United States Court of Appeals
Eleventh Circuit

Case No. 07-12532-HH

Luis Vega,

Appellant,

v.

Cruise Ship Catering Services International N.V., Prestige Cruises N.V., and Costa Crociere, S.p.A.,

Appellees.

Answer Brief of Appellees

On appeal from the United States District Court
for the Southern District of Florida

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Appellees' Certificate of Interested Persons and Corporate Disclosure Statement

In addition to the persons and entities listed by the Appellant, we certify that the following entities have an interest in the outcome of this appeal:

Carnival Corporation

Carnival PLC

Costa Holding SRL

McAlpin Conroy, P.A.

Statement Regarding Oral Argument

We suggest that there is no need for the Court to hear oral argument in this case. This is the *fourth* case in the last three years to reach the Court concerning foreign crewmembers on Costa ships who want a United States court to hear their lawsuits. *See Membreno v. Costa Crociere, S.P.A.,* 425 F.3d 932 (11th Cir. 2005); *Velasquez v. C.S.C.S. International N.V.,* 149 Fed. Appx. 881 (11th Cir. 2005); *Bautista v. Cruise Ships Catering and Services International N.V.,* 120 Fed. Appx. 786 (11th Cir. 2004).

In each of the prior cases, the district court ruled against the crewmember, and this Court affirmed, without oral argument. The Court should do the same here.

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Statement of the Issues

Whether the district court abused its discretion in finding that the Plaintiff was estopped from attempting to reopen the *forum non conveniens* dismissal of his lawsuit, after the district court had previously dismissed the lawsuit and the Plaintiff had failed to appeal the dismissal, and after a state court had ruled against the Plaintiff on crucial issues involved in the *forum non conveniens* analysis.

Whether the district court abused its discretion in denying the Plaintiff's attempt to have a federal court decide his lawsuit, in light of this Court's controlling and essentially on-point precedent, *Membreno v. Costa Crociere, S.p.A.*

Whether the district court abused its discretion in rejecting the Plaintiff's argument that the unavailability of contingent fees by itself renders an alternative forum inadequate.

Whether the district court abused its discretion in finding that the Plaintiff had failed to establish that he could not obtain counsel in any of the alternative fora.

Statement of the Case and Facts

Plaintiff Luis Vega is from Colombia. (Doc 177). In the early and mid 1990s, Vega served as a crewmember on a ship called the *Costa Marina*. (Doc 42 – Klutz affidavit – Pg 3). The ship did not call on United States ports. (Doc 42 – Costa Crociere affidavit – Pg 1-2).

In 1996, Vega was injured when he fell from his bunk bed on the ship. (Doc 42 – Klutz affidavit – Pg 3). At the time of the injury, the *Costa Marina* was out at sea, off of the coast of Italy. (Doc 42 – Costa Crociere affidavit – Pg 5). Vega was treated on board by an Italian ship doctor, and once ashore was treated at an Italian hospital on the island of Sicily. (Doc 42 – Klutz affidavit – Pg 3; Doc 42 – Vega deposition – Pg 50-52).

One week later, in Italy, Vega had surgery for his injury. (Doc 42 – Klutz affidavit – Pg 3). He recuperated in Italy, and then flew to his native Colombia. (Doc 42 – Klutz affidavit – Pg 3). While living in Colombia for the next three years, Vega did not visit any doctor. (Doc 42 – Vega deposition – Pg 65-66).

In 1999, Vega moved from Colombia to the United States. (Doc 177). Vega said he came to the United States for the purpose of receiving medical treatment. (Doc 241 - Pg 12-13). When Vega was asked why he came to the United States

for medical care, he responded: "I don't know how to answer because you have told me that I should not say anything about my attorney." (Doc. 241 - Pg 13).

After coming to the United States, Vega moved to a house in North Miami Beach, Florida. (Doc 241 – Pg 5-6). "[M]y attorneys sent me to that house." (Doc 241 – Pg 7). He has lived in that house since 1999, without paying rent. (Doc 241 – Pg 5-6). He does some chores, however. (*Id.*).

Vega remains a citizen of Colombia. (Doc 241 - Pg 8). Although he has lived in North Miami Beach for eight years, he has taken no steps to obtain citizenship. (*Id.*).

Vega's lawsuit in state court

A few months before Vega moved to the United States, Vega's Florida attorneys filed a lawsuit on behalf of Vega in Florida state court. The Defendants were the two Defendants in the present case: Prestige Cruises N.V. and Cruise Ships Catering & Services International N.V.

Vega's case, and the cases of other Costa crewmembers, eventually went to the state intermediate appellate court. The court, sitting *en banc*, concluded that the lawsuits had little to do with Florida, and should be dismissed based on *forum non conveniens*. *Tananta v. Cruise Ships Catering and Services Int'l N.V.*, 909 So. 2d 874 (Fla. 3d DCA 2004), *review denied*, 917 So. 2d 192, 195 (Fla. 2005).

The state court concluded that "our taxpayers should not be billed for a case which occurred in foreign waters to a non-U.S. plaintiff working for a foreign cruise ship that merely had a local employee benefits administrator." 909 So. 2d at 888.

The court noted that at one point the Miami-based Carnival Corp. had purchased Costa Crociere, S.p.A. 909 So. 2d at 879 n.1. The state court found that this was not a reason for the Florida courts to decide the foreign crewmember lawsuits. 909 So. 2d at 887. In any event, in 1996, at the time of Vega's accident, Carnival had not purchased an interest in Costa Crociere. 909 So. 2d at 890 (Cope, J., concurring in part and dissenting in part).

The court concluded that "[t]hese foreign seamen are free to re-file in their native countries or the Netherlands Antilles or even in Italy, but they are not free to misuse or abuse our court system." 909 So. 2d at 888.

Vega's federal lawsuit

While his lawsuit was still pending in the Florida court, Vega filed a nearly-identical lawsuit in United States District Court for the Southern District of Florida. (Doc 1). His complaint stated that "The instant action is being brought under federal *forum non conveniens*." (Doc 1 - Pg 2).

The Defendants moved to dismiss based on *forum non conveniens*. (Doc 42). In response, Vega argued that the district court should not dismiss the case because he could not obtain legal representation on a contingency basis in the alternative fora. He argued, for example, that "large law firms will only work on a contingency fee basis in the Netherlands Antilles in exceptional cases, depending on the probability of a positive outcome and the amount of the sum involved." (Doc 47 – Pg 20).

Vega's federal lawsuit is abated while this Court addresses similar issues

The federal district court eventually abated Vega's lawsuit, while this Court considered similar appeals in which other Costa crewmembers were arguing against *forum non conveniens* dismissal of their lawsuits.

In 2004, this Court issued its opinion in *Bautista v. Cruise Ships Catering and Services International N.V.*, case no. 04-10336 (11th Cir. Sept. 16, 2004), *affirming Bautista v. Cruise Ships Catering and Services N.V.*, 350 F. Supp. 987 (S.D. Fla. 2003), and *Rodriguez v. Cruise Ships Catering and Services International N.V.*, case no. 03-60288-CV-WPD (S.D. Fla. Nov. 13, 2003 & Jan. 5, 2004). This Court first held that United States law did not apply where foreign crewmembers were suing various Costa entities for injuries which occurred outside the United States.

The Court then held that the district courts did not abuse their discretion in dismissing the claims based on *forum non conveniens*.

Then, in 2005, this Court decided *Membreno v. Costa Crociere, S.p.A.*, 425 F.3d 932 (11th Cir. 2005). This Court found that the crewmember's claims were not governed by U.S. law. Furthermore, the Court upheld the dismissal of the lawsuit based on *forum non conveniens*.

A few months later, and based on its holding in *Membreno*, this Court *again* affirmed the dismissal of lawsuits by foreign crewmembers against Costa defendants, based on foreign accidents. *Velasquez v. C.S.C.S. International N.V.*, 149 Fed. Appx. 881 (11th Cir. 2005). This Court noted that *Membreno* was "factually similar" and "directly on point," and that "essential facts necessary for a *forum non conveniens* analysis are very similar if not identical in this case to those necessary in *Bautista* and *Membreno*." 149 Fed. Appx. at 882-83. This Court found that there were adequate alternative fora, including Italy and the Netherlands Antilles. *Id*. at 883.

Vega argues against dismissal of his lawsuit, in part because of the difficulty of obtaining contingency representation in the alternative fora

By September 2005, the landscape was clear. This Court had in *three* separate appeals affirmed dismissals on *forum non conveniens* of lawsuits brought by

foreign Costa crewmembers. Further, two Florida appellate courts had ordered that foreign crewmember cases be dismissed. *Tananta v. Cruise Ships Catering and Services Int'l N.V.*, 909 So. 2d 874 (Fla. 3d DCA 2004); *Valdivia v. Prestige Cruises N.V.*, 898 So.2d 271 (Fla. 4th DCA 2005).

But Vega continued to fight. At the hearing on the Motion to Dismiss, Vega's lawyer argued that crewmembers could not file suit in the alternative fora because of the lack of contingent fee representation in those jurisdictions:

> [T]he other thing is, ***it has occurred to me and only recently that what really is going on here is this motion is not for the convenience of the plaintiff.*** . . . In other words, Costa comes into court or CSCS comes into court and says, "Gees, it's just as convenient to go to Italy or the Netherlands Antilles or your home country." But ***the truth of the matter is, it's not convenient for the plaintiffs. They can't hire contingent fee lawyers in their countries.*** They don't have any money to hire lawyers or to pay costs.

(Doc 184 - Pg 47-48) (emphases added).

The Defendants, in addition to their other arguments, argued that Vega was collaterally estopped from making some of his arguments by the state-court decision in the case in which he was a party. (Doc 184 - Pg 19).

After the hearing on the motion to dismiss, but before the district court ruled on the motion, Vega submitted affidavits which he claimed showed that there were no adequate alternative fora because of the unavailability of contingent fee representation. (Doc. 179 - Pg 1).

Vega himself submitted an affidavit in which he said that "I cannot afford to hire an attorney by the hour or pay court costs. Unless my case stays in the United States, I will not have access to the court system." (Doc 177). Vega's attorney also submitted an affidavit, claiming that to his knowledge none of his clients had been able to refile their lawsuits in other countries. (Doc 174 - Alsina affidavit). Vega submitted essentially identical affidavits from two other lawyers in Miami whose foreign Costa crewmember cases had been dismissed based on *forum non conveniens*. (Doc 174 - Ayala affidavit, Guilford affidavit). He also submitted an affidavit from a foreign crewmember whose case had been dismissed. (Doc 174 - Diaz affidavit). That crewmember claimed that he contacted lawyers in his home country of Peru but could not find someone to take his case unless he paid them an hourly rate, which he said he could not afford. (Doc 174 - Diaz affidavit).

Finally, Vega submitted the affidavit of Italian attorney Attilio Costabel, who stated that "[u]pon review of the cases, it was decided by my firm, Conte & Giacomini, not to accept representation of the cases shown above on a contingent fee basis." (Doc 174 - Costabel affidavit). Costabel, although associated with a firm in Italy, is based in a Miami suburb. (Doc 216 – Costabel affidavit – Pg 1).

The district court rejects Vega's arguments and dismisses the lawsuit, and Vega does not prosecute an appeal of the ruling

The district court issued a long order rejecting Vega's arguments against *forum non conveniens* dismissal. (Doc 179).

The district court began by noting the three recent decisions from this Court involving Costa crewmembers. The district court three times mentioned that the cases are "strikingly similar." (Doc 179 – Pg 7-8). The court found that United States law did not apply to the lawsuit, under the *Lauritzen/Rhoditis* analysis. (Doc 179 - Pg 12-19). It found that Costa Crociere did not have a substantial base of operations in the United States. (Doc 179 - Pg 17-19). The court also noted that there were alternate fora available in Italy, Colombia, and the Netherlands Antilles. (Doc 179 - Pg 21-22).

The district court judge stated that "I have to agree with Judge Dimitrouleas, as he put it, '[i]n this case, the major connection to the United States is the law practice of Plaintiff's attorney.'" (Doc 179 - Pg 21).

The district court ordered that the case be dismissed. (Doc 179 - Pg 22). The order stated that the dismissal would be without prejudice to "refile this action in an alternative forum or to reinstate his action in this Court if no alternative fora accepts his case." (Doc 179 - Pg 22).

The district court also rejected the affidavits on the availability of contingent fee representation which Vega had filed after the hearing on the motion to dismiss. The court concluded "none of the matters set forth in the affidavits represents new or changed circumstances that could not have been addressed in a timely manner." (Doc 179 - Pg 1).

Vega filed a notice of appeal of the order of dismissal, but subsequently dismissed his appeal. (Doc 186, Doc 180).

After failing to appeal the order of dismissal, Vega moves to reinstate his case

About eleven months after the district court dismissed his case, Vega filed a Motion to Reinstate Case. (Doc 187).

The heart of Vega's argument—indeed, essentially the entire argument—was that he was not able to afford a lawyer, and that the alternative fora did not provide for contingent fee representation. (Doc 187).

Vega submitted a number of affidavits in support of his motion to reinstate. The first told of his financial woes and was nearly identical to the affidavit he filed before his case was dismissed. (Doc 187 - Vega affidavit). In a second affidavit, he said that he contacted three firms in the Netherlands Antilles, five firms in

Colombia, and one firm in Italy. None of them, he claimed, was willing to take his case on a contingency fee basis. (Doc 187 - Vega affidavit).

However, in deposition Vega admitted that he personally had not spoken with attorneys in Colombia. (Doc 241 – Pg 19). Instead, his then-wife called them. (Doc 241 – Pg 19, 28). Vega admitted that in 2000 he went to Colombia for ten days to renew his visa, but did not try to see any attorneys while he was there. (Doc 241 – Pg 15).

Vega said that he called three attorneys in the Netherlands Antilles, but could not remember their names. (Doc 241 – Pg 16). He admitted that he couldn't recall speaking to attorneys, and instead spoke to secretaries. (*Id.*). "The secretaries were the ones that would answer me." (Doc 241 – Pg 18). He made these phone calls from the office of his attorney in Miami. (Doc 241 – Pg 25). His Miami lawyer later suggested that the lawyer had made the calls, rather than Vega himself. (Doc 241 – Pg 29-30).

Finally, Vega admitted in deposition that he didn't speak with any attorneys in Italy. (Doc 241 – Pg 21).

Vega also submitted affidavits of other crewmembers, his attorney, and other attorneys for crewmembers, all of which talked about the difficulty of obtaining a

lawyer on a contingent fee in the alternative jurisdictions. (Doc 187 - affidavits of Diaz, Rey, Rodriguez, Gross, Guilford, Alsina, and Ayala).

In response, the Defendants pointed out that the availability of contingent fees representation was merely one factor in determining whether a forum is adequate. The fact that contingent fee representation may not be available to a plaintiff in a forum does not render that forum inadequate. (Doc 195 - Pg 1-3). The Defendants also submitted an affidavit establishing that settlements were in the process of being finalized with fifteen foreign crewmembers. (Doc 195 - Klutz affidavit).

In reply, Vega argued that the district court should reopen its *forum non conveniens* analysis. (Doc 205). He argued that in its earlier order dismissing the case, the district court had not considered the adequacy of the alternative forum. (Doc 205 - Pg 2). According to Vega, "If the Court would re-conduct a balancing of the private to public interest and take into consideration the Court's presumption for plaintiff's choice of forum, the outcome would be most favorable for Plaintiff." (Doc 205 - Pg 2).

After the Defendants submitted their response, Vega submitted an affidavit on Italian law. (Doc 200). This untimely affidavit started a flurry of affidavits, counter-affidavits, and motions. (Doc 200, 204, 206, 208, 216). Vega's expert, the

Miami-based Italian attorney, flatly stated that "[t]he Italian law system does not allow attorneys to apply contingent fees." (Doc 200). In response, the Defendants submitted an affidavit of an Italian lawyer, who said that as a result of a recent Italian law, effective in early 2007, "the prohibition against contingency fees has been abolished." (Doc 204 – de Gonzalo affidavit - Pg 1-2).

Vega then submitted another affidavit by his Miami-based Italian lawyer, who stated that his earlier affidavit had been prepared a year before, and did not reflect the recent change in Italian law. (Doc 216 – Costabel affidavit – Pg 1-2). Still, he suggested that the recent change did not necessarily authorize contingent fees in Italy. (Doc 216 – Costabel affidavit - Pg 2-3). This lawyer was subsequently deposed. (Doc 253). During his deposition, he acknowledged that the Italian legal system is geared to handle a case such as Vega's: "Technically the system is very sophisticated. Perfectly capable of handling and, in fact, the Italian legal system handles a lot of these cases." (Doc 253 – Pg 26).

The district court, once again, rejects Vega's request for a United States forum for his foreign dispute

A magistrate recommended that Vega's motion to reinstate be denied. (Doc 266). The magistrate concluded that the relevant question is not whether contingent fees are available in the alternative fora, but rather whether the

alternative fora are adequate. (Doc 266 - Pg 3). The magistrate stated that Vega's inability to retain an attorney and pay court costs in the foreign fora is insufficient to render the fora unavailable. (Doc 266 - Pg 10).

The district court heard oral argument on Vega's motion. (Doc 284 – Pg 1). During the hearing, Vega's counsel admitted that contingent fees are now permitted in Italy. (Doc 284 – Pg 6).

The district court agreed with the magistrate's recommendation. (Doc 284 - Pg 6). At the outset, the judge noted his sympathy for seamen, and suggested that he had shown greater sympathies than other judges. (Doc 284 - Pg 2). Still, the district court rejected Vega's motion to reinstate his case. The court gave three reasons.

First, the district court held that Vega's motion to reinstate was an "untimely motion to reconsider" or an "improper attempt to collaterally attack" his earlier order of dismissal. (Doc 284 – Pg 3). The judge concluded that the motion to reinstate "improperly asks this Court to revisit the same issues that I examined in the September 29, 2005 Order." (Doc 284 - Pg 3). The judge noted that Vega could have prosecuted an appeal to this Court, but did not. "Instead, he chose to wait more than one year to file his Motion to Reinstate which I view as improper gamesmanship." (Doc 284 - Pg 3).

Second, the district court held that Vega had failed to show that the alternative fora were unavailable or inadequate. (Doc 284 - Pg 3). Rather than make such a showing, Vega had merely attempted to show that contingent fee representation was not available in the alternative fora. The district court noted that the *forum non conveniens* analysis considers many factors, and does not rest on the issue of contingent fees alone. Furthermore, "it is well-established that a plaintiff's lack of funds or the lack of contingency fee contracts in an alternative fora does not make a forum unavailable." (Doc 284 – Pg 4).

Third, the district court held that Vega had "not sufficiently demonstrated that . . . the lack of contingency agreements in certain of the alternative fora prohibited him from filing his suit in other alternative fora." (Doc 284 - Pg 6).

Incorrect statements in Vega's Statement of the Case and Facts

Vega's Statement of the Case and his Statement of the Case and Facts contain a number of assertions which are simply not true. He makes factual claims which have been rejected by the district court in its original (unchallenged) order of dismissal, rejected by this Court in *Membreno*, and rejected by the state court decision in the action in which Vega was a party. Despite the fact that some of these statements have been rejected three times, Vega continues to assert them, without even mentioning that they have been repeatedly rejected.

We could reargue the merits of these issues at length, but there is no reason to. These issues have already been decided by the courts, numerous times. Furthermore, they are for the most part irrelevant to Vega's argument on appeal—that the lack of contingent fee representation in the alternative fora renders those fora inadequate. So rather than dwell on these issues, previously decided and irrelevant to this appeal, we will briefly point out the most important of the incorrect statements.

Vega asserts that "Costa's day to day operations are . . . run out of Hollywood, Florida" (Initial brief, at 3, 8), and that "[t]he Defendants are based in Florida and run a major cruise line from South Florida" (Initial brief, at 23). These assertions were rejected by this Court in *Membreno*. 425 F.3d at 936 ("Costa's day-to-day operations are run from a 450-person office in Genoa, Italy. . . . Costa maintains no officers or employees in the United States."). These assertions were rejected by the state appellate court, with Vega as a party. *Tananta,* 909 So. 2d at 879, 887 (Costa "conducts its day-to-day business from its 450-employee office in Genoa, Italy. . . . [W]hile Carnival certainly has its base of operations in the United States, the evidence presented supports that Carnival does not control Costa's day-to-day operations. . . [especially in light of the] maintenance of corporate formalities."). And the assertions were rejected by the district court, in

the original order of dismissal which Vega did not challenge on appeal. (Doc 179 – Pg 18-19). ("I conclude that the shipowner, Costa Crociere, does not have a substantial base of operations in the United States."). The factual details can be found in the record at Doc 42 – Costa Crociere affidavit – Pg 1-6.

Vega also claims that Costa Cruise Lines N.V., which has an office in Florida, "operates several ships." (Initial brief, at 7). This is not true. As courts have repeatedly stated, Costa Cruise Lines N.V. "markets and sells passenger tickets in the United States," is a "sales and marketing agent," and markets Costa cruises. *Membreno,* 425 F.3d at 937*;* Vega order of dismissal (Doc 184 – Pg 14 n.12); *Tananta*, 909 So. 2d at 886. *See* Doc 42 – Costa Crociere affidavit – Pg 4-5).

Vega asserts that "[t]he *Costa Marina*, which the Plaintiff sailed on, was owned by Costa Crociere, S.p.A., (CSCS), where all of its crew functions were handled in Miami." (Initial brief, at 7). There are at least two problems with this assertion. First, while the sentence refers to "Costa Crociere, S.p.A., (CSCS)," there is no such entity. There are two separate entities, Costa Crociere, S.p.A., and Cruise Ships Catering Services International N.V. (sometimes referred to as CSCS). Second, the suggestion that "all of its crew functions were handled in Miami" is incorrect. As the state appellate court explained, CSCS's "accounting

and personnel" functions are contracted to independent contractors in Monaco, while medical benefits and claims are handled by an independent contractor in Florida. *See Tananta*, 909 So. 2d at 879.

Finally, Vega argues that the "Defendants' cruise line passenger ticket has a forum selection clause that requires all of its passengers to bring suit in the federal district court of Miami." (Initial brief, at 24). It is true that passengers who buy their tickets in the United States for Costa cruises have Miami forum-selection clauses. But this is only a tiny portion of Costa's world-wide business—80 to 85 percent of Costa's business comes from the European market. *Membreno*, 425 F.3d at 937.

Standard of Review

The decision of the district court must be treated with great deference. The district court's ruling is protected by two separate applications of the abuse-of-discretion standard of review.

The district court originally dismissed Vega's lawsuit based on *forum non conveniens*. If Vega had then prosecuted an appeal in this Court, the standard of review would have been abuse of discretion. A dismissal based on *forum non conveniens* is entitled to "substantial deference." *Leon v. Million Air, Inc.*, 251 F.3d 1305, 1310 (11th Cir. 2001). The district court's ruling may be reversed only if the district court committed a clear abuse of discretion. *Membreno v. Costa Crociere, S.p.A.*, 425 F.3d 932, 935-36 (11th Cir. 2005).

But Vega did not prosecute an appeal to this Court from the district court's original order of dismissal—he filed a notice of appeal, but then dismissed the appeal. Vega later sought to reinstate his case. After a conditional dismissal for *forum non conveniens*, "[a] district court's refusal to reopen an administratively closed case that effectively terminates all litigation between the parties is reviewed for abuse of discretion." *Oyuela v. Seacor Marine (Nigeria), Inc.*, 201 Fed. Appx. 269, 269 (5th Cir. 2006).

Summary of the Argument

The district court did not abuse its discretion in refusing to reinstate the case.

First, Vega's motion to reinstate case was an improper attempt to collaterally attack the original order of dismissal.

Second, collateral estoppel precludes Vega from relitigating issues decided against him in state court.

Third, Vega's arguments are contrary to this Court's binding precedent in *Membreno v. Costa Crociere, S.p.A.*, 425 F.3d 932 (11th Cir. 2005), which affirmed the dismissal on *forum non conveniens* grounds of a lawsuit brought by a foreign crewmember on a Costa ship.

Fourth, Vega's assertion that a plaintiff's inability to obtain representation on a contingent basis in the alternative forum renders that forum inadequate is contrary to overwhelming authority, including this Court's decision in *Magnin v. Teledyne Continental Motors*, 91 F.3d 1424 (11th Cir. 1996). There is no separate, watered-down version of *forum non conveniens* for foreign crewmembers.

Finally, the district court did not abuse its discretion in concluding that Vega had failed to demonstrate that contingent fee representation is unavailable in any of the alternative fora.

Argument

Vega has had his day in court, his second day, and his third day. He has three times been given the opportunity of arguing to a U.S. court that he should be able to litigate his lawsuit in American courts. Three times U.S. courts have told him that his lawsuit will not be resolved here. There is no reason for this Court to change this. In rejecting a plaintiff's attempt to re-argue a *forum non conveniens* dismissal, a court recently noted that "[c]ourts today are having difficulty giving a litigant one day in court. To allow that litigant a second day is a luxury that cannot be afforded." *Amore v. Accor, S.A.*, 484 F. Supp. 2d 124, 130 (D. D.C. 2007).

Furthermore, Vega's current arguments—when not improper reargument of matters previously decided—are wrong on the law, and unsupported by the facts.

The decision of the district court, entitled to great deference, should be affirmed.

I. The district court did not abuse its discretion in concluding that Vega's Motion to Reinstate the Case was an improper attempt to relitigate previously decided matters

The district court did not abuse its discretion in denying Vega's Motion to Reinstate the Case on the basis that it was an "improper attempt to collaterally attack" its earlier ruling. (Doc 284 - Pg 3). Furthermore, much of Vega's argument is precluded by a state-court appellate decision in a case in which Vega was a party.

A. Improper relitigation of matters decided against Vega in earlier order of dismissal by district court

Vega's argument to reinstate his dismissed lawsuit is nothing more than an attempt to relitigate matters which he could have—and did—litigate earlier, before the case was dismissed based on *forum non conveniens*.

In that first round of argument, Vega argued that the alternative fora were not adequate, and in particular argued that his client could not afford to hire an attorney or obtain one on a contingency basis. (Doc. 184 - Pg 47-48). He even submitted affidavits in an attempt to prove his argument (albeit in an untimely manner).

The district court rejected Vega's arguments. It found that United States law did not apply to the lawsuit, that Costa Crociere did not have a substantial base of operations in the U.S., and that the requirements for *forum non conveniens* dismissal were present—including that there were adequate alternative fora in Italy, Colombia, and the Netherlands Antilles.

Vega could have sought to overturn this ruling. But he dismissed his appeal. He waited nearly a year and filed a "Motion to Reinstate," raising essentially the same arguments (and often supported by the same affidavits).

The district court's refusal to allow Vega to collaterally attack the prior ruling was entirely proper, and surely not an abuse of discretion.

The common sense conclusion that a party cannot come back a year later on an issue which he has already lost is fully supported by the law. "[T]he doctrines of [r]es judicata and collateral estoppel apply to admiralty proceedings." *Pelotto v. L & N Towing Co.*, 604 F.2d 396, 401 (5th Cir. 1979). This includes Jones Act claims by crewmembers. *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 20 (1963); *Scarborough v. Clemco Industries*, 264 F. Supp. 2d 437 (E.D. La. 2003), *affirmed*, 391 F.3d 660 (5th Cir. 2004) (plaintiff may not reargue district court's earlier conclusion that decedent was a Jones Act seaman). These principles also apply in the context of a *forum non conveniens* dismissal by a federal district court, where there is nothing materially different in the subsequently-filed federal action. *See Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665 (5th Cir. 2003); *China Tire Holdings v. Goodyear Tire and Rubber Co.*, 91 F. Supp. 2d 1106, 1110 (N.D. Ohio 2000). *See generally Ex Parte Ford Motor Credit Co.*, 772 So. 2d 437 (Ala. 2000) (discussing federal authorities).

We anticipate that Vega may point out that the district court in its original order of dismissal struck Vega's untimely-filed affidavits. But if Vega objected to this, then he should have appealed the ruling at that time. Furthermore, there was no excuse for Vega's failure to submit the affidavits earlier. Vega's counsel indicated that "it has occurred to me and only recently that what really is going on here is

this motion is not for the convenience of the plaintiff." (Doc 184 - Pg 47-48). Vega's counsel's failure to think of an argument earlier does not give him the right to raise the argument a year later, in a collateral attack on a final judgment.

Vega had his day in court, and lost. The district court did not abuse its discretion in finding that Vega's Motion to Reinstate the Case was an improper collateral attack.

B. Improper relitigation of matters decided against Vega by state court

As explained, the dismissal by the district court acts as a complete bar to Vega's Motion to Reinstate the Case. But there is an additional estoppel which works against Vega—the one created by the state court action between Vega and the Defendants, Cruise Ship Catering Services International and Prestige Cruises. *Tananta v. Cruise Ships Catering and Services Int'l N.V.*, 909 So. 2d 874 (Fla. 3d DCA 2004), *review denied*, 917 So. 2d 192, 195 (Fla. 2005).

We acknowledge that a state court dismissal for *forum non conveniens* does not preclude a plaintiff from bringing the identical lawsuit in federal court. There are differences in the analysis by the state and federal courts which preclude the application of ***claim*** preclusion. *Parsons v. Chesapeake & Ohio Railway Co.*, 375

U.S. 71 (1963); *Chazen v. Deloitte & Touche, LLP.*, 2003 WL 24892029 (11th Cir. 2003).

But particular issues decided by a state court as part of the *forum non conveniens* analysis can give rise to ***issue*** preclusion, which will bar relitigation of those issues in federal court. *Migra v. Warren City School District Board of Education*, 465 U.S. 75 (1984); *Allen v. McCurry*, 449 U.S. 90 (1980).

When factual issues are resolved by a state court in the process of deciding a *forum non conveniens* motion, the losing party is precluded from relitigating those factual issues in federal court. "[W]hile the Plaintiff is not barred from challenging the ultimate judgment of the state court to dismiss the prior action for *forum non conveniens*, the Plaintiff is barred from challenging the legal and factual issues resolved by the state court." *Callasso v. Morton & Co.*, 324 F. Supp. 2d 1320, 1325 (S.D. Fla. 2004) (seaman's claim dismissed in state court, then filed in federal court). Vega himself admitted this at one point in the current lawsuit, when a state court had ruled in his favor. (Doc 47 - Pg 2 n.3)

Under these principles, Vega was bound by the findings of the state court. There are at least three issues which Vega argues in this appeal which were resolved against him in the state court action in which both he and the Costa Defendants were parties.

First, the state court found that Vega's home country of Colombia is an adequate alternative forum. *Tananta v. Cruise Ships Catering and Services Int'l N.V.*, 909 So. 2d at 884.

Second, the court found that the Netherlands Antilles is an adequate alternative forum, and that seamen "can find suitable contingency-based representation there." 909 So. 2d at 885.

Third, the court found that Costa "conducts its day-to-day business from its 450-employee office in Genoa, Italy." 909 So. 2d at 879. This conclusion—in addition to being supported by the evidence and affirmed by every appellate court to address the question—precludes Vega from arguing in this appeal that "Costa's day to day operations are . . . run out of Hollywood, Florida." (Initial brief, at 3, 8).

Vega is precluded from arguing these points, since he litigated these issues in the state court action, and lost.

We are unable to anticipate Vega's argument on this issue, since he did not cite the *Tananta* case in his brief.

II. The district court did not abuse its discretion in denying the Motion to Reinstate the Case, in light of this Court's on-point authority in *Membreno*

Even if Vega himself had not already twice litigated *forum non conveniens* and lost, he would still face the obstacle presented by this Court's on-point authority of *Membreno v. Costa Crociere, S.p.A.*, 425 F.3d 932 (11th Cir. 2005).

Membreno involved a Jones Act claim by a foreign crewmember based on a foreign accident on a Costa ship. This Court held that the crewmember's claim was not governed by U.S. law, and that the case should be dismissed for *forum non conveniens*. In its analysis, the Court held that there were adequate alternative fora, including Italy and the Netherlands Antilles. 425 F.3d at 936-37.

In its opinion, the Court flatly rejected the argument—made here by Vega—that Costa's day-to-day operations are run out of Hollywood, Florida. "Costa's day-to-day operations are run from a 450-person office in Genoa, Italy," the Court determined. 425 F.3d at 936. The Court concluded that Costa did not have a substantial base of operations in Florida, and that the ultimate ownership by a United States corporation was insufficient to establish that Costa has a substantial base of operations in the this country. 425 F.3d at 936-37.

The Court initially designated that the opinion would be unpublished. The Defendants moved to publish the opinion, on the basis that "there are other

pending cases similar to this case, and nothing less than a published opinion may resolve the issue." The Court granted the motion and ordered that the opinion be published. (Order dated Sept. 16, 2005). *See Velasquez v. C.S.C.S. International N.V.*, 149 Fed. Appx. 881 (11th Cir. 2005) (unpublished affirmance of *forum non conveniens* dismissal of foreign crewmember's claim against the Costa Defendants, finding *Membreno* to be "directly on point").

So aside from *collateral estoppel*, Vega's arguments are precluded by *stare decisis*. This Court has already held that Italy and the Netherlands Antilles are adequate alternative fora.

Again, we are unable to anticipate Vega's argument for getting around this obstacle—he did not cite the *Membreno* decision in his brief.

III. The district court did not abuse its discretion in rejecting Vega's argument that Italy, Colombia, and the Netherlands Antilles are inadequate merely because they do not allow contingent fee agreements

Vega is in no position to argue that the district court abused its discretion in refusing to allow him to litigate his pervasively foreign lawsuit in a U.S. court. Vega's argument is precluded by (1) his having lost on *forum non conveniens* in federal district court, and failed to prosecute an appeal, (2) his having lost on

particular significant issues in state court, and (3) the binding precedent of this Court's decision in *Membreno*.

But even if Vega didn't face these three insurmountable obstacles, Vega's argument should still be rejected, as it is wrong on the merits. Contrary to his suggestion, the unavailability of contingent fee representation in an alternative forum does not by itself require that a U.S. court decide a lawsuit brought by a foreign plaintiff against foreign defendants, based on a foreign accident.

A. No one factor—and certainly not the availability of contingent fee representation—determines the *forum non conveniens* analysis

Vega's argument that the inability to obtain a lawyer on a contingency fee renders a forum inadequate is contrary to the basic principle that the *forum non conveniens* analysis is "a multi-sided doctrine in which no one interest is dominant or dispositive of the analysis." *Esfeld v. Costa Crociere, S.p.A.*, 289 F.3d 1300, 1311 (11th Cir. 2002). "If central emphasis were placed on any one factor, the *forum non conveniens* doctrine would lose much of the very flexibility that makes it so valuable." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 250 (1981). *See also Sinochem International Co. v. Malaysia International Shipping Corp.*, 127 S. Ct. 1184, 1190 (2007).

Vega's argument, if accepted, would drastically diminish the flexibility of *forum non conveniens*. If a foreigner wanted to bring a lawsuit in a U.S. court, he or she would need only show an inability to pay for counsel, and the lack of contingent representation in his or her home country. Since much of the world cannot afford to pay an attorney, and since most of the world's legal systems do not authorize contingent fee agreements, much of the world's population would be able to litigate their disputes in the United States.

B. This Court and other courts have found the availability of contingent fee representation to be of minimal importance in the *forum non conveniens* analysis

This Court has held that the unavailability of contingent fee representation is a minor consideration in the *forum non conveniens* analysis:

> Magnin also points out, almost in passing, that if the case is tried in France he will not receive a jury trial, nor will he be able to obtain counsel through a contingency fee arrangement, because such fee arrangements are not permitted in France. As cherished as trial by jury is in our law, and as cherished as contingency fee arrangements have become to some plaintiffs and their attorneys, Magnin has not cited us to any Supreme Court or court of appeals decision giving such considerations substantial weight in *forum non conveniens* analysis. The argument is particularly weak in regard to contingency fees. In *Coakes v. Arabian American Oil Co.,* 831 F.2d 572, 576 (5th Cir.1987), the Fifth Circuit held that ***the ban against contingency fees in England should not significantly influence the forum non conveniens determination***, and observed that, "[i]f the lack of a contingent fee system were held determinative, then a case could almost never be dismissed because contingency fees are not allowed in most forums."

Magnin v. Teledyne Continental Motors, 91 F.3d 1424, 1430 (11th Cir. 1996) (emphasis added).

The Second Circuit has held that the unavailability of contingent fee representation "may not be considered in determining the availability of an alternative forum." *Murray v. British Broadcasting Co.*, 81 F.3d 287, 292-93 (2nd Cir. 1996). The factor might be considered in evaluating the private interests under *forum non conveniens*, but even then is of "little weight." *Id.* at 294. *See also Coakes v. Arabian American Oil Co.*, 831 F.2d 572, 575-76 (5th Cir. 1987). The Fifth Circuit has rejected the argument that there is "effectively no alternative forum" where "there is no economic incentive to file suit in the alternative forum." *Gonzalez v. Chrysler Corp.*, 301 F.3d 377, 382 (5th Cir. 2002).

Underlying the refusal to find other countries to be "inadequate" are the international implications of such a ruling. This Court has noted that the "federal government's interest in foreign relations" is an "important federal interest at stake in the *forum non conveniens* context." *Esfeld v. Costa Crociere, S.p.A.*, 289 F.3d 1300, 1312 (11th Cir. 2002). "It is clear . . . that foreign relations are implicated in the *forum non conveniens* calculus." *Id.*

Accordingly, courts have found that Italy, Colombia, and the Netherlands Antilles are adequate alternative fora, without regard to whether they allow contingent fee representation.[1]

C. Vega's authorities do not support his argument

Vega cites a flurry of cases to support his claim that the inability to obtain contingent fee representation requires the denial of a motion to dismiss for *forum non conveniens*. A review of the cases demonstrates that there is less than meets the eye.

Most of the cases—and the ones which Vega relies on most vigorously—are easily distinguishable because they involved plaintiffs who are United States citizens, who are of course entitled to great deference in their choice of a U.S.

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[1] **Italy**: *Membreno v. Costa Crociere S.p.A.*, 425 F.3d 932 (11th Cir. 2005); *King v. Cessna Aircraft*, 405 F. Supp. 2d 1374 (S.D. Fla. 2005) (noting unavailability of contingent fee representation); *In re Vioxx Products Liability Litigation*, 448 F. Supp. 2d 741 (E.D. La. 2006) (same); *Delta Brands v. Danieli Corp.*, 99 Fed. Appx. 1 (5th Cir. 2004); *Hyatt International Corp. v. Coco*, 302 F.3d 707 (7th Cir. 2002). **Colombia**: *Iragorri v. International Elevator, Inc.,* 203 F.3d 8 (1st Cir. 2000); *Republic of Colombia v. Diageo North America Inc.*, 2007 WL 1813744 (E.D.N.Y. 2007); *Termorio S.A. E.S.P. v. Electrificadora Del Atlantico S.A. E.S.P.*, 421 F. Supp. 2d 87 (D. D.C. 2006). **Netherlands Antilles**: *Membreno v. Costa Crociere S.p.A.*, 425 F.3d 932 (11th Cir. 2005); *Bautista v. Cruise Ships Catering and Service Intern. N.V.*, 350 F. Supp. 2d 987 (S.D. Fla. 2003), *aff'd*, case no. 04-10336 (11th Cir. 2004).

forum.[2] Foreigner Vega, who moved to Miami at the behest of his lawyer in "an attempt to manufacture contacts in the United States," is entitled to no such deference in his choice of forum. (Doc 179 – Pg 17 n.14).

In other cases which Vega relies upon, the courts actually ***granted*** *forum non conveniens* dismissal.[3] Still others are older cases decided before the Supreme Court instructed that differences in substantive law were not a reason to deny *forum non conveniens* dismissal, *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981).[4] The remaining cases are also distinguishable.[5]

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[2] *See Macedo v. Boeing Co.,* 693 F. 2d 683, 690 (7th Cir. 1982); *Reid-Walen v. Hansen,* 933 F. 2d 1390, 1399 (8th Cir. 1991); *Lehman v. Humphrey Cayman Ltd.,* 713 F. 2d 339 (8th Cir. 1983); *Doe v. Sun International Hotels, Ltd.,* 20 F. Supp. 2d 1328, 1330 (S.D. Fla. 1998) (residence of plaintiff confirmed in complaint, available on Pacer); *Rudetsky v. O'Dowd,* 660 F. Supp. 341, 347 (E.D.N.Y. 1987); *McKrell v. Penta Hotels (France), S.A.,* 703 F. Supp. 13 (S.D.N.Y. 1989); *Lugones v. Sandals Resorts, Inc.,* 875 F. Supp. 821 (S.D. Fla. 1995); *Byrne v. British Broadcasting Corp.,* 132 F. Supp. 2d 229 (S.D.N.Y. 2001).

[3] *See Murray v. British Broadcasting Corp.,* 81 F. 3d 287 (2d Cir. 1996); *Coakes v. Arabian American Oil Co.,* 831 F. 2d 572, 575 (5th Cir. 1987); *Kilvert v. Tambrands, Inc.* 906 F. Supp. 790 (S.D.N.Y. 1995).

[4] *See Thomson v. Palmieri,* 355 F. 2d 64, 66 (2d Cir. 1966); *Constructora Ordaz, N. V. v. Orinoco Min. Co.,* 262 F. Supp. 90 (D.C. Del. 1966); *Odita v. Elder Dempster Lines Ltd.,* 286 F. Supp. 547 (S.D.N.Y. 1968); *Fiorenza v. US. Steel Intern., Ltd.,* 311 F. Supp. 117 (D.C.N.Y. 1969); *Hodson v. A.H. Robins Co.,* 528 F. Supp. 809, 818 (E.D. Va. 1981); *Manu International, S.A. v. Avon Products, Inc.,* 641 F. 2d 62 (2d Cir. 1981).

[5] *In re Air Crash off Long Island,* 65 F. Supp. 2d 207, 217 (S.D.N.Y. 1999) (plane accident occurred over U.S. territorial waters, all defendants were U.S. corporations, and most of evidence pertaining to liability was located in U.S.); *Irish National Ins. Co. v. Aer Lingus Teovanta,* 739 F.2d 90, 91 (2nd Cir. 1984) (plaintiff

The cases which Vega relies on do not support his position. The rule is as we stated: an alternative forum's prohibition of contingency fees "should not significantly influence the *forum non conveniens* determination." *Magnin v. Teledyne Continental Motors*, 91 F.3d at 1430 (quoting *Coakes v. Arabian American Oil Co.*, 831 F.2d at 576).

D. Vega's status as a seaman does not outweigh all of the reasons supporting *forum non conveniens* dismissal

The heart of Vega's brief is a plea to create a new *forum non conveniens* standard for seaman. He seeks extra protection for seamen under U.S. law, even though Vega is not a Jones Act seaman and his case is not governed by U.S. law (as the district court found in its original, unchallenged order of dismissal).

But *forum non conveniens* is perhaps at its most important in admiralty cases, which not infrequently include claims with at most a tangential connection to this country. *Forum non conveniens* "may have been given its earliest and most frequent expression in admiralty cases." *American Dredging Co. v. Miller*, 510 U.S. 443, 450 (1994). This Court has not hesitated to affirm *forum non conveniens* dismissal of claims for foreign seamen. *See Velasquez v. C.S.C.S. International N.V.*, 149 Fed.

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suing for $125,000, but alternative forum capped damages at $260; contingent fees not at issue).

Appx. 881 (11th Cir. 2005); *Membreno v. Costa Crociere S.p.A.*, 425 F.3d 932 (11th Cir. 2005); *Sigalas v. Lido Maritime, Inc.*, 776 F.2d 1512 (11th Cir. 1985).

In support of his argument for a watered-down *forum non conveniens* doctrine for foreign crewmembers, Vega relies on the Shipowners Liability (Sick and Injured Seamen) Convention of 1936. (Doc 184 - Pg 10; Initial brief, at 18). The Convention does support Vega's argument. Vega relies on Article 9 of the Convention, which provides that "[n]ational laws or regulations shall make provision for securing the rapid and inexpensive settlement of disputes concerning the liability of the shipowner under this Convention." By its terms, the provision doesn't do much. This generalized statement doesn't require that United States courts decide cases which would otherwise be dismissed based on *forum non conveniens*.

Seamen have in the past relied on another article of the Convention, which provides: "This Convention and national laws or regulations relating to benefits under this Convention shall be so interpreted and enforced as to ensure equality of treatment to all seamen irrespective of nationality, domicile or race." After one district court found that to deny a foreign seaman access to United States courts would deny him "equal treatment" under the Convention, the Fifth Circuit disagreed, and stated that this view "represents a candidly novel and clear departure

from our holdings and those of the Supreme Court." *In re McClelland Engineers*, 742 F.2d 837, 838-39 (5th Cir. 1984), *overruled on other grounds*, *In re Air Crash Disaster Near New Orleans*, 821 F.2d 1147 (5th Cir. 1987). *See also Calix-Chacon v. Global International Marine*, 493 F.3d 507, 513 (5th Cir. 2007) ("that is clearly not the law."); *Flores v. Central American Steamship Agency*, 594 F. Supp. 735, 738 (S.D.N.Y. 1984) (Convention does not entitle foreign seaman "to have United States law applied in all instances no matter how tenuous or non-existent their contact with the United States"); *Ullah v. Canion Shipping Co.*, 589 F. Supp. 552 (D. Md. 1984), *affirmed*, 755 F.2d 1116 (4th Cir. 1985); *Vlachos v. M/V Proso*, 637 F. Supp. 1354, 1362 n.11 (D. Md. 1986).

Vega also relies on a case which holds that courts have authority to review contingent fee agreements between seamen and their counsel. *Karim v. Finch Shipping*, 233 F. Supp. 2d 807, 810 (E.D. La. 2003). This may be true, but is irrelevant to the question of whether a United States court should decide a claim involving a foreign plaintiff, foreign defendants, and a foreign accident.

IV. The district court did not abuse its discretion in denying Vega's Motion to Reinstate the Case, where Vega never established that he could not obtain counsel in Italy, Colombia, and the Netherlands Antilles

In addition to what we have already said—the collateral estoppel effect of the prior judgments, the *Membreno* decision, the law stating that the availability of contingent fees is an exceedingly minor consideration in *forum non conveniens* analysis, and the deferential abuse-of-discretion standard of review—there is an additional reason for affirming the denial of Vega's Motion to Reinstate the Case: the district court did not abuse its discretion in concluding that Vega had failed to prove that contingent fee representation is unavailable in the alternate fora. As the district court concluded, Vega did "not sufficiently demonstrate that he could not bring his suit in an alternative fora or that the lack of contingency agreements in certain of the alternative fora prohibited him from filing his suit in other alternative fora." (Doc 284 - Pg 6).

Italy. Vega did not establish that contingent fee representation is unavailable in Italy. Indeed, it is clear that at least since January 2007, Italy authorizes contingent fee agreements. *See* Doc 284 – Pg 6; *Insurance & Professional Indemnity: Class of Their Own*, Legal Week, Aug 2, 2007 ("Since January 2007, Italy has lifted the ban on contingency fees. . . .") (available online at www.legalweek.com); P. Llewellyn & S. Barker, *Class Actions in the EU—A*

Jeremiad?, in PRODUCT LIABILITY 2007, at 23 (International Comparative Legal Guide Series 2007) ("On 4 August 2006, the Italian Parliament passed the Bersani Decree, article 2 of which abolishes minimum legal fees and the prohibition of private agreements between lawyers and clients. The text is vague and lacking in detail but, in principle, and this is a widely held view in Italian legal circles, there is nothing now to prevent contingency fees in Italy. . . .") (available online at www.iclg.co.uk).

Vega submitted an affidavit of an Italian lawyer who claimed that it was unclear whether Italy authorizes contingent fees. (Doc 216 – Costabel affidavit – Pg 2-3). This seems a distinctly minority view. In any event, the need to determine a disputed issue of Italian law is a strong reason for a United States court to not address the issue. The public interest factors point towards dismissal where the court would be required to become entangled in problems of foreign law. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 263 (1981).

Netherlands Antilles. The state court specifically found that seaman can obtain contingency-based representation in the Netherlands Antilles. *Tananta*, 909 So. 2d at 885. Vega is collaterally stopped from attacking this determination.

Moreover, the evidence establishes that contingent fee representation is available in the Netherlands Antilles. Vega argued that "large law firms will only

work on a contingency fee basis in the Netherlands Antilles in exceptional cases, depending on the probability a positive outcome and the amount of the sum involved." (Doc 47 - Pg 20). Vega's case was apparently not one of those cases. "[A] rejection of *this particular case*, as opposed to a blanket refusal to undertake, for instance, *all* product liability actions, seems instead to suggest that the conditional-fee system does not, as plaintiffs contend, automatically exclude their claims." *Kilvert v. Tambrands*, 906 F. Supp. 790, 769 n.4 (S.D.N.Y. 1995) (emphasis in original). The fact that lawyers in the Netherlands Antilles found Vega's case not worthy of accepting is no reason for a United States court to exercise its jurisdiction over a lawsuit with little connection to the United States. Furthermore, Vega did not provide evidence on the willingness of other than "large law firms" to accept contingency cases.

As with Italy, Vega's attempt to obtain counsel in the Netherlands Antilles was minimal. His Miami lawyer spoke with a few legal secretaries in the Netherlands Antilles. (Doc 241 – Pg 16-30). *See Dawson v. Compagnie des Bauxites de Guinee*, 112 F.R.D. 82 (D. Del. 1986) (after *forum non conveniens* dismissal, court refuses plaintiff's request to reopen case because of inability to obtain a lawyer in the alternative forum, finding that efforts made in obtaining counsel were deficient.).

Colombia. Vega did little to locate a lawyer in Colombia. His then-wife called five lawyers in Colombia, but he did not speak with anyone. (Doc 241 – Pg 19, 28). He visited Colombia in 2000 to renew his visa, but did not try to see a lawyer when he was there. (Doc 241 – Pg 15).

Vega failed to establish that contingent fees are unavailable in all three of the alternative fora. At most, he showed that a handful of lawyers would not accept his case on a contingency. The district court's denial of his Motion to Reinstate the Case was not an abuse of discretion.

Conclusion

This foreign plaintiff's case against foreign defendants should not occupy the courts of the United States. The district court's ruling, supported by overwhelming precedent, should be affirmed.

Respectfully submitted,

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Certificate of Service and Compliance

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to Elizabeth K. Russo, Esq., and Craig Lee Montz, Esq., Russo Appellate Firm, P.A., 6101 S.W. 76th Street, Miami, FL 33143; and Lipcon, Marguiles & Alsina, P.A., Two South Biscayne Boulevard, Suite 2480, Miami, FL 33131, on this 23rd day of October, 2007.

We also certify that the brief was uploaded to the Court's web site on October 23, 2007, at 1:30 p.m.

This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirement of Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2007 in 14-point Adobe Caslon. This brief complies with the type-volume limitation of Rule 32(a)(7)(b) because the brief contains 8,969 words.

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