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# ***Forum Non Conveniens* and the Need for Availability of an Alternative Forum Under CPLR 327: Is the *Islamic Republic* Case an Anomaly?**

**Anthony J. Centone, Esq.\***

This article will explore judicial interpretation of CPLR 327<sup>1</sup> with respect to the seminal case of *Islamic Republic of Iran v. Pahlavi*<sup>2</sup> and its controversial holding that, although the availability of an alternative forum is a “most important factor” in determining whether to grant a dismissal based on *forum non conveniens*,<sup>3</sup> it is not a “prerequisite for applying the *conveniens* doctrine . . . .”<sup>4</sup> Have prior and subsequent New York cases similarly held that a case could be dismissed based on *forum non conveniens* in the absence of an available alternative forum? In order to answer this, we first need to look at the foundations of *forum non conveniens* in New York.

It is believed that the doctrine of *forum non conveniens* dates back to early English and Scottish common law.<sup>5</sup> The doctrine was apparently first introduced into American law by Paxton Blair in a 1929 *Columbia Law Review* article, wherein he suggested the doctrine as a means of reducing “calendar congestion” in the courts.<sup>6</sup> New York implemented the doctrine by

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1. N.Y. C.P.L.R. 327 (McKinney 2001).

2. 467 N.E.2d 245 (N.Y. 1984), *cert. denied*, 469 U.S. 1108 (1985).

3. *Id.* at 249.

4. *Id.*

5. See Allan R. Stein, *Forum Non Conveniens and the Redundancy of Court-Access Doctrine*, 133 U. PA. L. REV. 781, 796-97 (1985).

6. Paxton Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 COLUM. L. REV. 1, 1 (1929). See also John P. Dobrovich, Jr., *Dismissal Under Forum Non Conveniens: Should the Availability Requirement Be a Threshold Issue When Applied to Nonessential Defendants*, 12 WIDENER L. REV. 561, 562 (2006) (“[I]t only seems logical that, as our relationships with other countries expand, so too will our legal battles. This means the U.S. legal system, already burdened with overloaded dockets, will be forced to take on more and more

case law<sup>7</sup> prior to its codification into CPLR 327 in 1972.<sup>8</sup> CPLR 327(a) simply states that if a “court finds that in the interest of substantial justice the action should be heard in another forum, the court . . . may stay or dismiss the action in whole or in part on any conditions that may be just.”<sup>9</sup> However, in order to understand the application of *forum non conveniens* in New York, we need to explore prior U.S. Supreme Court decisions on the doctrine.

### I. Supreme Court Cases

The U.S. Supreme Court first adopted the doctrine of *forum non conveniens* in 1947, in the case of *Gulf Oil Corp. v. Gilbert*.<sup>10</sup> In *Gilbert*, the question before the Court was whether the federal court in New York or Virginia was more appropriate for trial in a diversity of citizenship case.<sup>11</sup> In determining that the case should properly be dismissed in New York and re-filed in Virginia, Justice Jackson, writing for the majority, stated that “[i]n all cases in which the doctrine of *forum non conveniens* comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them.”<sup>12</sup> The court went on to hold that, under this doctrine, a court may resist jurisdiction even when it is authorized by statute.<sup>13</sup> However, Justice Jackson specifically noted that “[t]hese statutes are drawn with a necessary generality and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his remedy.”<sup>14</sup>

These statements seem to imply that the plaintiff needs to have another forum to pursue his claim in order for a court to

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international claims. Foreign plaintiffs seeking to litigate their claims under the more favorable U.S. laws will aggravate this problem further. To alleviate this dilemma, under the doctrine of *forum non conveniens*, a court may decline to exercise its jurisdiction over an action brought by a foreign plaintiff.”)

7. See, e.g., *Bata v. Bata*, 105 N.E.2d 623 (N.Y. 1952); *De La Bouillerie v. De Vienne*, 89 N.E.2d 15 (N.Y. 1949).

8. N.Y. C.P.L.R. 327 (McKinney 2001).

9. *Id.*

10. 330 U.S. 501 (1947).

11. *Id.* at 503-04.

12. *Id.* at 506-07.

13. *Id.* at 507.

14. *Id.*

apply the *conveniens* doctrine. This is further supported by the subsequent case of *Piper Aircraft Co. v. Reyno*,<sup>15</sup> in which the Supreme Court stated that “[a]t the outset of any *forum non conveniens* inquiry, the court must determine whether there exists an alternative forum. Ordinarily, this requirement will be satisfied when the defendant is ‘amenable to process’ in the other jurisdiction.”<sup>16</sup>

This language suggests that, unless the alternative forum can obtain jurisdiction over all defendants in a case, *forum non conveniens* should not be applied. This is consistent with the Restatement (Second) of Conflicts of Law, which states that an action should not be dismissed based on *forum non conveniens* “unless a suitable alternative forum is available to the plaintiff.”<sup>17</sup> Accordingly, the Restatement provides that a “suit will be entertained, no matter how inappropriate the forum may be, if the defendant cannot be subjected to jurisdiction in other states.”<sup>18</sup> Presumably, this can be expanded to include other forums outside of the United States.<sup>19</sup>

## II. Pre-Islamic Republic Cases

The availability of an alternative forum appears to have been a *sine qua non* under New York case law prior to the *Islamic Republic* case. In *Varkonyi v. S.A. Empresa De Viacao Airea Rio Grandense (Varig)*,<sup>20</sup> the Court of Appeals dealt with a case involving an airliner crash which occurred in Lima, Peru.<sup>21</sup> All of the plaintiffs’ decedents were non-New York residents.<sup>22</sup> Separate wrongful death actions were brought in the Supreme Court of New York County against various defendants, including Boeing, a corporation doing business in New

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15. 454 U.S. 235 (1981).

16. *Id.* at 252 n.22 (citing *Gilbert*, 330 U.S. at 506-07).

17. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 84 cmt. c (1971).

18. *Id.*

19. See *Esso Transport Co. v. Terminales Maracaibo, C.A.*, 352 F. Supp. 1030, 1031-32 (S.D.N.Y. 1972) (denying motion to dismiss on the grounds of *forum non conveniens* because the cause of action was time barred in Venezuela and Panama, the only other jurisdictions where this case could be heard (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 84 cmt. c)).

20. 239 N.E.2d 542 (N.Y. 1968).

21. *Id.* at 543.

22. *Id.*

York, and numerous non-New York entities.<sup>23</sup> Two of the defendants moved to dismiss based on *forum non conveniens*, alleging the action should be maintained in Peru or elsewhere.<sup>24</sup> However, it was clear that New York was the only forum where jurisdiction could be obtained over *all defendants*.<sup>25</sup> In reversing the Appellate Division, which had reversed the Special Term's decision to deny the motion to dismiss,<sup>26</sup> the Court of Appeals applied the "special circumstances" test,<sup>27</sup> stating that it is error for a court to exclude consideration of such special circumstances in deciding the motion, "particularly the absence of any other forum in which both of the moving defendants could be joined . . . ."<sup>28</sup>

As Professor Siegel notes, in determining a *conveniens* motion, a court should consider a variety of factors including the "availability elsewhere of a reputable forum."<sup>29</sup> Furthermore, according to Siegel, if the other forum is a foreign country, the dismissal of the case out of New York should be "less likely."<sup>30</sup>

### III. *Islamic Republic*

The action in *Islamic Republic* was brought by the Islamic Republic of Iran against Shah Mohammed Rezi Pahlavi and his wife, Empress Farah Diba Pahlavi, to recover thirty-five billion dollars in Iranian funds allegedly misappropriated by the Shah prior to his flight into exile in 1979.<sup>31</sup> The Shah and his wife were served in New York State (where the Shah was temporarily residing while being treated for cancer), but the defendants moved to dismiss the complaint based on, *inter alia*, *forum non conveniens*.<sup>32</sup> The trial court granted the motion, concluding that the parties had no connection with New York other than

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23. *Id.*

24. *Id.*

25. *Id.* at 544.

26. See *Varkonyi v. S.A. Empresa De Viacao Airea Rio Grandense (Varig)*, 277 N.Y.S.2d 577, 579 (App. Div. 1967).

27. 239 N.E.2d at 544.

28. *Id.*

29. DAVID D. SIEGEL, *NEW YORK PRACTICE* § 28, at 31 (4th ed. 2005) (citing *Varkonyi*, 239 N.E.2d at 544).

30. *Id.*

31. 467 N.E.2d 245, 246-47 (N.Y. 1984).

32. *Id.* at 247.

the claim that the Shah had deposited some of the alleged stolen funds in New York banks, which the trial court deemed to be an “insufficient contact” with New York.<sup>33</sup> A divided Appellate Division affirmed,<sup>34</sup> with the dissent arguing that the motion should be denied because there was no alternative forum available to the plaintiff.<sup>35</sup>

On appeal, Judge Simons, writing for the majority of the Court of Appeals, addressed the “alternative forum” issue,<sup>36</sup> as well as the issue of whether the U.S. government undertook to guarantee the plaintiff an American forum to litigate claims against the Shah pursuant to the Algerian Accords.<sup>37</sup> With regard to the *forum non conveniens* issue, the Court of Appeals affirmed the lower courts’ holding, stating that “[w]e do not find that those courts abused their discretion as a matter of law under the circumstances presented, *even though it appears that there may be no other forum in which plaintiff can obtain the relief it seeks.*”<sup>38</sup>

The Court of Appeals recognized that prior New York case law considered a variety of factors in determining whether to apply the doctrine of *forum non conveniens*, including but not limited to “the unavailability of an alternative forum in which plaintiff may bring suit.”<sup>39</sup> However, the court then proceeded

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33. *Id.*

34. *Islamic Republic of Iran v. Pahlavi*, 464 N.Y.S.2d 487, 488 (App. Div. 1983).

35. *Id.* at 497 (Fein, J., dissenting).

36. *Islamic Republic*, 467 N.E.2d at 248-50.

37. *See id.* at 251-52. The court held that the Algerian Accords, a “Declaration” executed by the United States and Iran which ultimately settled the “hostage crisis” on January 19, 1981 (slightly more than one year after this case commenced), did *not* guarantee the Iranian government a New York forum in which to pursue claims against the Shah’s assets. *Id.* at 252.

38. *Id.* at 247 (emphasis added). This was primarily because, as the Appellate Division stated,

the present regime in Iran is “a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law” and thus the judgment of its courts would not be entitled, either as a matter of comity or of absolute right, to recognition in jurisdictions having principles similar to New York.

*Islamic Republic*, 464 N.Y.S.2d at 490 (citation omitted) (quoting N.Y. C.P.L.R. 5304(a) (McKinney 2001)).

39. *Islamic Republic*, 467 N.E.2d at 248 (citing *Banco Ambrosiano v. Artoc Bank & Trust*, 464 N.E.2d 432, 436 (N.Y. 1984); *Irrigation & Indus. Dev. Corp. v. Indag S.A.*, 337 N.E.2d 749, 751 (N.Y. 1975); *Varkonyi v. S.A. Empresa De Viacao*

to address the issue of whether an “alternative forum” is an “absolute precondition to dismissal on *conveniens* grounds.”<sup>40</sup> First, the court discussed the *Gilbert* case and found that Justice Jackson’s statement, that *forum non conveniens* “presupposes at least two forums in which the defendant is amenable to process,”<sup>41</sup> was merely “dictum” since, in *Gilbert*, there was clearly an alternative forum to the State of New York.<sup>42</sup> The Court of Appeals held:

Without doubt, the availability of another suitable forum is a most important factor to be considered in ruling on a motion to dismiss but we have never held that it was a prerequisite for applying the *conveniens* doctrine and in *Varkonyi* we expressly described the availability of an alternative forum as a “pertinent factor,” not as a precondition to dismissal. Nor should proof of the availability of another forum be required in all cases before dismissal is permitted. That would place an undue burden on New York courts forcing them to accept foreign-based actions unrelated to this State merely because a more appropriate forum is unwilling or unable to accept jurisdiction.<sup>43</sup>

The court admitted that its decision may appear “arbitrary,”<sup>44</sup> but it stated that this was not the only instance where New York courts have declined to entertain jurisdiction in the absence of an alternative forum, citing, as examples, “unclean hands, diplomatic immunity and claims in which the applicable law is penal in nature or is contrary to the public policy of the forum State.”<sup>45</sup> The court also noted that, although the plaintiff

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Airea Rio Grandense (Varig), 239 N.E.2d 542, 544 (N.Y. 1968)). The other factors include “the burden on the New York courts [and] the potential hardship to the defendant . . .” *Id.*

40. *Id.*

41. *Id.* at 248-49 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507 (1947)).

42. *Id.* at 249.

43. *Id.* (citations omitted). As stated in *Varkonyi*, the availability of an alternate forum was more than just a “pertinent factor.” 239 N.E.2d at 544. Rather, the *Varkonyi* court deemed it to be a mandatory factor in considering whether there were “special circumstances” to warrant the court accepting or rejecting the case. *Id.*

44. *Islamic Republic*, 467 N.E.2d at 249.

45. *Id.* Significantly, the court failed to cite any case law to support this proposition. See *id.* (citing RESTATEMENT (SECOND) CONFLICTS OF LAW §§ 85 & cmt. a, 89, 90 (1971); DAVID D. SIEGEL, CONFLICTS IN A NUTSHELL §§ 49-53 (1982)).

had acquired personal jurisdiction over the defendants here in New York, “a plaintiff must be able to show more than its own convenience” to defeat this type of motion.<sup>46</sup> In that regard, the court stated that “[t]he absence of an alternative forum is the only substantial consideration advanced for denial of the motion.”<sup>47</sup> Conversely, the court noted several factors which it maintained warranted the granting of the motion, including the possibility that any judgment obtained by the plaintiff may be ineffectual and uncollectable in New York,<sup>48</sup> as well as the fact that most of the witnesses and evidence were located in Iran and not subject to the subpoena powers of New York courts.<sup>49</sup>

In justifying its holding, the court seemingly revealed its underlying motivation for ruling against the Islamic Republic of Iran:

If the action cannot be maintained in Iran, however, under laws which result in judgments cognizable in the United States or other foreign jurisdictions where the Shah’s assets may be found, then that failure must be charged to plaintiff. It is, after all, the government in power, not a hapless national victimized by its country’s policies. Any infirmity in plaintiff’s legal system should weigh against its claim of venue, not impose disadvantage on defendant or the judicial system of this State.<sup>50</sup>

In addition, the court seemed to completely ignore the alleged misconduct of the Shah and his wife, the defendants, in helping to create the chaotic situation in Iran, which subsequently contributed to the infirmities in its legal system, by allegedly looting the country’s treasury of some thirty-five billion dollars.<sup>51</sup>

Nonetheless, the majority concluded that “the record does not demonstrate a substantial nexus between this State and

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46. *Id.*

47. *Id.*

48. *Id.* at 250.

49. *Id.* The fact that the judgment may be ineffectual or uncollectable is a risk that every plaintiff takes when suing a defendant and does not appear to be a factor which should “weigh” against the plaintiff, who voluntarily chose to sue in that forum in the first place.

50. *Id.*

51. *See id.* at 246-47.



plaintiff's cause of the action . . . ."<sup>52</sup> In addition, the court explicitly found that the motion could be granted in the absence of an alternative forum and "without conditioning [the] dismissal on defendant's acceptance of service of process in another jurisdiction."<sup>53</sup>

In his dissent, Judge Meyer maintained that the *Gilbert* Court had, in fact, specifically held that an alternative forum was a prerequisite to a *forum non conveniens* dismissal and that Justice Jackson's statement was certainly not "dictum."<sup>54</sup> Judge Meyer found support for this interpretation in the Supreme Court's subsequent decision in *Piper Aircraft*, where the Court stated that the availability of an alternative forum must be determined "[a]t the outset of any *forum non conveniens* inquiry . . . ."<sup>55</sup> In addition, Judge Meyer referred to the plain language of CPLR 327, "which authorizes stay or dismissal of an action '[w]hen the court finds that in the interest of substantial justice the action should be heard in another forum,'"<sup>56</sup> as well as in the 1972 recommendations of the Judicial Conference for the adoption of CPLR 327, which stated that a court should decline jurisdiction pursuant to CPLR 327 if New York is a "seriously inconvenient forum . . . *provided that a more appropriate forum is available.*"<sup>57</sup>

#### IV. Post-Islamic Republic Cases

Following *Islamic Republic*, have New York courts granted *forum non conveniens* motions in the absence of any alternative available forum for the plaintiff to prosecute its claim? It has now been almost twenty-five years since *Islamic Republic* was

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52. *Islamic Republic*, 467 N.E.2d at 250.

53. *Id.* Courts routinely condition *forum non conveniens* dismissals on the "condition" that the defendant consents to jurisdiction and accepts service of process in the alternative forum, waives statute of limitations defenses in the alternative forum, and agrees to various other conditions as part of the dismissal. See *Bewers v. American Home Prods. Corp.*, 472 N.Y.S.2d 637, 638 (App. Div. 1984). If the moving defendant refuses to accept these conditions, the courts typically provide that the motion will be denied and the case will then remain in New York. See *id.*

54. *Islamic Republic*, 467 N.E.2d at 253 (Meyer, J., dissenting).

55. *Id.* (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981)).

56. *Id.* at 254 (quoting N.Y. C.P.L.R. 327 (McKinney 2001)).

57. *Id.* at 253 (quoting N.Y. JUDICIAL CONFERENCE, SEVENTEENTH ANNUAL REPORT A35 (1972)).

decided and the answer appears to be “no.” As Professor Alexander notes, contrary to *Islamic Republic*, even the potential “deficiencies” of other available forums in which to litigate the case may “weigh in favor of retaining New York jurisdiction.”<sup>58</sup> Of the over two hundred reported cases citing *Islamic Republic* since it was decided almost twenty-five years ago, this writer could find no case where the court actually dismissed a plaintiff’s claim based on *forum non conveniens* in the absence of an alternative forum. It appears that the large majority of the *conveniens* cases decided after *Islamic Republic*, whether citing that case or not, have in essence held that an alternative forum is essentially a prerequisite to the granting of a *forum non conveniens* dismissal.<sup>59</sup>

A particularly interesting example is the Second Department’s decision in *Broukhim v. Hay*,<sup>60</sup> decided approximately two years after *Islamic Republic*. In *Broukhim*, the court upheld the denial of the defendant’s motion to dismiss based on *forum non conveniens* where all of the parties were Iranian citizens of Jewish faith who fled Iran due to the Islamic revolution.<sup>61</sup> The defendant maintained that he was unable to produce documents and witnesses in defense of the claim, since they were all located in Iran,<sup>62</sup> which was also an argument made by the defendants in *Islamic Republic*.<sup>63</sup> In addition, all parties agreed that Iran was unavailable as a forum to resolve the dispute.<sup>64</sup> In light of these factors, the court affirmed the denial of the motion to dismiss, stating that

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58. VINCENT C. ALEXANDER, PRACTICE COMMENTARIES, MCKINNEY’S CONS. LAWS OF N.Y., Book 7B, CPLR C327:2 (2001) (citing *Neville v. Anglo Amer. Mgmt. Corp.*, 594 N.Y.S.2d 747 (App. Div. 1993); *Waterways Ltd. v. Barclays Bank PLC*, 571 N.Y.S.2d 208 (App. Div. 1991); *Rep. of Leb. v. Sotheby’s*, 561 N.Y.S.2d 566 (App. Div. 1990)).

59. See, e.g., *Adamowicz v. Besnainou*, 872 N.Y.S.2d 47, 48 (App. Div. 2009); *Kuwaiti Eng’g Group v. Consortium of Int’l Consultants, LLC*, 856 N.Y.S.2d 101, 102 (App. Div. 2008); *Apex Equity Partners v. Murray*, No. 111623/2006, 2008 N.Y. Misc. LEXIS 635, at \*10 (Sup. Ct. Feb. 5, 2008); *Foster Wheeler Iberia S.A. v. Mapfre Empresas S.A.S.*, No. 601916/06, 2007 N.Y. Misc. LEXIS 1205 (Sup. Ct. Mar. 29, 2007).

60. 504 N.Y.S.2d 467 (App. Div. 1986).

61. *Id.* at 468.

62. *Id.*

63. See *Islamic Republic of Iran v. Pahlavi*, 467 N.E.2d 245, 250 (N.Y. 1984).

64. *Broukhim*, 504 N.Y.S.2d at 468.

[t]he Court of Appeals has recognized that the availability of another suitable forum is not a prerequisite for applying the doctrine, but a “pertinent factor” and “a most important factor” to be considered in ruling upon a motion to dismiss. It did, however, implicitly recognize that where an action exists between “hapless national[s] victimized by [their] country’s policies,” the unavailability of an alternate forum may be a more compelling consideration.<sup>65</sup>

Thus, even cases that acknowledge the holding of *Islamic Republic* (i.e., that an available forum is not a prerequisite for applying the *conveniens* doctrine<sup>66</sup>), still seem to rely upon the “availability” of another forum as reason for allowing the motion to be granted.<sup>67</sup>

In *Shin-Etsu Chemical Co. v. 3033 ICICI Bank Ltd.*,<sup>68</sup> the First Department reversed a denial of *forum non conveniens*, which had been based on the huge backlog of cases in the New Delhi (India) High Court,<sup>69</sup> and held that the case should be tried in India where, despite a backlog of cases, the courts were operating.<sup>70</sup> The court reasoned that

[t]he only proper *forum non conveniens* factor considered by the Supreme Court was whether India provided an adequate alternative forum, the availability of which, although an important consideration, is not, contrary to the court’s ruling, a precondition to dismissal on *forum non conveniens* grounds. “Ordinarily, [the] requirement [of an adequate alternative forum] will be satisfied when the defendant is ‘amenable to process’ in other jurisdiction. . . . [However,] dismissal would not be appropriate where the alternative forum does not permit litigation of the subject matter of the dispute.”<sup>71</sup>

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65. *Id.* (alterations in original) (quoting *Islamic Republic*, 467 N.E.2d at 249).

66. *See* 467 N.E.2d at 249.

67. *See Broukhim*, 504 N.Y.S.2d at 468.

68. 777 N.Y.S.2d 69 (App. Div. 2004).

69. *Id.* at 72.

70. *Id.* at 75.

71. *Id.* (citation omitted) (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981)). *See also In re Union Carbide Plant Disaster*, 809 F.2d 195, 203-06 (2d Cir. 1984), *cert. denied*, 484 U.S. 871 (1987).

As set forth above, several post-*Islamic Republic* cases have held that not only is the availability of alternative fora a virtual prerequisite to the entertaining of *conveniens* motions, but also that the deficiencies of other potential fora may result in the denial of such motions and the retention of jurisdiction in New York.<sup>72</sup>

## V. Conclusion

In the end, it would appear that the plain language of CPLR 327 and its legislative history supports the interpretation of the necessity of an alternative forum for a *conveniens* dismissal.<sup>73</sup> The court in *Islamic Republic* seems to have ignored these factors completely. In order for a case to be “heard in another forum,” as set forth in CPLR 327,<sup>74</sup> it seems obvious that this other forum must be operating and available. In addition, the 1972 Judicial Conference on the adoption of CPLR 327 clearly states that *forum non conveniens* should be granted where New York is “seriously inconvenient for the trial of the action and that a more appropriate forum is available.”<sup>75</sup> In *Islamic Republic*, an available alternative forum went from being a prerequisite to a *forum non conveniens* dismissal, to a “most important factor.”<sup>76</sup> However, both pre- and post-*Islamic Republic* decisions seem to demonstrate that no other New York court has been willing to dismiss an action based on *forum non conveniens* where no alternative available forum exists.<sup>77</sup> In this respect, *Islamic Republic* would appear to be an anomaly. The prerequisite of an alternative forum would also appear to be consistent with all non-New York case law, both state and federal.<sup>78</sup> At least one federal court has even held that an alter-

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72. See *Shin-Etsu Chem. Co.*, 777 N.Y.S.2d at 75; *Broukhim v. Hay*, 504 N.Y.S.2d 467, 468 (App. Div. 1986); ALEXANDER, *supra* note 58, § C327:2.

73. See *supra* notes 56-58 and accompanying text.

74. N.Y. C.P.L.R. 327(a) (McKinney 2001).

75. N.Y. JUDICIAL CONFERENCE, *supra* note 57, at A35.

76. *Islamic Republic of Iran v. Pahlavi*, 467 N.E.2d 245, 249 (N.Y. 1984).

77. See *supra* notes 20-30, 58-72, and accompanying text.

78. See, e.g., *Ford v. Brown*, 319 F.3d 1302, 1310 n.25 (11th Cir. 2003); *Meyers v. Bridgeport Machs. Div. of Textron, Inc.*, 497 N.E.2d 745, 747 (Ill. 1986); *Stein v. Volkswagon of Am., Inc.*, 481 N.E.2d 1022, 1023 (Ill. App. Ct. 1985); *MacLeod v. MacLeod*, 383 A.2d 39, 43 (Me. 1978); *Hill v. Upper Miss. Towing Corp.*, 89 N.W.2d 654, 660 (Minn. 1958); *Vandam v. Smit*, 148 A.2d 289, 291 (N.H. 1959); *Conoco*,

native forum requirement is mandated by the due process clauses of the Fifth and Fourteenth Amendments.<sup>79</sup>

Perhaps the *Islamic Republic* decision can best be explained by way of its political overtones and the fact that the Court of Appeals was intent on not allowing New York courts to be used by what it perceived as a rogue government which had, just a few years earlier, antagonized and humiliated our nation for 444 days.<sup>80</sup> Unfortunately, when judges of higher courts decide cases on factors other than judicial precedent, one of the results can be subsequent confusion among the courts below and inconsistency in future case law. Fortunately, that does not seem to have occurred with regard to the case of *Islamic Republic* and its holding that *forum non conveniens* may be granted in the absence of an alternative available forum.

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Inc. v. Agrico Chem. Co., No. 99,469, 2004 Okla. LEXIS 92, at \*11 (Nov. 9, 2004); Norfolk & Western Ry. Co. v. Tsapis, 400 S.E.2d 239, 242 (W.Va. 1990).

79. See Farmanfarmaian v. Gulf Oil Corp., 437 F. Supp. 910, 915 (S.D.N.Y. 1977). See also Ann Alexander, *Forum Non Conveniens in the Absence of an Alternative Forum*, 86 COLUM. L. REV. 1000, 1005 (1986) ("[S]ome courts have held that the requirement is mandated by the due process clauses of the fifth and fourteenth amendments.").

80. See *Islamic Republic*, 467 N.E.2d at 250, 251-53.