FOURTH DIVISION
September 26, 2013

No. 1-11-2832

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JEFFREY SIEGEL, Administrator of the Estate of MOUSTAPHA AKKAD, deceased; SOOHA AKKAD, Individually; SUSAN GITELSON, Special Administrator of the Estate of RIMA AKKAD MONLA, deceased; and MICHAEL BUTLER,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 07 L 9489
GLOBAL HYATT CORPORATION, a corporation; HYATT INTERNATIONAL CORPORATION, a corporation; HYATT CORPORATION, a corporation; and HYATT HOTELS CORPORATION, a corporation,	)	Honorable Lynn M. Egan,
Defendants-Appellees.	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order granting defendants' motion to dismiss based on *forum non conveniens* is affirmed. The trial court did not abuse its discretion in finding that Cook County is an inconvenient forum for defendants and the nation of Jordan is a more convenient forum for all parties.

¶ 2 Plaintiffs' lawsuit arises from an attack by a suicide bomber that occurred at the Grand Hyatt Amman hotel in Amman, Jordan (hereinafter Grand Hyatt Amman or "hotel") on November 9, 2005. Plaintiffs' amended complaint alleges wrongful death and negligence against several defendants. This case was previously before this court on plaintiffs' appeal from the trial court's judgment dismissing plaintiffs' complaint against Hyatt International (Europe, Africa, Middle East) LLC (hereinafter Hyatt EAME) and Amman Tourism Investment Co., Ltd. (hereinafter ATIC). This court found that the circuit court of Cook County lacked general personal jurisdiction over them under either the Illinois Long-Arm Statute or on any other basis permitted under the Illinois Constitution or the United States Constitution. See *Siegel v. Hyatt International*, 2012 IL App (1st) 103524-U (2012).

¶ 3 Plaintiffs now appeal the trial court's September 1, 2011 order granting a motion to dismiss based on *forum non conveniens* filed by defendants herein. For the following reasons, we find that the trial court did not abuse its discretion in granting the motion to dismiss. Accordingly, the trial court's judgment is affirmed.

¶ 4 BACKGROUND

¶ 5 Plaintiffs, Jeffrey Siegel, as Administrator of the Estate of Moustapha Akkad; Sooha Akkad; Susan Gitelson, as Special Administrator of the Estate of Rima Akkad Monla; and Michael Butler, filed an amended complaint on November 8, 2007, seeking damages for

negligence, wrongful death, and survival. The defendants named in the complaint that are parties to this appeal are Global Hyatt Corporation (now known as Hyatt Hotels Corporation), Hyatt International Corporation, Hyatt Corporation, Hyatt Hotels Corporation (now known as Hyatt Hotels Management Corporation), and Hyatt International Holdings Corporation (collectively "Hyatt defendants"). As it pertains to this appeal, the amended complaint alleged that on November 9, 2005, an al-Qaeda in Iraq-affiliated suicide bomber detonated explosives in the Grand Hyatt Amman hotel in Amman, Jordan. On and before that date, ATIC and another named defendant, Zara Investment (Holding) Co., owned, operated, and managed the Grand Hyatt Amman. Hyatt EAME operated and managed the hotel. The complaint alleged Hyatt EAME was an affiliate of Hyatt defendants and was required to operate and manage the hotel in conformity with their standards. Hyatt defendants' headquarters are in Chicago, Illinois.

¶ 6 The amended complaint alleges Hyatt defendants participated in the operation and management of the Grand Hyatt Amman and provided security. The complaint alleges that "Hyatt EAME, by and through its agents and employees, as well as [Hyatt defendants] *** individually and by and through their agents and employees, including but not limited to their affiliate, Hyatt EAME, were negligent" in permitting unauthorized individuals and explosives access to the interior of the hotel, in failing to reasonably protect their guests from violence, in failing to provide metal detectors and/or x-ray equipment, and in failing to provide adequate security personnel and/or bomb-sniffing dogs. The complaint made identical allegations separately against Zara and ATIC. The complaint refers to Zara and ATIC as the "ownership entities" and Hyatt defendants as "management entities."

¶ 7 On July 10, 2008, Hyatt defendants filed a combined motion to dismiss. The motion argued, in pertinent part, that the amended complaint should be dismissed in its entirety under the doctrine of *forum non conveniens* pursuant to Illinois Supreme Court Rule 187 (Ill. S. Ct. R. 187 (eff. Jan. 1, 1967)). In their memorandum of law in support of the motion to dismiss, Hyatt defendants argued that neither the private interests of the parties, nor the public interests of the plaintiffs' chosen forum, are served by proceeding with this action in Cook County, Illinois. Hyatt defendants state that Jordan is an available and adequate alternative forum for this dispute. Hyatt defendants argued that Jordan is a substantially more convenient forum for the parties than is Cook County, but specifically noted they do not intend to imply that Jordan is the only available alternative forum and that plaintiffs may select an appropriate alternative forum.

¶ 8 On September 1, 2011, the trial court entered a written judgment and order granting Hyatt defendants' motion to dismiss based on *forum non conveniens*. The trial court began by stating the facts relevant to the *forum non conveniens* determination. The court found that the owner of the hotel is a Jordanian corporation, and both its chief security officer and security manager are residents of Jordan. The court found that Jordan is the location of several relevant documents which are written in Arabic. One plaintiff also received medical treatment in Jordan. The trial court identified other Jordanian witnesses but also noted that "a multitude" of other witnesses had been identified as having information which would necessitate their presence at trial--including certain of plaintiffs' damages witnesses--and that those witnesses, including the guests of the hotel at the time of the bombing, are scattered among many states and countries.

¶ 9 The trial court also noted the Cook County contacts. The court found that the special

administrator of the estate of one plaintiff resides in Cook County, but none of the other plaintiffs reside in Cook County. An employee of one of the Hyatt defendants, who was present in Jordan within seven days of the bombing, is based in Chicago, as is Hyatt defendants' corporate headquarters. Hyatt defendants maintain some records relating to the bombing in Chicago.

¶ 10 Next, the trial court stated the applicable law, acknowledging its duty to "balance the public and private interest factors while also giving some deference to plaintiffs' choice" in a "totality-of-the-circumstances approach." First, the trial court found that in this case, less deference is owed to plaintiffs' forum choice. The court made that finding based on the fact that (1) the injury did not occur in Cook County; (2) although the special administrator of the estate of one of the plaintiffs is a resident of Cook County, "her residency 'has no relationship to the litigation except as a nominal party;' " and (3) plaintiffs failed to articulate safety concerns arising from litigating this case in another forum, therefore plaintiffs' potential distress from litigating their claims in Jordan is not an appropriate consideration. The trial court then turned to the public interest factors and the private interest factors.

¶ 11 The trial court found that the record supports concluding that under the private interest factors, Cook County is an inconvenient forum for Hyatt defendants. The court found that Hyatt defendants' only connection to Illinois stems from the location of their corporate headquarters. The court found that with one exception, no necessary trial witnesses reside in Illinois, while several key liability witnesses reside in Jordan, and numerous other witnesses who will be needed for trial reside outside both Illinois and Jordan. The court found that this case presented unique circumstances which made it highly unlikely that many of the witnesses would ever

appear in a United States courtroom, presented barriers to accessing documents, and that those difficulties were prejudicial to all parties. On the contrary, the court found, those evidentiary problems could be easily addressed by a Jordanian court, and Hyatt defendants averred that they would make available in Jordan any evidence and witnesses in their possession or control in the United States. Thus, the court concluded that the "ease of access to sources of proof" factor weighs strongly in favor of dismissal.

¶ 12 Finally, the trial court found that the "practical problems" factor strongly favored dismissal. The court made that determination based on Hyatt defendants' inability to file third-party claims against Jordanian entities if the case were to proceed in Cook County, which would "hinder a simple and swift resolution to the litigation" by forcing Hyatt defendants to litigate here and against third-party defendants abroad. The court found that security measures implemented by ATIC on the date of the bombing are highly relevant to a liability determination.

¶ 13 Next, the trial court applied the public interest factors and found that they also favor granting Hyatt defendants' motion to dismiss. The court recognized that Cook County has some interest in deciding this controversy because a Cook County corporation is alleged to be negligent. The court found that this interest "pales in comparison to the interest of Jordanian citizens" who suffered and responded to the attack. The court concluded that the disparity of interests made it "manifestly unfair to impose the expense and burden of jury duty on Cook County residents." The court found that the "relatively insignificant" factor of court congestion did not favor granting Hyatt defendants' motion to dismiss. The court also considered the appropriateness of conducting the litigation in the forum most familiar with the law applicable to

the case. The court did not perform a full-scale choice of law analysis, but recognized that a choice of law determination was required because the difference in Illinois and Jordanian law would affect the outcome of the case.

¶ 14 Having determined that differences between Illinois and Jordanian law would affect the outcome of the case and, therefore, that the choice of law question is relevant to the motion to dismiss for *forum non conveniens*, the trial court found that Jordanian law will likely apply because Jordan is the site of plaintiffs' injury, the country where the conduct causing the injury occurred, and the relationship between the parties is centered in Jordan. The court found that the "significant factor" favoring dismissal of a suit on grounds of *forum non conveniens*, of the need to apply another country's law, strongly favored a Jordanian forum in this case. The court noted that not only would an Illinois court be required to apply the foreign law, the foreign law has no official English translation and would have to be pled and proved as any other fact.

¶ 15 The trial court concluded that, affording some deference to plaintiffs' choice of forum, the majority of both the private and public interest factors strongly favored granting Hyatt defendants' motion to dismiss. The court granted the motion.

¶ 16 This appeal followed.

¶ 17 ANALYSIS

¶ 18 1. Legal Standards Applicable to a Forum Motion

¶ 19 Our supreme court thoroughly explained the principles behind and legal standards that have developed under the doctrine of *forum non conveniens* in *Fennell v. Illinois Central Railroad Co.*, 2012 IL 113812 (2012). The following standards guide understanding of our

disposition of this case. "In determining whether the doctrine of *forum non conveniens* applies, the circuit court must balance the public and private interest factors. [Citations.] The court does not weigh the private interest factors against the public interest factors. Rather, the court must evaluate the total circumstances of the case ***." *Id*. at ¶17.

> " Private interest factors include: the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure attendance of unwilling witnesses; the cost to obtain attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical considerations that make a trial easy, expeditious, and inexpensive. [Citations.]
>
> The relevant public interest factors include: the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; the unfairness of imposing jury duty upon residents of a community with no connection to the litigation; and the interest having local controversies decided locally. [Citation.]" *Id*. at ¶¶ 15, 16.

¶ 20 The trial court must balance its determination of whether the "private interest factors" and "public interest factors" weigh in favor of finding that another forum can better serve the convenience of the parties and the ends of justice with the appropriate degree of deference that should be accorded to a plaintiff's choice of forum. *Fennell*, 2012 IL 113812, ¶18. As a result of this balancing, "[u]nless the factors weigh strongly in favor of transfer or dismissal, the plaintiff's choice of forum should rarely be disturbed." *Id*. "However, the plaintiff's choice is not entitled to the same weight or consideration in all cases. [Citation.] *** [W]hen the plaintiff is foreign to the chosen forum and when the action giving rise to the litigation did not occur in the chosen forum, the plaintiff's choice of forum is accorded less deference." *Id*.

¶ 21 "The determination of a *forum non conveniens* motion lies within the sound discretion of the circuit court. On review, the circuit court's determination will be reversed only if it can be shown that the court abused its discretion in balancing the relevant factors." *Fennell*, 2012 IL 113812, ¶21. Therefore, our function is not to reweigh any of these factors. *Bishop v. Rockwell International Corp.*, 194 Ill. App. 3d 473, 477 (1990). "The issue then is not what decision we would have reached if we were reviewing the facts on a clean slate ***." *Koss Corp. v. Sachdeva*, 2012 IL App (1st) 120379, ¶91 (2012). Rather, we must determine whether the trial court abused its discretion when it weighed these factors and determined that the public and private interest factors, as well as plaintiffs' right to chose their forum, favored dismissal. *Id.*

¶ 22 In this context, an abuse of discretion occurs if the trial court gives a single factor central emphasis or conclusive effect (*Dawdy v. Union Pacific Railroad Co.*, 207 Ill. 2d 167, 180 (2003)), or gives a relevant factor little or no weight (*Id*. at 178). This court may also find an abuse of discretion where the trial court's determination is irrational or lacks any support in the record. See *Langenhorst v. Norfolk Southern Railway Co.*, 219 Ill. 2d 430, 452 (2006). The court has also held that "[w]here witnesses are scattered and there is no predominant connection to any one forum, it is an abuse of discretion to grant a forum motion." *Brown v. Cottrell, Inc.*, 374 Ill. App. 3d 525, 533 (2007). In *Brown*, the court concluded that the relative interests of the three potential fora were not so unbalanced that a transfer was required and affirmed the trial court's judgment denying the defendants' forum motions. *Brown*, 374 Ill. App. 3d at 535. On the contrary, "where a trial court examines all of the relevant facts, and applies the proper legal standard so as to arrive at a reasonable determination, the trial court's decision should not be

overturned." *Continental Casualty Co. v. Michigan Mutual Insurance Co.*, 183 Ill. App. 3d 778, 781 (1989). The trial courts should include "*all* of the relevant private and public interest factors in their analyses." (Emphasis in original.) *Fennell*, 2012 IL 113812, ¶24.

¶ 23 2. Whether the Trial Court Abused Its Discretion

¶ 24 Initially, we find that the trial court applied the appropriate legal standard to Hyatt defendants' motion and included all of the relevant private and public interest factors in its analysis. We reject plaintiffs' assertion that the trial court adopted an "unprecedented framework for analyzing *forum non conveniens* motions." As evidenced by the brief summary of the trial court's order provided above, the trial court engaged in a careful application of controlling law to the facts and circumstances of ths case.

¶ 25 It is also apparent that the trial court did not give conclusive effect to any one factor. The trial court's order contains a careful explanation for its reasons for finding why the factors weigh in favor of granting Hyatt defendants' motion. The court's order explains its reasons for finding that the private interest factors favored granting the motion. The entirety of the court's order discusses various aspects of the convenience of the parties and finds that based on its review of the entire record, this factor favors dismissal. The court found that the relative ease of access to evidence favored dismissal (because key evidence is beyond the court's compulsory process); and that other practical problems favored granting the motion (because Hyatt defendants would be prejudiced in their ability to file third party claims). The court's order also explains its reasons for finding that the public interest factors favor dismissal. The court explained why it believed Cook County had minimal interest in deciding this controversy and, consequently, that

it would be unfair to impose the burden of the trial of this matter on its citizens. The court also explained that a difference in law would affect the outcome of the case, Jordanian law likely will apply, and that it is more appropriate to hear the case in the forum most familiar with the governing law. The court concluded that the majority of both the private and public interest factors strongly favor dismissal.

¶ 26 Based on the foregoing, we cannot conclude that the trial court abused its discretion for having failed to apply the appropriate legal standard or in giving conclusive effect to any single factor.

¶ 27 a. Did the trial court examine all of the relevant facts?

¶ 28 Plaintiffs claim the trial court misinterpreted the record and ignored facts or overlooked certain facts. The trial court did not disregard evidence that some plaintiffs might feel an emotional burden from returning to Jordan for trial. The trial court gave considerable consideration to plaintiffs' argument, but determined that it was not an appropriate consideration in the context of the current motion. The only Illinois authority plaintiffs cite in support of their argument the trial court did not properly weight the private interest factors in light of this consideration is, by its own admission, unique. *Doe v. Terra Properties*, 260 Ill. App. 3d 87, 89 (1994) ("This case presents some novel and interesting questions as opposed to the normal *forum non conveniens* cases."). *Doe* arguably creates and applies a new test for *forum non conveniens* cases involving sexual assaults. *Id*. at 91 ("Where there are several available forums, we should give plaintiff's selection in a case involving a criminal sexual assault more deference than in the usual tort case, unless the defendant can demonstrate some offsetting disadvantage."). *Guidi v.*

Inter-Continental Hotels Corp., 224 F. 3d 142 (2000), cited by plaintiffs, does not support finding that the trial court abused its discretion in this case. The trial court considered the federal authorities and concluded that the federal courts considering the emotional burden on plaintiffs resulting from litigating in an alternate forum, as an element of the weight to be given the plaintiff's chosen forum, had "focused on plaintiffs' safety concerns in litigating in the alternate forum." In *Guidi*, the court held that the district court "should have taken into account the unusual circumstances of Plaintiffs that weigh strongly in favor of the [chosen] forum." *Id*. at 147-48. The *Guidi* court did not merely find that the plaintiffs had a rational fear of returning to the place of their injury, but that "[p]laintiffs are atypical in that they are either the widows or the victim of a murderous act directed specifically against foreigners. Understandably, they are strongly adverse to litigating in a country where foreigners have been the target of hostile attacks, and have concerns for their own safety if required to travel there to bring their suit." *Id*. at 147.

¶ 29 The facts plaintiffs allege here as weighing more heavily in favor of their chosen forum in this case only include their emotional trauma, not their safety. Plaintiffs invite us to expand *Guidi* to encompass their emotional trauma to necessitate the court to give additional weight to the plaintiff's chosen forum in such circumstances. While we recognize plaintiffs may have legitimate trepidation at returning to Jordan, we cannot say the trial court abused its discretion in finding that plaintiffs' trauma is not an appropriate consideration in the context of the current motion. Despite the expansion of *Guidi* plaintiffs implicitly invite us to make, plaintiffs have pointed us to no authority directly to the contrary.

¶ 30 The trial court's judgment does not reflect oversight of the location of Hyatt defendant's

records relating to the bombing and the management of the hotel, which are stored in Chicago. That fact does not give the residents of Cook County any greater interest in resolving this dispute. The court considered the relative ease of access to documentary evidence, as it was required to do, given the respective locations of the documents. The court simply found that the balance of those factors favored dismissal because the documentary evidence in Jordan was beyond the court's compulsory process. Plaintiffs argue the court "grossly overestimated the significance of the records of ATIC," but plaintiffs do not refute that some Jordanian documents would be necessary for trial, and fail to address the other sources of documentary evidence that are beyond the court's compulsory process, including the results of investigations by Jordanian officials. We cannot say the trial court abused its discretion in weighing these competing facts to determine that the location of documents weighed in favor of granting the motion; especially in light of Hyatt defendant's averment to "make available *** any evidence and witnesses in its possession *** that a Jordanian court deems relevant to the resolution of any issue before it."

¶ 31 Plaintiffs also argue that when the trial court found that plaintiffs' choice of forum was entitled to less deference because the injury did not occur in the chosen forum and because plaintiffs are not residents of the chosen forum, the court ignored the fact that Hyatt defendants' alleged negligence is based on policies they created in Cook County. The test to determine the degree of deference given to a plaintiff's choice of forum has two prongs. First, whether the plaintiff is foreign to the chosen forum, and second, whether the action giving rise to the litigation occurred in the chosen forum. *Fennell*, 2012 IL 113812, ¶18. Plaintiffs focus on only the second prong. The trial court considered the fact that plaintiffs (with the exception of the

special administrator, whose residence has no relationship to the litigation) are foreign to Cook County. The court's order also concluded that the injury did not occur in Cook County. Therefore, contrary to plaintiffs' argument, the court did consider the location of the injury prong, and we could not say the court abused its discretion even if we disagreed with its conclusion.

¶ 32 Plaintiffs' reliance on *Koss Corp.*, 2012 IL App (1st) 120379, to argue that where some of the defendant's Illinois activities gave rise to the plaintiff's injuries, the plaintiff's choice of forum should be accorded substantial deference, is misplaced. In *Koss Corp.*, the trial court granted the defendant's motion to dismiss under the doctrine of *forum non conveniens* in favor of a trial in Wisconsin. *Koss Corp.*, 2012 Il App (1st) 120379, ¶2. The claims against the defendant arose from its failure to discover, as the plaintiff's auditor, embezzlement by the plaintiff's former employee. *Id*. at ¶1. Specifically, the "case *** arose out of two distinct sets of factual claims. Koss alleges that: (1) Thornton's auditing team failed to discover the embezzlement ***; and (2) inadequate firm-wide policies, procedures, and auditor training established by corporate headquarters led to the inadequate audits. *Id*. at ¶3. The alleged embezzlement and audits all took place in Wisconsin. *Id*. On appeal, the court found that, in deciding the *forum non conveniens* motion, "the trial court overlooked Koss's factual claim concerning Thornton's firm-wide policies and training." *Id*. at ¶16. Upon reviewing the evidence produced during discovery on the issue of the defendant's motion, the court found that "most potential witnesses concerning Thornton's firm-wide policies and procedures reside in Illinois" (*Id*. at ¶52), and "several Thornton training programs occur in Illinois and several

individuals involved in training Thornton auditors reside in Illinois" (*Id*. at ¶59). The *Koss Corp.* court found that the trial court abused its discretion in granting the defendant's motion to dismiss. *Koss Corp.*, 2012 IL App (1st) 120379, ¶83.

¶ 33 *Koss Corp.* does not stand for the broad proposition that the plaintiff's choice of forum is entitled to substantial deference just because the plaintiff alleges that a decision by the defendant that allegedly contributed to the injury was made in the chosen forum. The *Koss Corp.* court found that the trial court improperly gave the plaintiff's choice of forum *less* deference because it was neither the plaintiff's home nor the site of its injury. *Koss Corp.*, 2012 IL 120397, ¶120. The *Koss Corp.* court found that because the defendant's alleged inadequate policies, procedures, and training were mostly created, reviewed, and approved in Cook County, Cook County was the site of a substantial portion of the acts that gave rise to Koss's injury. *Koss Corp.*, 2012 IL 120397, ¶120. The court held under those facts that the plaintiff's choice of forum should be accorded *standard* deference. *Id*.

¶ 34 *Koss Corp.* does not persuade us to find that the trial court's deference to plaintiff's forum choice was inadequate in this case. In this case, although the trial court's order does state that "less deference is owed to plaintiffs' forum choice" the trial court also noted that "less deference is not synonymous with no deference." In *Koss Corp.*, the court found that the trial court abused its discretion because it overlooked an entire claim in the plaintiff's complaint (*Koss Corp.*, 2012 IL App 120379, ¶99) and the location of an entire set of actors involved in that claim (*Id*. at ¶96). The trial court in that case actually found that "the allegations in the complaint surround auditing the books and records in Wisconsin and providing reports and

representations pursuant to engagement letters executed in Wisconsin" ((Internal quotation marks omitted.) *Id*.) and rejected Koss's argument that the defendant's corporate employees were relevant, stating plaintiff has not cited the significance of any testimony potentially elicited from these individuals to further their claims of injury that took place in Milwaukee (*Id*. at ¶101). Here, the trial court specifically noted that plaintiffs' choice of forum remained entitled to some deference, therefore we cannot say that the trial court overlooked any actors from Hyatt defendants' corporate headquarters who may have been involved in plaintiffs' claims in determining whether Cook County was the most convenient forum for both the parties and the ends of justice.

¶ 35 Nor does *Koss Corp.* persuade us to find that the fact Cook County is the location where Hyatt defendants allegedly created security policies for the hotel is either a private interest factor or a public interest factor that weighs in favor of Cook County as the most convenient forum. The *Koss Corp.* court did find that the defendant's "corporate headquarters is connected to the litigation as the source of firm-wide policies and auditor training" (*Koss Corp.*, 2012 Il 120379, ¶124) and considered that fact in (1) its private interest factors analysis at it pertained to the convenience of the parties (*Id*. at ¶123), and (2) its public interest factors analysis as it pertained to Cook County's interest in deciding the case (*Id*. at ¶134). However, nothing in *Koss Corp.* leads to the conclusion that the trial court in this case gave incorrect weight to any factor based on plaintiffs' allegation that Hyatt defendants created and approved the allegedly inadequate security polices in Cook County.

¶ 36 The basis for finding that the trial court abused its discretion in weighing the private and

public interest factors in *Koss Corp.* was not solely where the policy was created, but that the majority of witnesses were located in Cook County, and actual acts pertaining to the claim occurred in Cook County. *Id*. at ¶125 ("although most witnesses concerning the Koss audit engagements reside in Wisconsin, several witnesses concerning Thornton's policies and auditor training reside in Illinois."). See also *Id*. at ¶126 ("several witnesses for Thornton's firm-wide policies and training are located in Illinois, closer to Chicago than Milwaukee."). In *Koss Corp.*, the connection to the plaintiff's chosen forum extended beyond the creation of a policy that ultimately lead to the plaintiff's injury. Rather, the implementation of those policies occurred in the chosen forum. The court found that the auditors who actually failed to discover the embezzlement (see *Id*. at ¶21) made a significant number of trips to the defendant's training center in Illinois (*Id*. at ¶¶54, 57), and other employees of the defendant involved with the plaintiff's audits also made a large number of trips to the defendant's training center in Illinois (*Id*. at ¶57). The partner in charge of the plaintiff's audits during the period of embezzlement (see *Id*. at ¶¶1, 20) also traveled to Cook County in connection with her work (*Id*. at ¶57), and maintained an office in the defendant's Chicago office during the relevant time period (*Id*. at ¶20).

¶ 37 The fact that the training of the auditors who actually failed to discover the embezzlement and of employees involved with the alleged negligent acts occurred in Cook County is a significant distinguishing characteristic that is not present in this case. The *Koss Corp.* court relied on both the fact that the defendant's "audit manual and bulletins *** are created and reviewed in Thornton's Cook County headquarters" and that "most of Thornton's training

programs are created and administered in Illinois." *Koss Corp.*, 2012 IL App (1st) 120379, ¶99. Based on the facts of that case, the *Koss Corp.* court properly found that if the plaintiff's allegations are proven true, then "a substantive [*sic*] portion of the acts that gave rise to Koss's injury will have occurred within Cook County." *Id*. at ¶134.

¶ 38 Plaintiffs have made no allegations that any security personnel in Amman received training at Hyatt defendants' corporate headquarters in Chicago. Plaintiffs have not identified any witnesses at Hyatt defendants' corporate headquarters who will testify as to the allegedly deficient security measures[1]. Although "[i]t is unreasonable to require a plaintiff to prove up its entire case on a motion to dismiss for *forum non conveniens* (*Id*. at ¶100), in *Koss Corp.*, the plaintiff's answer to the motion to dismiss both named and described the relevance of the corporate personnel who may be called to testify (*Id*. at ¶101). The court was able to consider the injury allegedly caused by the defendant's corporate personnel, where those injuries actually occurred (which included when the auditors were trained on how to conduct their audits) and the location of the witnesses who would testify to those facts. We have no similar information in this case from which to find that Cook County is a more convenient forum based on plaintiffs'

[1] Plaintiffs' response to Hyatt defendants' motion to dismiss in the trial court identified two employees located in Chicago, Illinois, who "were present at the Grand Hyatt Amman at some time immediately prior to or after [the] bombing." Plaintiffs attached biographical information to show their employment in Chicago. Plaintiffs provided biographical data identifying one executive as the Director of Hyatt Hotels Corp., which listed his background as President and Director of Hyatt International Corp. and as a member of the board of directors of Hyatt Hotels Corp. On appeal, Hyatt defendants state this employee no longer lives in Illinois. Plaintiffs provided more information regarding the second employee, who was identified as Chief Operating Officer, International Operations. Although his biographical information states that he "oversees various corporate functions in Chicago, IL" nothing in the information states any particular responsibility for security policies.

allegation that Hyatt defendants created their allegedly negligent security polices at their corporate headquarters, or that Hyatt defendants implemented those polices from their corporate headquarters. To the extent any such information was available, the trial court considered it as it related to both the connection to the forum and the convenience of the parties. The trial court found that plaintiffs identified only one corporate officer who resides in Illinois and noted Hyatt defendants' affidavit that its employees and documents would be made available in Jordan. The trial court did not fail to consider any relevant facts.

¶ 39 b. Did the trial court give a relevant factor no weight?

¶ 40 Plaintiffs argue the trial court gave weight to an *irrelevant* factor. Plaintiffs argue that the trial court "launched into an unwarranted choice of law analysis." "[T]he need to apply another state's law is a 'significant factor favoring dismissal of a suit on grounds of *forum non conveniens*.' " *Quaid v. Baxter Healthcare Corp.*, 392 Ill. App. 3d 757, 775 (2009). Although cases analyzing this *forum non conveniens* factor do not perform a full-scale choice-of-law analysis, a choice-of-law determination is required when a difference in the law will make a difference in the outcome. *Id*. at 773-74. Plaintiffs do not dispute that the law that applies will make a difference in the case. Plaintiffs argue the trial court's findings that Jordanian law applied, and that this weighed in favor of dismissal, are unsupported by law or fact. Plaintiffs argue the trial court abused its discretion because "Illinois courts can readily adapt to apply foreign laws" and because the controlling complaint at law pleads negligence under Illinois common law against defendants for their acts in Illinois.

¶ 41 The trial court could find that Jordan is the country where the conduct causing the injury

occurred, notwithstanding plaintiffs' allegation that Hyatt defendants created the allegedly insufficient security policies in Cook County and that those policies caused their injuries.

> "[A] strong presumption exists that the law of the place of injury governs *** unless plaintiffs can demonstrate that Illinois has a more significant relationship to the occurrence and the parties with respect to a particular issue. [Citation.] This presumption must be tested against the factors established by section 145(2) of the Second Restatement of Conflict of Laws (Restatement (Second) of Conflict of Laws § 145(2), at 414 (1971)): (1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile of the parties; and (4) the place where the relationship between the parties is centered." *Quaid*, 392 Ill. App. 3d at 774.

¶ 42 Even if inadequate security policies lead to plaintiffs' injuries, those policies were implemented in Jordan. The bombing occurred in Jordan. Plaintiffs' relationship to Hyatt defendants is centered in Jordan, not Chicago. The trial court did not abuse its discretion in finding that Jordanian law will likely apply in this case, and properly weighed this factor in favor of granting Hyatt defendants' motion to dismiss.

¶ 43 c. Is the trial court's determination supported by the record?

¶ 44 Plaintiffs argue the trial court's order does not identify "a single Record cite to support how the Defendants' home forum was inconvenient to them." Plaintiffs also argue Hyatt defendants failed to satisfy their burden to identify specific witnesses who would be unwilling to testify in Illinois. Plaintiffs allege no witnesses indicated an unwillingness to travel to Cook County, while certain witnesses did indicate an unwillingness to testify in Jordan. The trial court noted affidavits of potential witnesses who averred that it would be convenient to travel to Cook County, but those affidavits do not contain express promises to appear at trial. On the contrary,

Hyatt defendants specifically averred to make any witnesses or documents in their control available in an alternate forum. The record also contains the affidavit of a Jordanian attorney who averred that no official English translation of the Jordanian Civil Code exits; Jordanian courts have the ability to compel the production of documents and witnesses located in Jordan but they will not assist parties to United States lawsuits to compel Jordanian witnesses to appear or compel the production of documents; in cases tried in Jordan arising from the bombing, ATIC has asserted that it took all security measures considered reasonable at the time; Jordanian government agencies are in charge of security in Jordan for both public and private entities. One of the attorneys for ATIC provided an affidavit that ATIC will not voluntarily produce witnesses or documents for discovery or trial of this case in the United States. The trial court's order cites evidence as to potential witnesses and their locations, and determined the difficulties in accessing certain testimonial and documentary evidence, both of which lead to the court's conclusion that Cook County is an inconvenient forum for defendants. We find no abuse of discretion.

¶ 45 The trial court also properly considered the fact that litigating this case in Cook County would deprive Hyatt defendants of their ability to pursue third-party claims. *Quaid*, 392 Ill. App. 3d at 771 ("While defendant has not yet filed a third-party complaint against Cedars–Sinai, it apparently contemplates such a filing, since it raised this issue in its motion to dismiss pursuant to the doctrine of *forum non conveniens*."). Plaintiffs' argument that any litigation against the Jordanian ownership entities would have little or no effect on this case is belied by their own allegations in their amended complaint. Here, as in *Quaid*, plaintiffs' amended complaint "establishes at least some liability on the part of [ATIC.]" *Quaid*, 392 Ill. App. 3d at 771. The

counts in the amended complaint directed specifically at Hyatt defendants allege Hyatt EAME "by and through its agents" operated and managed th Grand Hyatt Amman, ATIC operated and managed the hotel, and Hyatt EAME was required to operate the hotel in conformity with Hyatt defendants' standards. Plaintiffs cannot seriously argue that the facts of ATIC's conduct, and its own potential liability, are not, as the trial court found them to be, "highly relevant to a liability determination" against Hyatt defendants. The fact that ATIC is a foreign corporation is not disputed. Moreover, the record contains evidence that government officials are at least partially responsible for security for private entities in Amman. Hyatt defendants' inability to pursue third-party claims against these Jordanian actors is a factor which favors dismissal. See *Id*. (citing *Cook v. General Electric Co.*, 146 Ill. 2d 548, 559-60 (1992)).

¶ 46 Nor did the trial court speculate about witnesses' unwillingness to travel to Cook County. The court noted that certain witnesses had not actually agreed to voluntarily appear, despite averring that it would be convenient to travel to Cook County. The court also noted an affidavit from counsel for ATIC stating that the company would not voluntarily produce documents or witnesses for discovery or trial in the United States. The trial court could properly consider Hyatt defendants' affidavit stating it would make its employees and documents available in Jordan and compare that fact with a Jordanian court's ability to compel the appearance of Jordanian witnesses and the production of Jordanian documentary evidence. *Quaid*, 392 Ill. App. 3d at 768 (quoting *Gridley v. State Farm Mutual Auto Insurance Co*, 217 Ill. 2d 158, 174 (2005) ("In contrast, the named witnesses residing in Illinois appear to be employees of [the defendant], so it is unlikely that [the plaintiff] would have the same difficulty securing the attendance of those

witnesses in Louisiana.")). The trial court's findings with regard to the availability of witnesses was supported by evidence. The trial court did not overestimate the necessity of any witnesses. The trial court did not abuse its discretion with regard to the ease of access to testimonial evidence factor, where the record reveals only one potential witness in plaintiffs' chosen forum and Hyatt defendants identified multiple witnesses and documentary evidence in the proffered alternate forum.

¶ 47 d. Is there no predominate forum such that the motion should be denied?

¶ 48 Plaintiffs argue that because the potential witnesses (including every guest of the hotel on the night of the bombing) are so widespread, both in the United States and across the globe, the compulsory process issue is neutral, therefore transfer is not favored. Plaintiffs cite *First American Bank v. Guerine*, 198 Ill. 2d 511, 526 (2002), for the proposition that the trial court abuses its discretion when it grants a forum motion in a case where witnesses are geographically scattered. The *Guerine* court's opinion is primarily concerned with intrastate transfers under the doctrine of *forum non conveniens*. See *Guerine*, 198 Ill. 2d at 514 ("we are called upon to evaluate the continued vitality of the intrastate *forum non conveniens* doctrine"). In an attempt to clarify the intrastate *forum non conveniens* doctrine in Illinois, the court held that "a trial court abuses its discretion in granting an intrastate *forum non conveniens* motion to transfer venue where, as here, the potential trial witnesses are scattered among several counties, including the plaintiff's chosen forum, and no single county enjoys a predominant connection to the litigation." *Id*. at 526. The *Guerine* court held that the litigation in that case had a nexus with several fora. *Id*. at 524.

¶ 49 We do not believe that *Guerine* mandates a different outcome in this case. One important factor the *Guerine* court noted was that compulsory process is available in each county where the witnesses were located. *Id*. at 525. We do not believe *Guerine* states a bright line rule with regard to scattered witnesses. See *Id*. at 526 ("the convenience of the parties depends in large measure upon the context in which we evaluate their convenience."). We also note that compulsory process is definitely not available as to several potential witnesses that have been identified in this case.

¶ 50 In *Erwin v. Motorola, Inc.*, 408 Ill. App. 3d 261 (2011), the court held that the trial court did not abuse its discretion in finding that the defendant "had failed in its burden to establish that the relative ease of obtaining such 'scattered' testimonial evidence weighed strongly in favor of dismissal." *Id*. at 280. The *Erwin* court found that the trial court had not abused its discretion after reviewing the parties' conflicting affidavits and deposition testimony with respect to where decisions that allegedly led to the plaintiffs' injury occurred--either at the defendant's corporate headquarters in Cook County or in the alternate forum. *Erwin*, 408 Ill. App. 3d at 279. In light of the competing evidence on the issue of the location of relevant witnesses, the *Erwin* court was able to conclude that the trial court had not abused its discretion in finding the "ease of access to evidence" private interest factor did not strongly favor dismissal. *Id*. at 280 ("Having reviewed the evidence before the circuit court, we find no abuse of discretion in this finding.").

¶ 51 The *Erwin* court did note that "[w]here the transfer to some other forum does not solve the compulsory attendance problem, the compulsory process factor is regarded as being neutral, and not strongly favoring transfer." *Erwin*, 408 Ill. App. 3d at 278. However, the *Erwin* court

did not find that the trial court properly found this factor did not favor dismissal simply because the compulsory process factor was neutral. The *Erwin* court found the factors did not strongly favor dismissal because relevant witnesses were located in the alternate forum as well as the plaintiffs' chosen forum, therefore the compulsory service issue did not give the trial court a strong reason to transfer the case form the chosen forum. *Erwin*, 408 Ill. App. 3d at 279 ("the trial court specifically recognized that the parties had presented competing evidence with respect to who was responsible for making decisions *** whether corporate personnel in Cook County or local personnel"). Thus, the key element which deflates consideration of the compulsory process element is the identification of relevant witnesses in the chosen forum. The court found it significant that the plaintiffs had provided the trial court with an "exhaustive" list of witnesses they intended to call, which included the defendant's current and former leaders, most of whom lived in Illinois. *Id*. at 278 ("More importantly, *** the plaintiffs provided the circuit court with an exhaustive list of liability witnesses."). Based on the record before us, and as the trial court found, with one exception, no witnesses reside in Illinois. Therefore, we cannot say that the trial court abused its discretion in this case in finding that the ease of access to evidence factor--as it pertains to witnesses--does strongly favor dismissal.

¶ 52 Plaintiffs' argument, that the public interest factors favored denying Hyatt defendants' motion because Cook County residents have a strong interest in deciding this case, is unpersuasive. Plaintiffs claim the trial court abused its discretion in considering whether Cook County residents' interest outweighed the interests of Jordanian residents, in violation of our supreme court's admonition in *Langenhorst*, 219 Ill. 2d at 453. There, our supreme court warned

that courts should not focus on the "more appropriate forum" based on where the cause of action arose, over the convenience of the parties, as the touchstone of a *forum non conveniens* analysis. *Langenhorst*, 219 Ill. 2d at 453. In *Langenhorst*, "neither the plaintiff's residence nor the site of the accident" were located in the plaintiff's chosen forum. *Id*. at 448. The court rejected the alternate forum because the defendants had failed to show that trial in the alternate forum was favored because it was the county where the accident occurred. *Id*. at 449. The lack of favor was due to the fact that a view of the accident site was not appropriate because the preexisting conditions which were alleged to have caused the accident no longer existed. *Id*. at 448. The only witness who documented the scene as it appeared at the time of the accident, and those documents, were in the plaintiff's chosen forum. *Id*. Our supreme court did not simply disregard the alternate forum in favor of the convenience of the parties. Similarly, here, the trial court's order does not reflect that it improperly focused on where the cause of action arose, although under *Langenhorst* that fact remains a relevant factor to consider. See *Langenhorst*, 219 Ill. 2d at 449.

¶ 53 In weighing the public interest factors, the trial court in this case acknowledged that "both Jordan and Cook County have some interest in deciding this controversy ***." The court did not base its decision on Jordan's greater interest in the case. To determine whether it would nonetheless be unfair to impose trial expense and the burden of jury duty on residents of a forum "that has *little* connection to the litigation" (emphasis added) (*Langenhorst*, 219 Ill. 2d at 443), the court necessarily had to assess the degree of interest Cook County had in the litigation. Here, the court found that Cook County residents' interest in this case, "pales in comparison to the

interest of Jordanian citizens ***." The court's order does not mention Cook County residents' interest in safe hotels, but this fact does not mean that the trial court improperly weighed this factor. Any interest Cook County has in this case is generalized, whereas Jordan's interest is specific to the event. The trial court based its determination on the fact that Jordan actually suffered the attack on its soil and its law enforcement and medical resources responded to the attack. See *Quaid*, 392 Ill. App. 3d at 773 (affirming trial court's order granting motion to dismiss in favor of trial in California) ("defendant correctly observes that California's 'paramount interest' in this matter is demonstrated by the swift action it took after the incident to investigate and discipline the hospital."). Based on its finding as to the strength of Cook County's interest (*i.e.*, that it has "little" interest), the court properly concluded that "it would be manifestly unfair to impose the expense and burden of jury duty on Cook County residents." "The public interest requires that causes which are without *significant factual connections* to particular forums be dismissed in favor of, or transferred to, convenient forums." (Emphasis added.) *Fennell*, 2012 IL 113812, ¶44. The trial court applied an appropriate standard based on its findings as to Cook County's level of interest in this case. We do not find that the trial court abused its discretion.

¶ 54 *Blake v. Colfax Corp.*, 2013 Il App (1st) 122987 (2013), does not alter our conclusions. In *Blake*, an automobile accident occurred in Will County between the plaintiff and defendant, while defendant was driving a van owned by the defendant's employer, the corporate defendant in that case. *Id*. at ¶3. The defendant-employee was driving to a job in DuPage County when the collision occurred. *Id*. at ¶3. The corporate defendant's headquarters were in Cook County (*Id*.

at ¶5) and the plaintiff resided in Will County (*Id*. at ¶4). The plaintiff and her husband, who was also a plaintiff in the case, filed suit in Cook County for the defendant-employee's negligence in operating the vehicle. *Id*. at ¶8. Defendants moved to transfer the case to either Will or DuPage County. The plaintiffs then amended their complaint to add allegations of negligence based on a failure to equip and maintain the vehicle with safe and proper tires and brakes. *Id*. at ¶8. The vehicle involved in the collision was serviced in Cook County and while the litigation was pending the vehicle was stored in Cook County. *Id*. at ¶21. This court found that the trial court did not abuse its discretion in denying the defendants' motion to transfer because the private and public interest factors did not strongly favor transfer away from Cook County. *Blake*, 2013 IL App (1st) 122987, ¶18. *Blake* is distinguishable from this case in several material respects.

¶ 55 In *Blake*, the only independent eyewitness to the collision did not reside in either proposed forum. *Blake*, 2013 IL App (1st) 122987, ¶21. Here, several relevant witnesses and significant documentary evidence is located in Jordan. The *Blake* court found that the ease of access to evidence factor did not favor transfer in that case despite the fact that, as we have similarly noted in this case, the first responders to the accident in *Blake* did not come from the plaintiffs' chosen forum. *Id*. But, unlike this case, the *Blake* court found that, "[g]iven the facts here, it is reasonable to assume that [the first responders'] means of travel [to Cook County] would be by car, which would not be inconvenient." *Id*. The court took note of the fact that "people regularly commute between homes and jobs in Cook and Will Counties." *Id*. The distinction is self-evident.

¶ 56 The chosen forum in *Blake* had a greater connection to the site of the actual injury than

just being the corporate defendant's headquarters and the source of some documentary evidence. In *Blake*, much like in *Koss Corp.*, 2012 IL App (1st) 120379, ¶99, the defendant-employer trained its employees and supervised them from Cook County, and one of those employees--hired, trained and supervised in Cook County--injured the plaintiff. *Blake*, 2013 IL App (1st) 122987, ¶26. Similarly, the vehicle, which the plaintiffs in *Blake* alleged was negligently maintained, was actually maintained in Cook County. *Id*. Here, plaintiffs only allege that Hyatt defendants' security protocols were inadequate. Accepting that those protocols were written in Cook County, there is much less of a connection between the creation of security protocols in Cook County and the implementation of those protocols, which may itself have been negligent, by third parties in Amman, Jordan, than was present in *Blake*, where the employee who directly caused the injury was hired and trained in Cook County, and the alleged instrument of the plaintiffs' injury was serviced in Cook County.

¶ 57 Additionally, the plaintiffs in *Blake* "indicated that Colfax's four corporate officers, who all worked in Chicago, are potential witnesses *** and three of them resided in Cook County." *Blake*, 2013 IL App (1st) 122987, ¶21. As we have already discussed, plaintiffs in this case have identified only one corporate officer in Chicago as a potential witness. We reiterate that plaintiffs do not have the burden to prove that their chosen forum is the most convenient. Rather, we note the lack of evidence in the record as to the number of potential witnesses in Cook County as an element in our determination that we cannot say that no reasonable person would take the view adopted by the trial court. Where the evidence in the record is that only one potential witness may be in Chicago, along with some relevant documents; there are witnesses

and documents in Jordan that will be necessary for trial and can be compelled for trial in Jordan; any witnesses and documents in Chicago will be transported to Jordan; and there are significant obstacles to transporting Jordanian witnesses and documents to Chicago, a reasonable person would think this trial should occur in Jordan.

¶ 58 3. Conclusion

¶ 59 Plaintiffs rely heavily on the fact that Cook County is Hyatt defendants' corporate headquarters, yet they have failed to identify any witnesses from those corporate headquarters who would testify on the only topic which allegedly ties this litigation to Cook County: the creation of security protocols for the hotel in Amman. "[A] party's principal place of business may not be dispositive in the *forum non conveniens* analysis" (*Erwin*, 408 Ill. App. 3d at 276), but that is precisely the result plaintiffs seek. Plaintiffs' reliance on the location of certain documents is similarly weak. "[T]he location of documents, records and photographs has become a less significant factor in *forum non conveniens* analysis in the modern age of Internet, email, telefax, copying machines, and world-wide delivery services, since those items can now be easily copied and sent." *Fennell*, 2012 IL 113812, ¶36. While we are cognizant of the fact the burden was on Hyatt defendants in the trial court to establish that the relevant factors "strongly favor" transfer, the burden of persuasion to demonstrate that the trial court abused its discretion rests with plaintiffs on appeal. Plaintiffs reliance on Hyatt defendants' corporate headquarters and the location of some documentary evidence in Cook County as the basis for their claim the trial court abused its discretion does not carry that burden. We cannot say that no reasonable person would find that the inconvenience factors attached to Cook County do not greatly

outweigh the plaintiffs' substantial right to try the case in the chosen forum in this case. *Langenhorst*, 219 Ill. 2d at 443. Therefore we find no abuse of discretion.

¶ 60 The trial court's judgment is affirmed.

¶ 61 Affirmed.