 28 at PageID.142). Defendant opines that "[t]his is an inherently Mexican dispute in which Michigan has little or no interest" (*id.*).

Plaintiff argues that the United States has already demonstrated its interest in the allegations in this lawsuit inasmuch as Defendant's misconduct has been the subject of multiple actions by United States authorities (ECF No. 29 at PageID.311-312).

This factor strongly weighs in favor of dismissal.

Given the nature of the allegations in this case and the location of the injury in Mexico, the Court determines that Mexico has a strong interest in having this dispute adjudicated in a Mexican court. While the United States has an interest in policing corporate activity and preventing bribery schemes such as the one alleged, the alleged victims of this case are in Mexico and primarily include the Mexican citizens on whose behalf IMSS allegedly purchased medical products at inflated contract prices, without impartial evaluations of other potential medical device providers (Compl. ¶¶ 31-36). "[T]he place of injury has a greater interest in resolving any ensuing disputes than the place of corporate decision making." *Solari*, **654 F. App'x at 769** .

Application of Foreign Law. Again, Plaintiff's tort claims in Counts I and II **[*9]** are brought under both Mexican and United States law, and Plaintiff's statutory and contract claims in Counts III and IV are brought solely under Mexican law. Because this is a diversity case, Michigan's choice-of-law rules apply. *See Ruffin-Steinbeck v. dePasse*, **267 F.3d 457** , **463** (6th Cir. 2001). Michigan's choice of law rule presumes that Michigan law applies to a case "unless there is a rational reason to displace it." ***Id.*** "If a foreign state has an interest in having its law applied, a determination is made whether Michigan's interests require Michigan law be applied." ***Id.*** For many of the reasons discussed already herein, Mexico has a strong interest in having its law apply, and Michigan's interests do not require that Michigan law be applied. This Court's complete unfamiliarity with the Mexican law that will govern this action also strongly supports dismissal. *See Piper Aircraft*, **454 U.S. at 251** (the public-interest factors point towards dismissal where a court would be required to "untangle problems in conflict of laws, and in law foreign to itself"); *Dowling*, **727 F.2d at 615** .

The Unfairness of Burdening Citizens in an Unrelated Forum with Jury Duty. Inasmuch as the record does not indicate that a jury trial has been requested in this case, this factor is presently neutral.

In sum, the public-interest factors also weigh in favor of dismissing this action for forum non conveniens.

Each forum non conveniens case "turns on its facts." *Am. Dredging Co. v. Miller*, **510 U.S. 443** , **455** , **114 S. Ct. 981** , **127 L. Ed. 2d 285** (1994) (citation omitted). Having considered the facts of this case, the Court affords little deference to Plaintiff's forum choice; determines that Mexico is an alternative forum; and finds that the public- and private-interest factors, on balance, demonstrate that Plaintiff's chosen forum is unnecessarily burdensome to both Defendant and the Court. Therefore, the Court, in its discretion, declines to exercise its jurisdiction over this case and grants Defendant's motion to dismiss this case without prejudice. *See Hefferan*, **828 F.3d at 501** ("It is well established that the appropriate disposition of a granted forum non conveniens motion is dismissal without prejudice to filing in the alternative forum.").

III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss (ECF No. 27) is GRANTED, and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE.

Dated: January 4, 2021

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

JUDGMENT

In accordance with the Opinion and Order entered this date:

IT IS HEREBY ORDERED that Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE.

Dated: January 4, 2021

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge

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Defendant also alternatively seeks dismissal of Plaintiff's claims under **Federal Rules of Civil Procedure 12(b)(6)** and **9(b)** . Give this Court's holding herein, the Court declines to reach the alternative arguments for dismissal.