

**UNIVERSITY OF UTAH
COLLEGE OF LAW
EXAMINATION COVER SHEET**

Student Examination Number: _____

**Law 6040 - 1
Civil Procedure
Professor Adler**

Fall 2006

Wednesday, December 13, 2006, 8:30 a.m.

Ⓢ **Time Allowed:** 3 ½ hours. The first 30 minutes students may read and analyze the exam, and work on scratch paper, but they may not begin to write answers in bluebooks or on Exam 4 until 30 minutes have expired.

Authorized Materials:

Authorized Materials

- The Rules book, which may be tabbed or annotated;
- Your class notes in hard copy;
- Any materials such as an outline that you have prepared for this exam in hard copy.

Special Instructions:

1. This exam consists of 9 single-part essay questions of varying length, all of which are based on a single fact pattern. Grading points are directly proportional to the time assigned to each question, for a total of 180 points/minutes. Points/estimated time are indicated in bolded brackets.
2. Answer all questions on your computer disks (or in your blue books). No credit will be given for answers that are not included in the submitted computer disk or blue book answer.
3. Read the entire fact pattern and all questions carefully before proceeding. Make sure you understand what is being asked before you write.

4. Three hours worth of questions are included in this exam. You have been given an extra thirty minutes to use as you see fit. You are strongly advised to use this time to read through the entire exam before proceeding, and to begin to identify issues and outline your answers. Blue books and computer disks will be distributed after thirty minutes.
5. The exam consists of 3 pages NOT including the instruction pages. Make sure you have all pages before proceeding.

GENERAL INSTRUCTIONS FOR ALL EXAMS:

1. Exams do not leave the exam room! Write your exam number on your copy of the examination questions, and return it to the proctor at the end of the exam.
2. Students may NOT take any bluebooks or scratch paper from the examination room, whether blank or used. Return to proctor.
3. If you are using a bluebook print your exam number, the title of the course and the instructor's name on the front of each bluebook.
4. Number each bluebook (1 of 3, 2 of 3, 3 of 3, etc.) and place all bluebooks and examination questions inside the first numbered bluebook.
5. If the examination utilizes a computer answer sheet (Scantron):
 - You must use **BLACK** or **BLUE INK** only; no pencils
 - You may use **CORRECTION TAPE** only; no liquid paper
 - Print your examination number in the box found in the lower left-hand section of the form. Write the number in the first 4 spaces, and zero-fill any remaining spaces.

For example, if your examination number is 2983:

IDENTIFICATION NUMBER

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Fill in the bubbles corresponding to the numbers written.

IMPORTANT NOTE: The following fact pattern involves U.S. military personnel and contactors in Iraq. If you happen to know about any actual substantive or procedural law specifically governing those situations, ignore it for purposes of this exam. Answer based only on the information presented below, and what you learned in Civil Procedure this semester.

While deployed to Iraq with her Utah National Guard unit, Nan C. Fellowsi was injured in an accident involving Dick Shamey, an employee of Hugiburden, Inc., a large contractor providing support services to the U.S. Army. She asks your law firm to represent her in obtaining appropriate relief against Hugiburden and Shamey, and tells you the following: Fellowsi was walking across the street in the Green Zone when Shamey, who was driving a pickup truck with a Hugiburden logo, sped around the corner without looking and hit her as she tried to dodge out of the way. Fellowsi suffered a broken leg, a broken arm, and severe lacerations and abrasions to her face and neck which require extensive plastic surgery. She was flown back to Utah for treatment, and remains there because the National Guard deemed her unfit to return to duty. While the National Guard pays for her immediate medical expenses, she must borrow over \$100,000 to pay for the plastic surgery and other expenses in Utah. The broken leg will mend, but will leave her with a permanent limp and affect her ability to run, hike, and engage in other activities she enjoys at home in Utah.

Fellowsi provides you with a copy of the short written report filed by U.S. Military Police in Baghdad, which indicates that Fellowsi gave the same account of the facts to them as she did to you, but that Shamey denied that he was speeding, and also denied that he failed to look before turning. Rather, he told the police that Nan suddenly dodged into the street as he turned, and that he could not possibly stop in time. The police recorded the names and addresses of two Iraqi bystanders who were in a position to see what happened, but reported no statements from them because they were too agitated to respond intelligibly. Fellowsi was on the ground and in great pain at the time, but she says that she thinks there was a passenger in Shamey's vehicle who was not interviewed by the police, and that the passenger threw what appeared to be a liquor bottle out of the window of the truck as the police arrived. Further preliminary research identifies the following additional information:

Fellowsi was born and raised in Payson, Utah, moved to Salt Lake City during college, and has lived there ever since except during her tour of duty in Iraq.

Hugiburden is incorporated in, and has its corporate headquarters and principal place of business in California. It maintains a personnel recruitment center in Dallas, Texas because of the significant willing work force there. Its activities in Dallas are limited to recruitment and personnel training. After being trained in Texas, personnel are deployed to other locations where Hugiburden conducts business. Hugiburden has no clients in Texas, and performs no services for any client in Texas.

Shamey was born and raised in Tooele, Utah. Bored with his courses at Salt Lake Community College, he learned that Hugiburden was hiring people to work in Iraq for

incredibly high wages. He moved to Dallas temporarily, took a job with Hugiburden, and went to Iraq (where he still works), but left most of his possessions in storage in Utah with the intention of returning home to finish college.

Under [fictional] Iraqi law, a person injured in a vehicular accident may collect damages only when the defendant is found to be “willfully reckless.” Under tort law in the United States, damages are available for simple negligence.

Under [fictional] Utah and California law, in tort cases courts apply the substantive legal standards of the jurisdiction in which the injury initially occurred. Under [fictional] Texas law, in tort cases courts apply the substantive legal standards of the jurisdiction in which the “majority of financial and other damages are incurred.”

To show its support for the war in Iraq, and out of fear that U.S. citizens serving in Iraq might be kidnapped, Texas adopted a [fictional] state statute which provides: “No court in Texas shall compel discovery of any information which might divulge the identity of any U.S. citizen who serves in, or who works for any contractor serving, the armed forces of the United States or the National Guard.”

A [fictional] federal statute provides: “The Secretary of Defense is authorized to revoke the contract of any person or entity doing business with the Department, on a showing that said person or entity, or any agent or employee of such person or entity, has acted with gross negligence in a manner that causes material injury to the personnel, property, or interests of the Department of Defense, or of U.S. military operations.”

The senior partner in your law firm asks you to write an objective memorandum addressing the following issues:

1. Fellwosi indicates that she cannot pay for expensive litigation, especially due to her medical debt. The firm is willing to take this case on a contingency fee, but would prefer a quick settlement to avoid the risk of un-reimbursed litigation costs. What are the chances of reaching a settlement with Shamey or Hugiburden, why, and what would you propose to do to achieve that result? [15]

2. Do you have sufficient information to file a complaint in this case, and why or why not? If your answer is no, what additional investigation is necessary? [15]

3. What remedies can Fellwosi seek and why? [15]

4. Can you successfully avoid the need to serve Shamey personally in Iraq by: (i) mailing the summons and complaint to his last known address in Texas; (ii) mailing the summons and complaint to his last known address in Utah; or (iii) mailing the summons and complaint to Hugiburden’s personnel office in Texas? [15]

You recommend filing suit in Texas because of the favorable choice of law prospect there, which you believe is critical and overrides other reasons to litigate in Utah

(such as convenience, costs, and a potentially more favorable jury.). The Senior Partner agrees with your recommendation, but wants to know whether you can avoid the discovery limitation in the Texas statute by suing in federal instead of state court. As a result, she asks you to address the following additional issues:

5. Will a court in Texas have personal jurisdiction over Shamey and Hugiburden, and why or why not? **[30]**

6. What would you have to do to ensure federal subject matter jurisdiction over this case in the U.S. District Court for the District of Texas, and would that seriously affect your case? (Hint: You often need to give something up to get something.) **[20]**

7. Would venue in federal court in Texas be proper, and why or why not? **[10]**

8. Would filing suit in federal court in Texas in fact avoid the discovery limitation of the Texas statute, and why or why not? **[30]**

9. Assuming that you prevail in federal court in Texas on the issues of personal jurisdiction, subject matter jurisdiction, and venue, is there anything else the defendants might do to avoid litigation in Texas, and how likely are they to prevail on that issue? **[30]**

SAMPLE ANSWERS

1. Based on the strength of the case alone, defendants may not have a large incentive to settle, at least for a substantial amount. Your only witness is Nan, who was injured and whose perspective may have been impaired by her injuries. Right now, it is her word against Shamey's, and she will not be viewed as entirely objective. Nan has the burden of proof, and it will be difficult to identify the three other witnesses. The passenger may have as much incentive to lie as does Shamey. It will be very hard to locate the Iraqi witnesses, and they may not be cooperative, or may not have clear recollections of what happened. Defendants will point out these defects in your case as a reason to settle cheaply, or not to settle at all.

Two factors might increase significantly your chances of a successful settlement with Hugiburden. First, the company likely has a very public profile in connection with its role in Iraq, may want to avoid the adverse publicity connected with litigation even suggesting that its employees are acting recklessly in ways that harmed U.S. military personnel who are serving selflessly in Iraq. Second, and more potently, Hugiburden has much more money at stake in its contract with the U.S. Army. Even if the chances of contract revocation pursuant to the federal statute are slim, it may not want to take that chance given the huge implications of losing the contract.

To underscore those downside risks to Hugiburden, you could do two things in advance of any negotiation. You could draft a complaint for the case, which will take minimal time and effort, and either file and serve it first or at least present it in draft form to Hugiburden. Second, you could draft a letter to the Defense Department requesting a statutory finding and contract revocation. (You would not want to mail that letter, but rather retain it for purposes of leverage.)

Shamey does not have the same business incentive to settle as Hugiburden, but he is also a rather shallow pocket and may not be worth a lot of time and effort. Unless the company or his insurance company pays for his defense in order to maintain a consistent position between the two defendants (which is probably likely), he might be persuaded to settle for some money to avoid expensive litigation costs. The best strategy is probably to focus on the deep pocket, Hugiburden, but eliminating Shamey could simplify other aspects of the case (as discussed further below).

2. To file a complaint in federal court or in a notice pleading state (such as Utah) which applies the same general rule of pleading, all the plaintiff needs to allege is the basis for jurisdiction, a "short and plain statement of the claim," and the requested relief. Here, sufficient information is known to assert jurisdiction in one or more court, to allege a claim based on simple negligence or "willful recklessness," depending on which legal standard applies, and to request damages in an appropriate amount. Thus, based on the fundamental rules of pleading alone, no additional investigation is needed to file this complaint.

A harder issue, however, is suggested by Rule 11, which requires that anyone signing the complaint (including the plaintiff herself, to the extent that the complaint asserts issues of fact), either know that the facts alleged are likely to be true, or that the necessary facts to prove the assertions are reasonably likely to be ascertained through appropriate discovery. Here, we are relying entirely on the plaintiff's allegations, absent any independent verification. Although the plaintiff's statement is supported by the Military Police report, that is arguably just a second version of the same statement. It does, however, tend to lend credence to the testimony in that Nan's version of the events has been consistent over time. The most prudent course would be to try to locate and interview at least one other witness before filing the complaint. Rule 11, however, requires only an objective standard of reasonableness "under the circumstances." Given the practical and logistical difficulty of locating and interviewing these witnesses, especially given that one is likely within Hugiburton's control (the mystery passenger), a court is likely to find that such investigation is not required before filing the complaint. To do everything reasonably possible to guard against a Rule 11 problem, however, it would be prudent to question the plaintiff with great care rather than simply taking her version of the facts at face value.

3. Fellowsi clearly should be able to seek compensatory damages for several kinds of losses. Compensatory damages are designed to return plaintiff, as nearly as is possible via monetary compensation, to the position she was in absent the injury. While money cannot truly compensate someone for certain kinds of injury, such as pain and suffering or emotional losses, monetary damages can provide some surrogate relief. Here, Fellowsi most clearly should be able to recoup her out-of-pocket losses. Those include the \$100,000 she incurred in medical expenses, plus any interest due because she had to borrow funds to pay medical expenses. Direct pecuniary losses may also include lost wages while she was out of work, and any other direct expenses she can prove that were caused by the accident. However, Fellowsi should also be able to recover for the extensive pain and emotional and physical discomfort she suffered due to this accident. While this is more subjective, research about what other juries awarded for similar nature and extent of physical injury will provide guidance on how much to seek for this category of damages. Similarly, she should be able to recover damages for the permanent injury to her ability to walk, hike, and engage in other activities. As a relatively young person, the injury will affect her quality of life for many years, and again, other jury awards can provide guidance on the appropriate amount of compensatory damages in this category.

Second, depending in part on what information is learned during discovery, Fellowsi might be able to seek punitive damages against Hugiburden. Punitive damages are appropriate to vindicate a state's "legitimate interests in punishing unlawful conduct and deterring its repetition," but may not be "grossly excessive" in relationship to that interest. (*BMW v. Gore*). The fact that a single employee was reckless in one driving incident is probably not sufficient to meet this standard. Punitive damages here might be appropriate, however, if Hugiburden is found to have been extremely careless in its training and supervision of its employees. Information about whether Shamey was driving under the influence, whether the company had effective policies and training to prevent such conduct, and whether there is a pattern of such incidents in connection with

Burger King, including convenience to defendant, availability of a fair forum for plaintiff, the forum state's interests, and the interests of the interstate judicial system.

Texas does not appear to have personal jurisdiction over Shamey based on any of the traditional grounds explained in *Pennoyer*. He is not a citizen or a current resident of Texas, because he moved to Texas only temporarily for purposes of training with Hugiburden. We could argue that Texas was Shamey's last residence in the United States, and that Iraq is only a temporary place of employment. However, the facts seem to indicate that he will return to his permanent residence in Utah after he finishes working in Iraq, so this theory is plausible but probably tenuous. This case does not involve any of Shamey's property, in Texas or elsewhere, so in rem jurisdiction does not apply, and he appears to have no assets in Texas that could be attached for purposes of quasi in rem jurisdiction even if the requirements of *Shaffer v. Heitner* could be met. There is no indication that he has consented to jurisdiction in Texas. Therefore, the best argument for finding personal jurisdiction over Shamey is that he established minimum contacts with Texas for purposes of this action. His temporary and now discontinued residence probably is not sufficiently "systematic and continuous" to establish general jurisdiction. Therefore, the court would have to find that the accident that is the subject of this lawsuit arose out of Shamey's contacts with Texas, because he established contacts in Texas for the express purpose of seeking employment with Hugiburden, and the accident occurred during his employment there. However, the accident itself--the wrong being sued on--arose out of Shamey's contacts with Iraq, not Texas. Moreover, it will be inconvenient for Shamey to defend this case in Texas, where he has no remaining ties, and it seems no more convenient (probably less) for plaintiff to litigate there. While Texas arguably has some interest in the protecting people from the negligent acts of employees recruited in Texas, given that the accident occurred in Iraq that interest appears slight. This, the fairness factors also weigh against the Texas forum. Therefore, personal jurisdiction over Shamey seems dubious under any theory.

Personal jurisdiction over Hugiburden in Texas seems much more likely. The corporation is probably not a "citizen" of Texas for this purpose. Corporations are citizens where they are incorporated, have their principle place of business, or have the "corporate nerve center" or corporate offices. Hugiburden has none of these in Texas, where it maintains one office solely for purposes of personnel recruitment and training, and where it has no business contracts. However, there are two strong arguments that Hugiburden nevertheless has established sufficient minimum contacts with Texas to justify personal jurisdiction. First, because its personnel office is permanent, and appears to conduct recruitment and training on an ongoing basis, it arguably has "systematic and continuous" contacts with Texas sufficient to support general jurisdiction. Second, arguably the claim here does arise out of Hugiburden's contacts with Texas, unlike that against Shamey, to the extent that plaintiff will argue that inadequate training and supervision caused or contributed to Shamey's reckless driving. Hugiburden is a large company with an office (and probably existing local counsel) in Texas, making litigation there far more convenient than for Shamey, and provides a forum for plaintiff if she is not able to sue the corporation in Utah.

6. Federal subject matter jurisdiction is likely only under diversity of citizenship, but we will probably have to drop Shamey from the suit to do so.

There is no federal question subject matter jurisdiction, because this is a common law tort case arising under state law. The federal statute conferring discretion on the Secretary of Defense to revoke Hugiburden's contract provides no cause of action on which the plaintiff here can rely for relief. Therefore, the only way to ensure federal subject matter jurisdiction is through diversity of citizenship. However, under the complete diversity rule of *Strawbridge*, all of the plaintiffs must be citizens of different states than all of the defendants. Plaintiff is a citizen of Utah for purposes of diversity, which is dictated by her domicile. The only time she left Utah was for purposes of her military service, and she clearly had no intent to remain away from Utah indefinitely otherwise to change her domicile. Likewise, there is no credible evidence that Shamey intended to remain in either Texas or Iraq indefinitely. He moved to Texas only for purposes of job training, rented a temporary residence, and did not leave any possessions there. By contrast, he left most of his things in storage in Utah, where he intends to return for college. Therefore, Shamey destroys complete diversity if he is in the case. Given that Hugiburden is the deep pocket defendant, one strategic approach to this case would be to sue only Hugiburden in federal court in Texas.

7. Venue in diversity cases is appropriate under 28 U.S.C. 1391(a) in one of three circumstances: (1) where any defendant resides if all defendants reside in the same state; (2) where a substantial part of the acts or omissions giving rise to the claim occurred, or where a substantial portion of the property at issue exists; or (3) in any district in which defendant may be found if no other venue is available under (1) or (2). For these purposes, corporations reside where they are incorporated, or where they have their principal place of business or "corporate nerve center." None of these tests is likely to be met in Texas, where Hugiburden has only a recruitment and training facility. (3) does not apply because Hugiburden clearly could be sued where it is incorporated and does have its principal place of business, California. The best argument for venue in Texas is (2). While not airtight, we can argue that the essence of our claim against Hugiburden under an agency theory was failure to hire responsible employees and to properly train and supervise Shamey in safety issues. Because Hugiburden both recruited and trained Shamey in Texas, a substantial part of the events or omissions giving rise to the claim occurred there.

8. To answer this question, we need to analyze whether the federal judge would apply the Texas discovery limitation statute under the principles set forth in the *Erie/York/Byrd* and *Hanna/Sibbach* lines of cases, applying the Rules of Decision Act and the Rules Enabling Act cases, respectively. To determine which of the two statutes/lines of cases applies, we need to analyze whether there is a FRCP that directly controls the precise issue in question, in which case the *Hanna/Sibbach* line of cases interpreting the Rules Enabling Act applies. (If not, the *Erie* case law interpreting the Rules of Decision Act applies.)

Because the federal court is more likely to apply federal law under *Hanna/Sibbach*, we are better off arguing that FRCP 26(b)(1) directly controls what information can be discovered in federal court. That rule provides that “Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party” The federal discovery rules are designed to allow full and open discovery of material, and full application of the federal rule is arguably irreconcilable with the Texas statute. Under the Rules Enabling Act, we ask whether application of the federal rule would “enlarge, abridge, or modify” a state-granted substantive right. If the court views the Texas statute as conferring a substantive right on U.S. military personnel, it still might honor the discovery limitation. However, under *Hanna*, in gray areas we err on the side of applying the federal rule if it is “rationally capable of classification as procedural,” to promote uniform rules of practice in federal courts. Because rules of discovery are “arguably procedural,” and govern how litigation is conducted rather than underlying legal rights, we have a strong argument that the broader principles of federal discovery apply in federal court.

However, the Texas law can also be construed, even under the language of Rule 26, as conferring a special statutory “privilege” on U.S. citizens who serve in the armed forces, the National Guard, or any included contractors. Because Rule 26 does not directly address whether the kind of limitation in the Texas statute constitutes a kind of statutory “privilege”, similar to the *Cohen* line of cases, the *Erie* arguably applies here.

The first question in the *Erie* analysis is whether the Texas statute constitutes core legal rights and obligations which, under the constitutional underpinnings of *Erie*, must be honored in federal courts. Here, especially given the Texas Legislature’s expressed intent to protect disclosure of the identities of U.S. personnel for their personal safety, arguably this does constitute a core legal right which the federal courts sitting in diversity are bound to honor as a matter of states’ rights. However, the Texas statute also could be construed more as a rule of discovery, which helps to govern how underlying “substantive” legal rights and obligations are implemented and enforced. If so, we must also ask under *York* whether the discovery limitation nevertheless is “outcome-determinative” and implicates the twin policy goals of *Erie*, to prevent forum shopping and to ensure uniform application of state law regardless of whether the case is brought in state or federal court. At least as applied to this case, application of the Texas law may well be outcome-determinative, and as is true here, is likely to promote forum shopping because we would much rather be in federal court if the state statute does not apply than in state court. If we cannot discover from Hugiburden the identity of the passenger in Shamey’s car, and to depose him or her, especially given the dubious availability of the Iraqi witnesses, we may lost any possible opportunity to prevail in a case which is otherwise Shamey’s word against Fellowsi’s word. Therefore, Under *Erie* and *York*, the federal court is still likely to apply the Texas statute.

Our best argument to prevent application of the *Erie* result is to argue that, under *Byrd*, the critically important principles of open discovery in federal court constitute an important countervailing federal policy to override the discovery limitation in the Texas statute. State privileges typically limit very specific kinds of communications and

information, and not the very identities of material witnesses in cases. Absent an ability even to discover the identities of the witnesses here will be extremely prejudicial to the plaintiff's case, and entirely inconsistent with the fundamental policies underlying the federal discovery rules. Therefore, this is a perfect case to apply the Byrd principle.

9. There are two plausible ways litigation in Texas might be avoided, but one would be preferable. The case might be dismissed under the doctrine of forum non conveniens, on the theory that litigation is more appropriate in Iraq, where the accident occurred. The case might also be transferred to another federal forum under 28 U.S.C. 1406, but that is both less likely and less favorable because it would not solve our choice of law issue. Where a court transfers venue under 1406, the law of the transferring venue remains the applicable law, even for purposes of choice of law (*Piper*). [Note: Because the question assumes that the plaintiff prevails on the issue venue, the case cannot be dismissed for improper venue under 1404, in which case the law of the transferee venue would apply.] In any event, change of venue under 1406 is not likely. Change of venue would be within the federal court system. [Even within the Green Zone, there is no U.S. District Court for the District of Baghdad (☺).] Even if, as discussed below, it is arguable that litigation is more appropriate in Iraq, there is no viable argument *on defendant's behalf* that venue is appropriate in a different district in the United States. Although litigation for this individual plaintiff with few resources might be more fair and convenient in Utah, plaintiff rather than defendant would have to raise that issue, and the court would view plaintiff's act in filing the case in Texas as dispositive of that issue. Hugiburden's only argument would be that it is more convenient to litigate the case in California, that would probably not be persuasive. Hugiburden is a large corporation, with international operations and sufficient resources to defend the case in Texas, where it maintains an office. Moreover, because more of the events or omissions leading to this claim occurred in Texas than in California, it is not likely Hugiburden could make a persuasive case for transfer to Texas.

It is more likely, however, that Hugiburden could argue that the case should be dismissed on forum non conveniens grounds, by arguing that the accident occurred in Iraq, and that any claim arising from that event should be litigated there. Forum non conveniens issues are decided under the two-part, multi-factor test set forth in *Gulf Oil v. Gilbert*. In *Gulf Oil*, the Supreme Court set forth a series of "private interest factors" and "public interest factors" relevant to deciding whether a case is more appropriately litigated in another forum. Private interest factors include availability of evidence, the cost and likelihood of compelling witnesses to testify, the location of physical evidence to view, the enforceability of the judgment, and other practical issues. Public interest factors include congested courts, requiring jury duty where there is no relation to the litigation, local interest in the dispute, and the forum of the law that applies. However, the threshold rule is that courts will not disturb plaintiff's choice of forum lightly, meaning that Hugiburden must make a persuasive case to justify dismissal.

Here, Hugiburden's best argument is that the accident occurred in Iraq. Most likely the vehicle Shamey was driving remains there as well, and the scene of the accident. We know that there were two Iraqi witnesses, but we do not even know

whether they can be located and remember any useful information about the incident. We also know that there was an unidentified passenger in the vehicle, most likely another Hugiburden employee, but we do not know that person's current location. On the other hand, given that our agency theory is based on negligent hiring, training, and supervision, at least a substantial amount of the information relevant to the claim is in Texas. This includes Hugiburden's hiring and training personnel, records, and policies. Moreover, it is clearly more convenient for both parties to litigate in the United States than in unfamiliar Iraqi courts, and under unfamiliar legal principles and procedures. That is particularly true for an individual U.S. citizen, who is not likely to be able to retain counsel in Iraq and to weave her way through the Iraqi court system. The court reached a different result in Piper, but the real parties in that case were citizens of the country in which the case would have to be brought if dismissed in the United States. Similarly, this is not a case like Piper in which a foreign citizen burdens the U.S. court system seeking a more favorable remedy. This case involves a U.S. plaintiff suing a U.S. defendant, making use of U.S. judicial resources (including jury time) entirely appropriate. Therefore, it is possible, but unlikely, that Hugiburden can convince a court to overcome the presumption in favor of plaintiff's choice of forum in Texas.