No. _____

In the
# Supreme Court of the United States

ADVANFORT COMPANY,

*Petitioner*,

v.

ZAMIL OFFSHORE SERVICES COMPANY and SAUDI PORTS AUTHORITY, a foreign sovereign state,

*Respondents*.

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit**

## PETITION FOR WRIT OF CERTIORARI


H. Brent McKnight, Jr.
MCGUIREWOODS LLP
501 Fayetteville St.
Suite 500
Raleigh, NC 27601
(919) 755-6600

Jonathan Y. Ellis
*Counsel of Record*
Grace Greene Simmons
MCGUIREWOODS LLP
888 16th Street N.W.
Suite 500
Washington, DC 20006
(202) 828-2887
jellis@mcguirewoods.com

*Counsel for Petitioner*


September 29, 2025

## QUESTION PRESENTED

In *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), this Court held that "[a]t the outset of any *forum non conveniens* inquiry, the court must determine whether there exists an alternative forum." The courts of appeals are divided on whether this requirement is met where, to proceed elsewhere, a case must be split between multiple courts. In the decision below, the Fourth Circuit held that *Piper Aircraft*'s initial requirement is satisfied even when a plaintiff would have to split its case between multiple foreign courts, as long as those courts are in the same country. The question presented is as follows:

Whether the doctrine of *forum non conveniens* requires the existence of a single foreign court in which a plaintiff has the right to bring its entire case against all defendants, or whether the plaintiff may be forced to split its case across multiple courts.

## CORPORATE DISCLOSURE STATEMENT

Petitioner AdvanFort Company is not a publicly held corporation, has no parent corporation, and no publicly held corporation owns ten percent (10%) or more of its outstanding stock.

## STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings:

- *AdvanFort Company v. Zamil Offshore Services Company*, No. 24-1007 (4th Cir. 2025), judgment entered April 22, 2025; petition for rehearing and rehearing en banc denied on May 30, 2025.
- *AdvanFort Company v. Zamil Offshore Services Company*, No. 1:23-cv-906 (E.D. Va.), order granting motion to dismiss for *forum non conveniens* entered December 1, 2023; notice of appeal filed December 26, 2023.

## TABLE OF CONTENTS

## APPENDIX

## TABLE OF AUTHORITIES

**Cases**

**Statutes**



**Other Authorities**

## INTRODUCTION

This case concerns when an American plaintiff can be stripped of its home forum and forced to proceed in a foreign country under the doctrine of *forum non conveniens*. Under *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), a district court deciding a motion to dismiss on grounds of *forum non conveniens* must first ask "whether there exists an alternative forum." *Id.* at 254 n.22. If the answer is no, the court's analysis is complete; it may not dismiss the case on *forum non conveniens* grounds. Although one might think—and most courts of appeals have found—that "*an* alternative forum" means a single alternative court, this Court has not specifically addressed whether the moving party must identify one foreign court in which a plaintiff has the right to bring its entire case against all defendants, or whether the plaintiff may be forced to split its case across multiple courts.

This case presents that question. Petitioner AdvanFort Company sued Respondents Zamil Offshore Services Company and the Saudi Ports Authority after AdvanFort's maritime security vessel, the *M/V Seaman Guard Virginia*, was looted and destroyed while docked at the Jeddah Shipyard in Saudi Arabia for maintenance. AdvanFort, a Virginia business, brought its case against both Respondents in its home forum, the United States District Court for the Eastern District of Virginia. The Ports Authority defaulted, but Zamil appeared and moved to dismiss for *forum non conveniens*. The district court granted the motion, requiring AdvanFort to proceed, if at all, in the Saudi courts, and the Fourth Circuit affirmed—even though no one Saudi court affords AdvanFort the right to bring all its claims against both Respondents.

This Court should grant review and reverse. The decision below deepens and entrenches a circuit split over whether the doctrine of *forum non conveniens* allows a case to be dismissed if it means that case would be divided among multiple foreign courts. The majority rule is that a party seeking dismissal for *forum non conveniens* must identify *a* forum in which the entire case can be brought against all defendants. In other words, there must be a single alternate court in which the plaintiff has the right to bring its entire case and join all defendants to the action. The Fourth Circuit's published decision below departs from that view, joining the Second Circuit. Over Judge Thacker's dissent, the majority rejected AdvanFort's demand that Zamil identify a single court in Saudi Arabia in which AdvanFort could bring all its claims.

The court of appeals' decision is also wrong. *Forum non conveniens* demands that a single forum—that is, a single court—in the foreign country be able to hear the entire case against all defendants. This requirement prevents a defendant from "split[ting] or bifurcat[ing]" a single case into two or more proceedings in multiple forums and ensures that *forum non conveniens* functions as designed. *DIRTT Env't Sols., Inc. v. Falkbuilt Ltd.*, 65 F.4th 547, 555 (10th Cir. 2023). As the name suggests, the doctrine is intended to move a case to a more convenient forum. Requiring a plaintiff to split its claims, rather than litigate a single suit in its chosen forum, creates double the work in different venues that might well result in inconsistent judgments. Nothing about that is convenient.

The bar against splitting cases also ensures that *forum non conveniens* does not unduly intrude on federal courts' "virtually unflagging obligation . . . to exercise the jurisdiction given to them." *Colo. River Water Conser-*

*vation Dist. v. United States*, 424 U.S. 800, 817 (1976). The doctrine of *forum non conveniens* is, and must be, a narrow exception to that duty. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 722 (1996) (noting only "[i]n rare circumstances" can "federal courts relinquish their jurisdiction" under *forum non conveniens*); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 509 (1947) (explaining *forum non conveniens* only applies in "rather rare cases"). By demanding that the party seeking dismissal identify a single alternate court where the plaintiff has the right to bring its entire case, the majority rule helps keep the doctrine within its narrow bounds; the minority position impermissibly expands it.

This case thus raises an important question, with significant consequences, that is squarely presented and dispositive. It warrants this Court's review.

## OPINIONS BELOW

The court of appeals' opinion is reported at 134 F.4th 760 and reproduced at App., *infra*, 1a-32a. The opinion of the district court is reported at 704 F. Supp. 3d 669 and is reproduced at App., *infra*, 33a-52a.

## JURISDICTION

The court of appeals issued its published opinion and judgment on April 22, 2025. App., *infra*, 1a. The court of appeals denied a timely filed petition for rehearing and rehearing en banc on May 30, 2025. App., *infra*, 53a. On August 28, 2025, Chief Justice Roberts extended the time in which to file a petition for a writ of certiorari until September 29, 2025. This Court has jurisdiction under 28 U.S.C. § 1254.

## STATEMENT OF THE CASE

1. AdvanFort is a Virginia company that deploys security vessels and guards to protect oil tankers and other vulnerable ships against piracy in international waters. CA4 App. 7 (¶ 1). One of AdvanFort's vessels, the *M/V Seaman Guard Virginia*, was sailing in the Red Sea when it needed routine maintenance and repair. *Id.* at 7-8, 16 (¶¶ 2, 39). AdvanFort sent the *Virginia* to the Jeddah Shipyard in Saudi Arabia. *Id.* at 21 (¶ 67).

The Jeddah Shipyard is jointly operated by the Saudi Ports Authority and Zamil Offshore Services Company. CA4 App. 10 (¶ 13). The Ports Authority is an arm of the Saudi government. *Id.* at 10 (¶ 12). Zamil is a Saudi company controlled by the Zamil family, which has significant ties to the Saudi royal family. *Id.* at 9 (¶ 10).

A fire broke out while Jeddah Shipyard was working on the *Virginia*, causing damage to the vessel. CA4 App. 23 (¶ 79). Zamil tried to blame AdvanFort for the fire, refusing to repair the damage and threatening to "undock" the vessel unless AdvanFort "sign[ed] a statement of responsibility for the fire." *Id.* at 24, 27 (¶¶ 86, 99-100). The Saudi fire inspectors performed a perfunctory inspection of the fire and, in a six-line report, attributed the fire to AdvanFort. *Id.* at 24-25 (¶¶ 87-89).

AdvanFort immediately sued Zamil in Saudia Arabia in the Third Commercial Circuit of Jeddah. CA4 App. 28 (¶ 105). The Saudi judiciary is not independent. *Id.* at 233 (¶ 17). The King of Saudi Arabi is the head of the Saudi judicial system, and he maintains ultimate authority over the judiciary's organization and operations. *Id.* at 232 (¶ 16). Judges that issue decisions perceived to be contrary to the interests of the government are met with retribution, and judges have been arrested and tortured for

rulings. *Id.* at 233-34 (¶¶ 19-20) (explaining that 10 judges currently "face the death penalty"). "Occasionally, the Saudi government permits cases against it to succeed and allows the court to award nominal judgments," which are "publicized to generate positive public relations for the government." *Id.* at 240 (¶ 33). Otherwise, it is well-recognized that Saudi courts do not provide a fair or impartial forum for adjudicating claims against the Saudi government or entities or individuals associated with the royal family. *Id.* at 230-31 (¶ 11).

This bias was borne out in AdvanFort's case. The Saudi court declined to appoint an independent expert to assess the source of the fire, relying only on the reports prepared by the Saudi government and deeming them dispositive. CA4 App. 31-32 (¶¶ 121-22); *id.* at 108. One witness refused to testify for fear of retribution from the Zamil family, telling AdvanFort "this is not America." *Id.* at 31 (¶ 119). And Zamil openly attempted to bribe the *Virginia*'s captain, demanding that he testify in favor of Zamil and threatening "that he would face dire consequences" if he did not. *Id.* at 30 (¶¶ 112-16). When he refused, the Saudi court deemed his testimony to be "unacceptable." *Id.* at 108. In a cursory opinion, the Saudi court ruled against AdvanFort and awarded Zamil $40,000 in damages, plus unspecified berthing fees. *Id.* at 31 (¶ 121); *see id.* at 107-08.

Five years later, in 2022, Zamil finally gave AdvanFort access to the *Virginia*, demanding that AdvanFort come retrieve the vessel or else they would "dispos[e]" of it. CA4 App. 32 (¶ 124). When it did, AdvanFort discovered that Zamil and the Ports Authority had stripped everything from the vessel—from its engines to a stray set of binoculars—and allowed the vessel to rust in the ele-

ments. *Id.* at 33, 35 (¶¶ 127, 135). Hatches and windows had been left open, and debris was strewn around the vessel. *Id.* at 33 (¶ 128). The vessel was "utterly unseaworthy." *Id.* at 33 (¶ 128); *see id.* at 33-34 (¶¶ 129-131) (pictures of the disrepair). AdvanFort could not even tow the vessel out of the shipyard. *Id.* at 35 (¶ 133).

2. In 2023, AdvanFort filed a second suit—this suit—against Zamil and the Ports Authority. AdvanFort asserted claims of conversion, breach of bailment, negligence, and gross negligence in stripping and trashing the vessel. CA4 App. 37-40. And having learned its lesson, this time AdvanFort filed in its home district of the Eastern District of Virginia.

The Ports Authority defaulted and never appeared. CA4 App. 356. Zamil moved to dismiss for lack of personal jurisdiction and *forum non conveniens*, arguing that AdvanFort should be required to bring its claims in Saudi courts. AdvanFort opposed.

AdvanFort submitted an expert declaration by Dr. Abdullah Alaoudh, a Saudi legal scholar. CA4 App. 229-48. Dr. Alaoudh reiterated that the Saudi judiciary is not independent and so does not provide a fair forum for foreign parties suing the government, especially in cases "alleg[ing] malfeasance by government actors and irregularities in Saudi court proceedings." *Id.* at 230-31 (¶¶ 11-12). He noted that any AdvanFort employees that traveled to Saudi Arabia for litigation "would be at risk of detention," or "at least . . . surveillance." *Id.* at 231 (¶ 12). And he explained that "it would be extremely difficult for AdvanFort to obtain counsel to represent it in prosecuting its claims," as attorneys "face retribution for supporting lawsuits against the Saudi government or allied families." *Id.* at 231, 235 (¶¶ 12, 21).

Importantly, Dr. Alaoudh also explained that AdvanFort's claims against the two defendants, if litigated in Saudi Arabia, would have to be split between two forums. CA4 App. 242 (¶ 39). The claims against the Ports Authority would have to be brought before the Board of Grievances, which "has exclusive jurisdiction over . . . lawsuits filed against government bodies." *Ibid.* The claims against Zamil, on the other hand, would have to be brought before the Commercial Court. *Ibid.* "There is no forum in Saudi Arabia where AdvanFort could bring its claims against both Defendants." *Ibid.*

Zamil's expert did not disagree. In his supplemental expert report, he speculated that the Board of Grievances might be willing to allow "eligible litigants" to intervene in a proceeding. CA4 App. 323-24. But he did not explain who counted as "eligible" to join a suit against the government and identified no prior instances of the Board of Grievances allowing a plaintiff to join a private entity to a suit. *See ibid.*

3. The district court granted Zamil's motion and dismissed the suit against both defendants based on *forum non conveniens*. App., *infra*, 42a-52a.

The district court first concluded that alternative forums were available in Saudia Arabia, dismissing the concern that AdvanFort would have to sue the defendants in two different forums. App., *infra*, 43a-44a. The court recognized that other courts had held that *forum non conveniens* should not be used to split claims between defendants, but it declined to follow that rule, as AdvanFort would not be forced "to litigate in two different countries," just two different courts. *Id.* at 44a.

The district court further concluded that the Saudi courts would be adequate. App., *infra*, 44a-48a. The court

ignored the overwhelming proof of bias, calling it "anecdotal evidence of corruption and delay." *Id.* at 45a. The court then wrongfully asserted that AdvanFort's prior suit proved that the Saudi court system was not biased, as the Saudi Commercial Court had only granted Zamil $40,000 when it requested $147,000. *Id.* at 46a. And, citing decades-old cases, the court reasoned that Saudia Arabia had been found to be an adequate forum in the past. *Id.* at 46a.

Finally, the district court found that the public and private interests favored litigation in Saudia Arabi, discounting AdvanFort's interest in suing in the United States and reasoning that the court "would be forced to apply Saudi law." App., *infra*, 48a-52a.

Because the court had dismissed the entire suit based on *forum non conveniens*, it declined to address Zamil's challenge to personal jurisdiction and rejected AdvanFort's request for jurisdictional discovery. *See* App., *infra*, 33a-35a & n. 2.

4. In a divided, published opinion, the court of appeals affirmed. App., *infra*, 15a-28a.

Judge King, writing for the majority, held that "the Saudi courts are an available and adequate forum." App., *infra*, 15a. On availability, the majority accepted that an "alternate forum must be available as to *all defendants*." *Id.* at 16a (internal quotation marks omitted). But the majority disagreed that there must be "a *single* tribunal in a foreign jurisdiction where all claims brought by a plaintiff may be heard and resolved." *Id.* at 17a. AdvanFort would have to split its claims between courts in Saudi Arabia, but it would not have to bring its claims "in two different countries." *Id.* at 17a-19a (internal quotation marks omitted). So, the majority concluded, Saudi Arabia served as an alternative forum. Like the district court, the court of

appeals also declined to reach personal jurisdiction. *Id.* at 12a n.4.

Judge Thacker dissented. App., *infra*, 29a-32a. Citing to precedent from this Court and the Tenth Circuit, she explained that for *forum non conveniens* to apply, there must be "*an* alternat[ive] *forum*" to bring all the claims at issue against all defendants. *Id.* at 29a (quoting *Piper Aircraft*, 454 U.S. at 254 n.22). "[F]orum non conveniens 'is not available as a tool to split or bifurcate cases' as that 'fundamentally contradicts the central purpose of" the doctrine—"it only increases the possibility of overlapping, piecemeal litigation that is inherently inconvenient for both the parties and the courts." *Id.* at 31a (quoting *DIRTT*, 65 F.4th at 555). So "[d]ismissal for forum non conveniens requires the existence of one alternate, adequate, and available forum." *Id.* at 29a.

No alternative forum exists here, Judge Thacker explained. Instead, AdvanFort would need to split its claims into two suits in two different courts, "creat[ing] piecemeal litigation," "increas[ing] the possibility of overlapping and inconsistent judgments," and "forc[ing] AdvanFort to incur the costs and inconvenience associated with litigating . . . in separate tribunals." App., *infra*, 31a-32a. In her view, the bar against case splitting was "dispositive." *Id.* at 29a. AdvanFort should be permitted "to proceed on its claims in its home forum, the Eastern District of Virginia." *Id.* at 32a.

AdvanFort petitioned for rehearing and rehearing *en banc*, emphasizing that the Fourth Circuit had deviated from its sister circuits. The Fourth Circuit denied rehearing. App., *infra*, 53a.

## REASONS FOR GRANTING THE PETITION

For *forum non conveniens* to require the dismissal of a suit and denial of a plaintiff's chosen forum, there must be "an alternative forum" where the suit could be brought. *Piper Aircraft*, 454 U.S. at 254 n.22. But the lower courts are divided on whether that requires the moving party to identify a single alternative court in which a plaintiff can bring its entire case against all defendants, or whether the plaintiff may be forced to split its case across multiple courts. The question is important and recurring, and it is squarely presented here. The petition for a writ of certiorari should be granted to resolve it.

### A. The Court of Appeals' Decision Deepens a Circuit Split on Whether *Forum Non Conveniens* Allows Case-Splitting.

The majority of the courts of appeals recognize that a party seeking dismissal for *forum non conveniens* must identify a *single* forum in which the entire case may be brought against all defendants. These circuits thus reject efforts to split or bifurcate the case between forums—whether between courts in different countries or between different courts in the same country. But the Second and Fourth Circuits depart from that view. These circuits hold that a plaintiff may be forced to split its claims between different courts in foreign countries, rather than allow them to proceed in a single suit in a U.S. court. That circuit conflict warrants review.

1. Most circuits hold that *forum non conveniens* cannot "be used to split cases." *DIRTT*, 65 F.4th at 554. "*[A]ll parties* (and by extension the entire case) must be subject to the jurisdiction of an alternative forum in order for it to be considered available under *forum non conveniens*." *Ibid.* At least the First, Third, Fifth, Sixth, Seventh,

Ninth, Tenth, and Eleventh Circuits have *forum non conveniens* standards aimed at identifying whether the entire case may be brought against all defendants in a single alternative forum—that is, "a particular foreign court." *Associação Brasileira de Medicina de Grupo v. Stryker Corp.*, 891 F.3d 615, 620 (6th Cir. 2018); *see, e.g.*, *Curtis v. Galakatos*, 19 F.4th 41, 47-48 (1st Cir. 2021) (forum adequate if "there's another suitable court to hear the plaintiff's case"); *Lacey v. Cessna Aircraft Co.*, 932 F.2d 170, 177, 180 (3d Cir. 1991) ("[T]he foreign jurisdiction must have jurisdiction over all defendants."); *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 835 (5th Cir. 1993) (forum available "when the entire case and all parties can come within the jurisdiction of that forum"); *Associação Brasileira*, 891 F.3d at 620 (forum not "truly available" if "the foreign court cannot exercise jurisdiction over both parties"); *Fischer v. Magyar Allamvasutak Zrt.*, 777 F.3d 847, 867 (7th Cir. 2015) (forum available because "all parties [were] subject to jurisdiction"); *Dole Food Co. v. Watts*, 303 F.3d 1104, 1118 (9th Cir. 2002) ("A foreign forum is available when the *entire case and all parties* can come within the jurisdiction of that forum." (internal quotation marks omitted)); *Tyco Fire & Sec., LLC v. Alcocer*, 218 Fed. App'x 860, 865 (11th Cir. 2007) (forum available if the foreign "court can assert jurisdiction over the entire case" (citing *Leon v. Million Air, Inc.*, 251 F.3d 1305, 1311 (11th Cir. 2001)).

The Tenth Circuit's opinion in *DIRTT* is illustrative. There, a Canadian construction company filed suit against a former employee and his spin-off businesses in an Alberta court. 65 F.4th at 550-51; *see* Mot. to Dismiss First Am. Compl. at 5-6, *DIRTT Env't Sols., Inc. v. Henderson*, No. 1:19-cv-144 (D. Utah Nov. 19, 2020), ECF No. 134 (describing existing suit in the Court of Queen's Bench of

Alberta). The Canadian company's U.S. subsidiary then filed another suit in Utah federal court and eventually joined the Canadian parent as a plaintiff. 65 F.4th at 551. Some of the defendants moved to dismiss for *forum non conveniens*; the remaining defendants, all based in Utah, refused to consent to jurisdiction in Canada. *Ibid.* The district court dismissed the claims against the moving defendants, concluding that the Canadian court provided a more convenient forum for those parties, "while allowing the other part[ies] to proceed before it"—splitting the case. *Id.* at 549; *see id.* at 553.

The Tenth Circuit reversed, "holding that *forum non conveniens* is not available as a tool to split or bifurcate cases." *Id.* at 555. As the court of appeals explained, for a forum to be "available," "*the entire case and all parties*" must "come within the jurisdiction" of that forum. *Id.* at 554 (internal quotation marks omitted). That requirement was not satisfied: The moving defendants might already be proceeding in Alberta court, but the Utah-based defendants could not be sued there. *Id.* at 555. There was thus no available alternative forum in Canada. *Ibid.* And the defendants could not use *forum non conveniens* to "split" this singular case into two. *Id.* at 554.

The Ninth Circuit provided a similar application of the bar against case splitting in *Dole Food Co. v. Watts*, *supra.* There, a corporation sued two former employees in California for fraudulently inducing it into leasing a warehouse in The Netherlands. *Dole*, 303 F.3d at 1107-08. The employees moved to dismiss for *forum non conveniens*, asserting that the District Court of Rotterdam could hear "all the claims" the corporation had asserted against them. *Id.* at 1118; *see id.* at 1116 (defendants offering "the District Court in Rotterdam [as] an adequate alternative

forum"). But neither of the defendants resided in or were citizens of The Netherlands, and only one defendant had "agreed to submit to personal jurisdiction" in the Rotterdam court. *Id.* at 1118. The defendants thus had not identified "an alternative forum in The Netherlands" where "'the *entire case and all parties*'" could be heard. *Ibid.* (quoting *Alpine View Co. v. Atlas Copco*, 205 F.3d 208, 221 (5th Cir. 2000)); *see also id.* at 1116-17 (defendants conceding that besides the Central District of California, "there might not be any single alternative forum that has subject matter and personal jurisdiction over all parties and issues").

2. The Second and now the Fourth Circuits have taken a different view. Those Circuits, in sharp contrast, do not require a single forum that can hear the entire case against all defendants but instead allow a plaintiff's suit to be split across multiple forums.

In this case, AdvanFort argued that *forum non conveniens* did not apply because, to proceed elsewhere, AdvanFort would have to bring its claims against Zamil and the Ports Authority in two different courts in Saudi Arabia. *See* App., *infra*, 30a (Thacker, J., dissenting). But the majority rejected AdvanFort's assertion "that a defendant must identify a *single* tribunal in a foreign jurisdiction where all claims brought by a plaintiff may be heard and resolved." *Id.* at 17a (majority opinion). In the majority's view, it was enough that AdvanFort could bring its separate suits within the same country, rather than having "to litigate in two different countries." *Id.* at 18a (internal quotation marks omitted). In other words, Saudi Arabia as a *country* counted as the "available alternative forum." *Id.* at 17a. That reasoning, as Judge Thacker noted in her dissent, is directly at odds with other circuits' rule against

splitting cases. *Id.* at 31a (Thacker, J., dissenting) (citing *DIRTT*, 65 F.4th at 555).

The Second Circuit likewise held that *forum non conveniens* allows the plaintiff's claims to be split between two different courts in *Aenergy, S.A. v. Rep. of Angola*, 31 F.4th 119, 131 (2d Cir. 2022). There, as here, the plaintiff objected to dismissing the case for *forum non conveniens* because its claims against one defendant would have to be brought in the Supreme Court of Angola, while its claims against another defendant would have to proceed in one of Angola's provincial courts. *Ibid.* The Second Circuit rejected this argument and allowed the defendants to split the single case into two, reasoning that *forum non conveniens* "does not require a single foreign court." *Ibid.*

If Respondent Zamil had moved to dismiss for *forum non conveniens* in any circuit other than the Second or Fourth, its motion would have been denied because Zamil failed to identify a single court in Saudi Arabia that could hear "the entire case" against "all parties." *DIRTT*, 65 F.4th at 554 (emphasis omitted). But because this case arose in the Fourth Circuit, Zamil was allowed to split the case, denying AdvanFort the right "to proceed on its claims in its home forum." App., *infra*, 32a (Thacker, J., dissenting). The Court should resolve this split.

**B. The Decision Below Is Wrong on the Merits.**

This Court's review is also warranted because the court of appeals' decision below is incorrect. The majority misconstrued this Court's decision in *Piper Aircraft* as making a defendant's amenability to process the final word on whether an alternative forum is available. And it distinguished on-point precedent from other circuits on superficial grounds.

1. For *forum non conveniens*, there must be a single court in the foreign country in which the entire case may be brought against all defendants. As this Court has explained, the movant must point to "an alternative forum." *Piper Aircraft*, 454 U.S. at 254 n.22; *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 429 (2007). A "forum" is "[a] court or other judicial body; a place of jurisdiction." *Forum* (def. 2), BLACK'S LAW DICTIONARY (12th ed. 2024); *see also Forum Conveniens*, in *id.* ("*The court* in which an action is most appropriately brought . . . ." (emphasis added)). And so an alternative forum is not simply an alternative country, but a particular court in that country. *See Sinochem*, 549 U.S. at 425 (Under "the doctrine of *forum non conveniens*, . . . a federal district court may dismiss an action on the ground that *a court abroad* is the more appropriate and convenient forum for adjudicating the controversy" (emphasis added)); 14D Wright & Miller, Fed. Prac. & Proc. Juris. § 3828 (4th ed.) ("[F]orum non conveniens . . . applies only when *the superior forum* is in a foreign country or perhaps, under rare circumstances, a state court or a territorial court." (emphasis added)).

"Logically, this makes good sense." *DIRTT*, 65 F.4th at 554. "*Forum non conveniens* is a doctrine that is fundamentally concerned with convenience." *Ibid.* This means convenience as "to the *entire case*" and "to *all* parties." *Id.* at 555. "When a plaintiff brings suit against multiple defendants in a forum where they are all subject to jurisdiction and the proposed alternative forum could only exercise jurisdiction over some of those defendants," that alternative forum is "inherently" less convenient than the original. Instead of one suit, the plaintiff must now proceed in two or more suits—with double the pleadings, double the discovery, double the trials, and the possibility of

inconsistent judgments from the different courts. "Splitting cases" like that "fundamentally contradicts the central purpose of *forum non conveniens*." *Ibid.* (internal quotation marks omitted).

After all, *forum non conveniens* is nothing more than a judicially crafted rule of venue. In the domestic context, a district court in one State cannot simply transfer the case to another, more convenient State. If a federal district court has jurisdiction and venue is proper, the court may only transfer a case before it in its entirety if "another proper federal district court would be a more convenient forum" for the entire case. Fed. Prac. & Proc. § 3828 (citing 28 U.S.C. § 1404(a)). In other words, "[t]he idea behind [Section] 1404(a) is that where a civil action to vindicate a wrong—however brought in court—presents issues and requires witnesses that make *one District Court* more convenient than another, the trial judge can . . . transfer *the whole action* to the more convenient court." *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964) (emphasis added) (quoting *Cont'l Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960)). So too must it be with *forum non conveniens*. *See Sinochem*, 549 U.S. at 430 (recognizing that modern venue statutes have largely replaced *forum non conveniens* within the federal court system); *see* Fed. Prac. & Proc. § 3828. "Venue" is the "process" of "determining which among various competent courts will decide the case," not which sovereign. *Am. Dredging Co. v. Miller*, 510 U.S. 443, 453 (1994).

2. The Fourth Circuit erred in concluding otherwise. The court started from the right premise—that "[a]t the outset of any forum non conveniens inquiry, the court must determine whether there exists an alternat[ive] forum." App., *infra*, 16a (quoting *Piper Aircraft*, 454 U.S. at 254

n.22). And it even paid lip service to the requirement that "the alternate forum must be available as to *all defendants*—that is, all parties must come under the jurisdiction of the foreign forum." *Ibid.* But the court of appeals then concluded that it sufficed for a defendant to identify a single available foreign *country*, not a single tribunal within that country.

As the majority reasoned, a party seeking dismissal for *forum non conveniens* need only "provide more than generalized evidence to demonstrate that the alternative forum is better, i.e., available." App., *infra*, 17a (internal quotation marks omitted). And to meet that burden, according to the court of appeals, nothing is required "beyond a showing that all parties are amenable to process in the other jurisdiction"—that is, the foreign country at large. *Ibid.* (internal quotation marks omitted). AdvanFort may not be able to bring its claims in the same suit in Saudia Arabia, but at least it would not have to litigate its claims "in two different countries." *Id.* at 19a (internal quotation marks omitted).

That reasoning confuses different inquiries. To be sure, there must be "an alternative forum" where the defendant is "amenable to process." *Piper Aircraft*, 454 U.S. at 254 n.22 (internal quotation marks omitted). But that requirement says nothing about whether "forum" refers to a single tribunal—as the plain meaning of that word dictates—or to a foreign country with multiple forums. And *Piper Aircraft* certainly did not purport to hold that amenability to process is the be-all and end-all of "whether there exists an alternative forum." *Ibid.* To the contrary, *Piper Aircraft* recognized that other reasons might render an alternative forum unavailable, such as "where the

alternative forum does not permit litigation of the subject matter of the dispute." *Ibid.*

The Fourth Circuit's exclusive focus on service of process makes little sense. Under the court of appeals' reading, as long as service may be made on a defendant, a forum would be "available," even if the foreign court were still unable to hear the plaintiff's claims for other reasons. That cannot be right, as this case illustrates. If AdvanFort served the Ports Authority in the Commercial Court, the Ports Authority could accept service but immediately move to dismiss for lack of jurisdiction because the Board of Grievances has exclusive jurisdiction over suits against government entities. *See* CA4 App. 242 (¶ 39); App., *infra*, 29a-30a (Thacker, J., dissenting). Similarly, serving Zamil with process in the Board of Grievances does not render that tribunal meaningfully available as to Zamil because joining Zamil as a party—if even possible at all, *see* CA4 App. 242 (¶ 39) (Dr. Alaoudh explaining that it isn't)—would be, as Zamil's own expert concedes, subject to that court's discretion, and even then only if certain conditions are met, *see id.* at 323-34; *see also Associação*, 891 F.3d at 620 ("[A] foreign forum is not truly 'available'—and a defendant is not meaningfully 'amenable to process' there—if the foreign court cannot exercise jurisdiction over both parties.").

None of this Court's precedents supports that result. In *Piper Aircraft*, there was no suggestion that all the parties and claims at issue in the California suit could not be brought in a singular Scottish court. 454 U.S. 235. Indeed, the defendants "had agreed to submit to the jurisdiction of the Scottish courts," had "waive[d] any statutory of limitations defense that might be available," and, as this Court emphasized, the parties could "resolve all

claims in one trial." *Id.* at 259. In *Sinochem*, suit had already been brought in the Guangzhou Admiralty Court in China. *Sinochem* 549 U.S. at 426-27, 435. Likewise in *Canada Malting Co.*, suit had already been brought "in the admiralty court of Canada." *Canada Malting Co. v. Patterson Steamships*, 285 U.S. 413, 417 (1932). In *Koster*, all the defendants were Illinois citizens, and nothing suggested the claims against them would be split into separate suits in Illinois. *See Koster v. (Am.) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 519 (1947). And in *Gilbert* there was never any threat of having the case split up, as there was only one defendant. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

The majority justified the case splitting here because AdvanFort's claims would not "be[] 'splintered' across different countries." App., *infra*, 19a & n.6. But the majority provided no reason why that should make a difference. Requiring a plaintiff to forgo a single suit in the United States and to instead litigate its claims across multiple foreign courts is the opposite of convenient, no matter whether those multiple courts are in the same or different countries. Splitting a case across multiple courts within the same country, no less than splitting a case across different countries, will still result in "piecemeal litigation that is inherently inconvenient for both the parties and the courts." *DIRTT*, 65 F.4th at 555; *see* App., *infra*, 31a (Thacker, J., dissenting).

Indeed, had the district court not erroneously dismissed the Ports Authority along with Zamil—even though the Ports Authority defaulted and so never moved to dismiss on any ground—this case would be split across multiple countries. *See* App., *infra*, 13a-15a (majority opinion). AdvanFort would be proceeding on the default

against the Ports Authority in Virginia, and against Zamil in Saudi Arabi. The Fourth Circuit brushed this aside, reasoning that the district court could exercise its inherent authority to dismiss a defaulted defendant based on *forum non conveniens*. *Id.* at 13a. But "procedural defenses, such as a motion to dismiss for *forum non conveniens*," are "lost" to a defaulted defendant. *Tyco Fire*, 218 Fed. App'x at 863-64; *see Moreno v. LG Elecs., USA Inc.*, 800 F.3d 692, 698 (5th Cir. 2015) (assuming "defaulting defendants cannot raise a *forum non conveniens* defense" unless the default is set aside). Only by ignoring this distinction could the court of appeals claim that this suit would not be split across multiple countries.

This Court should grant review and reverse the court of appeals' erroneous conception and application of *forum non conveniens*.

### C. The Question Presented Is Important and Recurring.

The question presented is plainly important. It concerns what circumstances justify stripping an American plaintiff of its home forum to be forced to litigate in foreign tribunals. Just as it is up to a plaintiff who to sue, and for what claims, so too it is the plaintiff's choice on where to sue. "[P]laintiffs are ordinarily allowed to select whatever forum they consider most advantageous," *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. Texas*, 571 U.S. 49, 63 (2013)—something that this Court has called the plaintiff's "venue privilege," *Van Dusen*, 376 U.S. at 635. That "choice of forum should rarely be disturbed." *Piper Aircraft Co.*, 454 U.S. at 241. Hence why "[a] defendant invoking *forum non conveniens* ordinarily bears a heavy burden in opposing the plaintiff's chosen forum." *Sinochem*, 549 U.S. at 430.

Here, AdvanFort has not only been deprived of its chosen forum, but it must now proceed, if at all, in two different foreign courts with no assurance of receiving a fair trial in either one. AdvanFort did not receive a fair shake the last time it litigated in Saudi Arabia. It sued in the Eastern District of Virginia to ensure that its case would be heard before an independent judge, where its witnesses will not be threatened or intimidated, and where it could join its claims against the two defendants. Whether a federal court can deny AdvanFort that opportunity based on the convenience of others is worthy of this Court's review.

That question is particularly important in light of federal courts' "virtually unflagging obligation" to hear cases over which they have jurisdiction. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013); *see Colo. River*, 424 U.S. at 817 (same). *Forum non conveniens* is an exception to this duty—a judge-made doctrine that has been grounded in a court's inherent authority. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991); *see Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (noting the Federal Rules of Civil Procedure "make no provision . . . for *forum non conveniens*"). But it rests on uneasy grounds.

In other contexts, this Court has explained that a court's "exercise of an inherent power cannot be contrary to any express grant of or limitation on the district court's power contained in a rule or statute." *Dietz*, 579 U.S. at 45. And yet "forum non conveniens might be said to exist not only in the absence of enacted law on point but in spite of it." Amy Coney Barrett, *Procedural Common Law*, 94 VA. L. REV. 813, 826 (2008). "[F]orum non conveniens exists in spite of jurisdiction and venue statutes that arguably instruct a district court to adjudicate." *Ibid.* The Court has thus rightly explained that it should be used

only rarely "with restraint and discretion." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980); *see Gulf Oil*, 330 U.S. at 509 (explaining *forum non conveniens* only applies in "rather rare cases"). Decisions expanding the doctrine, like the decision below, constitute an important exercise of judicial power that merit this Court's review.

The question presented is also increasingly recurring. In the decade after this Court's 1947 decision in *Gulf Oil*, "federal courts delivered [only] approximately twenty-nine forum non conveniens opinions." Elizabeth T. Lear, *Congress, The Federal Courts, & Forum Non Conveniens: Friction on the Frontier of Inherent Power*, 91 IOWA L. REV. 1147, 1151 (2006). "[A]lmost twice that many decisions were reported in 2003 alone." *Ibid.* By 2017, district judges were writing "dozens" of decisions "analyzing forum non conveniens each year"—to say nothing of oral orders—and granting dismissal in "roughly half." Maggie Gardner, *Retiring Forum Non Conveniens*, 92 N.Y. UNIV. L. REV. 390, 396 & n.33 (2017).

Despite this Court's admonitions, dismissal for *forum non conveniens* is thus no longer a "rare" case, but a frequent occurrence. *Quackenbush*, 517 U.S. at 722; *Gulf Oil*, 330 U.S. at 509. The Fourth Circuit's decision promises to only make such dismissals more frequent still. The courts of appeals have issued three published decisions in cases presenting the case-splitting issue in just the last four years. *See* App., *infra*, 1a-32a; *DIRTT*, *supra*; *Aenergy*, *supra*. The Fourth Circuit's express and published approval of case splitting will only encourage more litigants to demand it.

The Court should grant review to ensure that the lower courts continue to faithfully apply this Court's *forum non conveniens* precedents without unduly expand-

ing the doctrine's reach in unrestrained exercise of inherent power.

### D. This Case Is an Ideal Vehicle for Addressing the Question Presented.

Finally, this case offers an ideal vehicle for this Court to address whether *forum non conveniens* allows case splitting. AdvanFort has raised and preserved this question at every step of the way, and the court of appeals squarely decided the issue below in a published opinion. The proper understanding of the "alternative forum" requirement is "dispositive" of the *forum non conveniens* analysis. App., *infra*, 29a (Thacker, J., dissenting); *accord Associação*, 891 F.3d at 619-20 ("[I]dentifying an alternate forum is a prerequisite for dismissal . . . . If there is no suitable alternate forum where the case can proceed, the entire inquiry ends."). And *forum non conveniens* is the key procedural issue in this case. The district court dismissed only on *forum non conveniens* grounds, App., *infra*, 52a, and the court of appeals focused only on this threshold issue, App., *infra*, 28a. *See Sinochem*, 549 U.S. at 425 (explaining that district courts may address *forum non conveniens* before "any other threshold objection," even subject-matter jurisdiction). Reversal would allow further proceedings in the Eastern District of Virginia, while affirmance would end the U.S. litigation altogether—and any meaningful chance for AdvanFort to recover on its claims.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

H. Brent McKnight, Jr.
McGuireWoods LLP
501 Fayetteville St.
Suite 500
Raleigh, NC 27601
(919) 755-6600

Jonathan Y. Ellis
*Counsel of Record*
Grace Greene Simmons
McGuireWoods LLP
888 16th Street N.W.
Suite 500
Washington, DC 20006
(202) 828-2887
jellis@mcguirewoods.com

*Counsel for Petitioner*

Dated: September 29, 2025

# APPENDIX

## TABLE OF APPENDICES

*Page*

*Appendix A*

**APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, FILED APRIL 22, 2025**

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 24-1007

ADVANFORT COMPANY,

*Plaintiff – Appellant*,

v.

ZAMIL OFFSHORE SERVICES COMPANY; SAUDI PORTS AUTHORITY, a foreign sovereign State,

*Defendants – Appellees*.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:23-cv-00906-LMB-IDD)

January 29, 2025, Argued
April 22, 2025, Opinion Filed

Before KING and THACKER, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by published opinion. Judge King wrote the

majority opinion, in which Senior Judge Floyd joined. Judge Thacker wrote a dissenting opinion.

KING, *Circuit Judge*:

In this appeal from the Eastern District of Virginia, plaintiff AdvanFort Company ("AdvanFort") challenges the district court's December 1, 2023 dismissal of its complaint against defendants Zamil Offshore Services Company ("Zamil") and the Saudi Ports Authority (the "Ports Authority") on the basis of forum non conveniens. *See AdvanFort Co. v. Zamil Offshore Servs. Co.*, 704 F. Supp. 3d 669 (E.D. Va. 2023). On appeal, AdvanFort primarily contends that the district court abused its discretion in determining that the Saudi Arabian judicial system is a more convenient forum to litigate its tort claims than AdvanFort's choice of forum, the Eastern District of Virginia. AdvanFort also argues that the court was procedurally barred from dismissing its complaint after the court had entered default against the Ports Authority for its failure to appear.

Having carefully assessed the record and the parties' briefs, and with the benefit of oral argument, we are satisfied that the district court did not err in its dismissal of AdvanFort's complaint on the basis of forum non conveniens. We therefore affirm the district court.

I.

*Appendix A*

A.

AdvanFort is a maritime security company headquartered in Fairfax County, Virginia, that deploys vessels to protect oil tankers and other vulnerable ships from the threats posed by piracy in international waters. In May 2012, AdvanFort deployed a former British Naval vessel, the *Seaman Guard Virginia* (the "*Virginia*"), to perform contracted anti-piracy services for commercial fleets in the Red Sea. While the *Virginia* was sailing the Red Sea, AdvanFort determined that the vessel required routine maintenance and minor repairs.

AdvanFort sought repair services from defendant Zamil, a company that provided maritime construction and maintenance services from a leased shipyard (the "Jeddah Shipyard") at the Jeddah Islamic Port in Saudi Arabia. Zamil operated the Jeddah Shipyard pursuant to a lease from the Ports Authority, a Saudi government entity. On October 19, 2013, AdvanFort docked the *Virginia* at the Jeddah Shipyard in what it describes as "in good condition." At some point in October 2013, Zamil proposed that it would undertake electrical maintenance work on the *Virginia*, and AdvanFort agreed. On October 27, 2013— while the *Virginia* was undergoing those electrical repairs — a fire broke out below the vessel's deck.

AdvanFort believed that the fire aboard the *Virginia* was caused by Zamil's repair personnel, and thus, in 2014,

filed suit against Zamil and the Ports Authority in a Saudi Arabian court. Zamil filed a countersuit against AdvanFort shortly thereafter. Three years later — in April 2017 — the Saudi court issued a judgment dismissing AdvanFort's claims and awarding Zamil partial damages on its counterclaims. All the while, the *Virginia* remained docked at the Jeddah Shipyard.

In early 2022, Zamil transferred the *Virginia* to a storage yard located within the Jeddah Shipyard, claiming that the vessel was at risk of sinking, thereby creating an environmental or safety hazard. In June 2022, Zamil informed AdvanFort that its lease agreement with the Ports Authority was ending and that it would dispose of the *Virginia* if AdvanFort did not retrieve the vessel. AdvanFort then dispatched a marine expert from the United States to inspect the *Virginia*. The inspection revealed that the *Virginia* had been stripped bare — a measure which Zamil claimed was necessary to facilitate the transfer of the *Virginia* to its storage yard. In addition to the removal of the ship's engines, steering equipment, and anchors, the inspection observed that the Jeddah Shipyard had left the *Virginia*'s windows and hatches open, causing the ship to rust.

B.

1.

On July 12, 2023, AdvanFort filed a five-count complaint in the district court for the Eastern District of Virginia against Zamil and the Ports Authority for

conversion, breach of bailment, negligence, and gross negligence. It sought damages for the loss of the *Virginia*, plus damages for the loss of profits resulting from AdvanFort's inability to deploy the vessel due to its unserviceable condition.

AdvanFort properly served process on the Ports Authority, a subdivision of the Saudi Arabian government, pursuant to the Foreign Sovereign Immunities Act. *See* 28 U.S.C. § 1608.[1] To effectuate service of process, AdvanFort requested that the Clerk of Court mail a service package containing the summons, complaint, and notice of suit to the head of Saudi Arabia's Ministry of Foreign Affairs in Riyadh, Saudi Arabia, on September 11, 2023. The service package was delivered to the Ministry of Foreign Affairs on September 25, 2023, where it was accepted and signed for by an authorized representative of the Ministry.[2]

---

[1] Section 1608 of the Foreign Sovereign Immunities Act requires "[s]ervice in the courts of the United States . . . upon a foreign state or political subdivision of a foreign state" be made by "sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of court to the head of the ministry of foreign affairs of the foreign state concerned." *See* 28 U.S.C. §§ 1608(a), (a)(3).

[2] Service of process under 28 U.S.C. § 1608(a)(3) is deemed made "as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed." *See* 28 U.S.C. § 1608(c)(2). Pursuant to § 1608, service on the Ports Authority occurred on September 25, 2023, when the service package was signed for at the Ministry of

Zamil waived service on September 29, 2023. It then moved to dismiss AdvanFort's complaint in the Eastern District of Virginia on the grounds of forum non conveniens and for lack of personal jurisdiction, contending that the Saudi courts are a more convenient forum to litigate AdvanFort's claims. On October 30, 2023, AdvanFort opposed Zamil's motion and moved for limited discovery relating to forum non conveniens and personal jurisdiction.

In opposition to Zamil's motion to dismiss, AdvanFort primarily argued that the Saudi courts are unavailable and inadequate. In doing so, it contended that the Saudi courts are neither independent nor impartial, and that no Saudi tribunal was available for it to litigate its claims against the Ports Authority and Zamil in a single action. To support its claims of inadequacy, AdvanFort cited various publicly sourced documents and tendered the opinion of an expert witness to argue that the Saudi courts would subject AdvanFort to unfair treatment and deprive it of all remedies. Those arguments included, inter alia, that lawyers and witnesses face retribution for supporting lawsuits opposing the Saudi government or its allied families; that judges, lawyers, and critics of the Saudi justice system have been detained or tortured; that the Saudi government is currently prosecuting multiple judges for "high treason," on the basis that those judges have issued judgments perceived as adverse to the

---

Foreign Affairs. *See Republic of Sudan v. Harrison*, 139 S. Ct. 1048, 1059 (2019) (explaining that "service is deemed to have occurred on the date shown on a document signed by the person who received it from the carrier").

government; and that witnesses are treated unfairly or discredited based on their gender or religion.

Although Zamil moved to dismiss AdvanFort's complaint, the Ports Authority failed to appear in the Eastern District of Virginia within the 60-day time limit mandated by the Foreign Sovereign Immunities Act. *See* 28 U.S.C. § 1608(d).[3] On November 30, 2023, AdvanFort requested entry of default against the Ports Authority for its failure to respond to the complaint or otherwise appear.

2.

On December 1, 2023, the district court conducted a hearing on Zamil's motion to dismiss. Before turning to the merits of Zamil's motion, the court acknowledged that the Ports Authority had failed to file a responsive pleading or otherwise appear in the proceedings, and was therefore in default. Later that day, the court directed the Clerk to file an entry of default against the Ports Authority, pursuant to Federal Rule of Civil Procedure 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.").

---

[3] Section 1608(d) of Title 28 requires that "[i]n any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section."

The district court then informed the parties that it intended to dismiss AdvanFort's complaint on the basis of forum non conveniens. The court thereafter denied AdvanFort's motion for limited discovery and dismissed its claims against Zamil and the defaulted Ports Authority. Later that day, the court filed its Memorandum Opinion dismissing AdvanFort's complaint, concluding that the Saudi courts were available, adequate, and more convenient in light of public and private interests involved, explaining that all the relevant events had occurred in Saudi Arabia and all relevant evidence was located there.

In rendering its forum non conveniens decision, the district court first rejected AdvanFort's availability contentions, determining that "[n]either of AdvanFort's arguments preclude the [c]ourt from finding that Saudi courts are available to hear" the action "[m]erely because the Ports Authority has not yet appeared" before the Eastern Virginia court. *See AdvanFort*, 704 F. Supp. 3d at 675-76. It also rejected AdvanFort's argument that the Saudi courts were unavailable because AdvanFort may be required to pursue its claims against the Ports Authority and Zamil before separate tribunals — that is, the Saudi Board of Grievances and the Saudi Commercial Court, respectively. Because dismissal "would not force AdvanFort to litigate in two different countries" — and because together those separate tribunals possess jurisdiction to hear and resolve AdvanFort's claims — the court found that "the Saudi courts provide[d] an available forum to resolve AdvanFort's claims against both defendants." *Id.* at 676.

The district court then turned to and assessed the adequacy of the Saudi courts. After considering AdvanFort's arguments regarding corrupt practices in the Saudi courts, the court determined that those assertions were generalized allegations that were insufficient to support the proposition that the Saudi courts were inadequate. To illustrate that the Saudi courts were capable of fairly adjudicating AdvanFort's claims, the court pointed to and emphasized the parties' prior litigation in Saudi Arabia, observing that "although the [Saudi] court dismissed AdvanFort's claims, it awarded Zamil . . . less than one-third" of the repair fees Zamil had sought in its countersuit. *See AdvanFort*, 704 F. Supp. 3d at 676- 77.

The district court then turned to the public and private interests at stake in the litigation, ultimately concluding that both weighed in favor of dismissing on the basis of forum non conveniens. The court explained that the private interest factors favored litigating the dispute in the Saudi courts. Although the court recognized that AdvanFort had brought suit in its home forum of Virginia, it nevertheless "partially discounted" AdvanFort's citizenship in the United States and the presumptive effect of its choice of forum because AdvanFort had elected to do business abroad in Saudi Arabia. *See AdvanFort*, 704 F. Supp. 3d at 678. And "[b]ecause the relevant conduct occurred in Saudi Arabia" — not the United States — and because AdvanFort was not in Saudi Arabia when the alleged damage to the vessel occurred," the court recognized that "the parties will need to rely on physical and testimonial evidence" located in Saudi

Arabia. *Id.* at 678. The court also explained that, given the claims at issue, it was likely that the litigation would involve third-party witnesses who would not be under the control of either party and over whom a Virginia court would lack authority to compel testimony.

The district court similarly found that the public interest factors weighed in favor of litigating AdvanFort's claims in Saudi Arabia. The court explained that, at bottom, AdvanFort's "action is about a vessel in Saudi Arabia that was allegedly damaged by a Saudi company, with Saudi employees, in a Saudi shipyard in Saudi Arabia." *See AdvanFort*, 704 F. Supp. 3d at 679. The Commonwealth of Virginia, therefore, had "little local interest in a case involving an alleged tort arising from performance of a contract overseas." *Id.* (internal quotation marks omitted). And, in any event, the court would need to apply Saudi law to AdvanFort's claims under Virginia's choice of law statute. *Id.* (explaining that Virginia's choice of law statute mandates that a "court must apply the law of the place where the last event necessary to make an action liable for an alleged tort takes place").

In sum, after assessing the threshold questions of availability and adequacy, and then weighing the public and private interests at stake in the matter, the district court determined that Saudi Arabia was a more convenient forum for AdvanFort's litigation. It therefore dismissed AdvanFort's complaint on the basis of forum non conveniens.

AdvanFort has timely appealed the district court's dismissal of its complaint, and we possess jurisdiction pursuant to 28 U.S.C. § 1291.

II.

We review a district court's dismissal based on the doctrine of forum non conveniens for abuse of discretion, "disturbing its decision only when it failed to consider a material factor or clearly erred in evaluating the factors before it, or did not hold the defendants to their burden of persuasion on all elements of the forum non conveniens analysis." *See Galustian v. Peter*, 591 F.3d 724, 731 (4th Cir. 2010) (internal quotation marks and alterations omitted). "[A]bsent a 'clear abuse of discretion,' the district court's 'decision deserves substantial deference.'" *See dmarcian, Inc. v. dmarcian Europe BV*, 60 F.4th 119, 136 (4th Cir. 2023) (quoting *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981)).

III.

On appeal, AdvanFort maintains that the district court abused its discretion in dismissing the AdvanFort complaint on the basis of forum non conveniens, and thus argues that these proceedings should be litigated in the Eastern District of Virginia.

A federal court has the discretion to dismiss a case on the ground of forum non conveniens where another forum is more appropriate for adjudicating a dispute, considering "the factual and legal issues of the underlying

dispute." *See Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 423 (2007) (internal quotation marks omitted). The forum non conveniens doctrine requires a court to consider whether an alternative forum is "available" or "adequate" and, if so, whether the alternative forum is "more convenient in light of the public and private interests involved." *See Jiali Tang v. Synutra Int'l, Inc.*, 656 F.3d 242, 248 (4th Cir. 2011). The moving party bears the burden of showing that an adequate alternative forum exists. See Galustian v. Peter, 591 F.3d 724, 731 (4th Cir. 2010).

And as we have recited previously, a forum non conveniens determination is "committed to the sound discretion of the trial court," and we therefore afford its decision substantial deference. See Piper Aircraft Co. v. Reyno, 454 U.S. 235, 257 (1981). We discern no abuse of discretion in the district court's ruling that its forum non conveniens inquiry in this matter favors a Saudi Arabian forum, and we therefore affirm the dismissal of AdvanFort's claims against Zamil and the Ports Authority on that basis, without addressing the parties' contentions regarding personal jurisdiction.[4]

---

[4] The district court declined to reach and resolve Zamil's arguments regarding a lack of personal jurisdiction over the defendants after rendering its decision to dismiss AdvanFort's complaint on the basis of forum non conveniens. As the Supreme Court has held, "[a] district court . . . may dispose of an action by a forum non conveniens dismissal, bypassing questions of subject-matter and personal jurisdiction, when considerations of convenience, fairness, and judicial economy so warrant." *See Sinochem*, 549 U.S. at 422. In light of the district court's decision to dismiss AdvanFort's complaint on

*Appendix A*

A.

Before assessing the district court's dismissal on the merits, we must address AdvanFort's claim that the court was precluded from dismissing its complaint because the Ports Authority was in default. As AdvanFort asserts, an entry of default limits the defenses available to the defaulting defendant and, thus, the Ports Authority was not entitled to raise or benefit from its codefendant Zamil's assertion of the procedural defense of forum non conveniens. We are constrained to disagree.

As we have explained, "federal courts possess certain implied or inherent powers that 'are necessary to the exercise of all others.'" *See United States v. Moussaoui*, 483 F.3d 220, 236 (4th Cir. 2007) (quoting *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812)). More specifically, we have recognized that a district court has "the inherent authority to control various aspects of the cases *before that court*," including the ability to "dismiss a lawsuit sua sponte . . . on [the] grounds of forum non conveniens." *Id.* at 236- 37; *see also Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 509 (1947). With those principles in mind, we discern no reasonable basis for us to limit the district court's inherent authority to dismiss this action on the basis of forum non conveniens, simply because the Ports Authority failed to move for dismissal.

Moreover, our Court has adhered to the longstanding

---

the basis of forum non conveniens, we decline to reach the issues regarding personal jurisdiction raised on appeal.

principle that "if the suit should be decided against the complainant on the merits, the bill will be dismissed as to all the defendants alike — the defaulter as well as the others." *See Frow v. De La Vega*, 82 U.S. 552, 554 (1872). We have thus recognized that where "a defending party establishes that [a] plaintiff has no cause of action or present right of recovery, this defense generally inures also to the benefit of a defaulting defendant." *See U.S. ex rel. Hudson v. Peerless Ins. Co.*, 374 F.2d 942, 945 (4th Cir. 1967) (internal citations omitted); *see also, e.g.*, *Equip. Fin. Grp., Inc. v. Traverse Comput. Brokers*, 973 F.2d 345, 348 (4th Cir. 1992) (explaining that when action against defaulting codefendant "was ultimately dismissed, it is not vulnerable to judgment"). And although our Court has not applied this principle in the circumstances presented here, we see no reason to ignore our precedent merely because the contested decision to dispose of AdvanFort's action was based on "a non-merits ground for dismissal." *See Sinochem*, 549 U.S. at 432 (explaining that a dismissal on the basis of forum non conveniens "is a determination that the merits should be adjudicated elsewhere").

Indeed, it would be "absurd" and "unreasonable to hold" that a district court is precluded from dismissing an action against a defaulting codefendant "where the court is satisfied from the proofs offered by the other" that a more convenient forum exists. *See Frow*, 82 U.S. at 554. As made clear by its decision, the district court was satisfied that Zamil had satisfied its burden of establishing an available and adequate alternative forum as to both defendants. At the outset of its decision — and after recognizing that the Ports Authority was in default

— the court concluded that its forum non conveniens analysis would equally apply to both Zamil and the Ports Authority. *See AdvanFort Co. v. Zamil Offshore Servs. Co.*, 704 F. Supp. 3d 669, 675 (E.D. Va. 2023). The court then carefully analyzed the threshold factors of availability and adequacy with respect to Zamil and the Ports Authority, ultimately concluding that those factors weighed in favor of AdvanFort litigating its claims against both defendants in the Saudi courts. *E.g.*, *id.* at 675-77. We therefore cannot say that the court erred in applying its analysis equally to each defendant, or in ruling that Zamil had satisfied its burden of establishing that the Saudi courts are the more convenient forum.

Accordingly, we decline to adopt AdvanFort's view that the district court erred in dismissing the claims against the defaulted Ports Authority.

B.

Having determined that the district court did not err in dismissing AdvanFort's complaint when the Ports Authority was in default, we will turn to and assess the district court's forum non conveniens ruling. AdvanFort contends that the district court committed reversible error in ruling that the Saudi courts are an available and adequate forum. It also contends that the district court erred in the final step of its forum non conveniens inquiry by improperly balancing the public and private interest factors at stake in this litigation. These errors, AdvanFort maintains, amount to an abuse of the court's discretion.

*Appendix A*

1.

"At the outset of any forum non conveniens inquiry, the court must determine whether there exists an alternate forum." *See Piper Aircraft Co.*, 454 U.S. at 254 n.22 (internal quotation marks omitted). "Ordinarily, this requirement will be satisfied when the defendant is 'amenable to process' in the other jurisdiction." *Id.* (citing *Gulf Oil Corp.*, 330 at 506-07). And, importantly, "the alternate forum must be available as to *all defendants*" — that is, all parties must come under the jurisdiction of the foreign forum. *See Galustian*, 591 F.3d at 731 (citing *Alpine View Co. v. Atlas Copco AB,* 205 F.3d 208, 221 (5th Cir. 2000)).

As the district court explained, AdvanFort "does not contest that Saudi courts would have jurisdiction over both defendants." *See AdvanFort*, 704 F. Supp. 3d at 675. Rather, AdvanFort claims that the Saudi courts are rendered unavailable because it may be forced to bring its claims against Zamil and the Ports Authority in two different tribunals, both located in the city of Jeddah: The Commercial Court and the Board of Grievances, respectively.[5] The Board of Grievances, as AdvanFort argues, exercises "exclusive jurisdiction over administrative cases and lawsuits filed against government bodies" like the Ports Authority. *See*

[5] AdvanFort's expert witness observed that "[i]t appears" from filings in the parties' prior Saudi litigation that "the Commercial Court in these cases was located within the Board of Grievances, as the Board of Grievances address is listed. Though in the same location, the two venues are legally distinct." *See* J.A. 239 n.34.

Appellant's Br. 27. And AdvanFort maintains that "the Ports Authority cannot be brought before the Commercial Court," where its claims against Zamil would be litigated. *Id.* at 28.

AdvanFort thus urges us to hold that a defendant moving for dismissal on the basis of forum non conveniens bears the burden of identifying a single available alternative forum. Our precedent, however, does not go so far as to demand that a defendant must identify a *single* tribunal in a foreign jurisdiction where all claims brought by a plaintiff may be heard and resolved. Rather, we require only that a defendant provide more than generalized evidence to demonstrate that "the alternative forum is better," i.e., available. *See Kontoulas v. A.H. Robins Co., Inc.*, 745 F.2d 312, 316 (4th Cir. 1984) (explaining that letter suggesting Maryland physician "will consent to personal jurisdiction in Australia" was insufficient to establish available alternative forum); *see also Galustian*, 591 F.3d at 730-31 (vacating forum non conveniens dismissal as premature where "no evidence was proffered regarding the availability of the forum" as to codefendant). And although we have recognized that a defendant can meet its availability burden by "indicat[ing] which court provides the alternative forum," instead of merely "suggest[ing] the *country*," we have not required anything beyond a showing that all parties are "amenable to process in the other jurisdiction." *See Kontoulas*, 745 F.2d at 316; *Piper Aircraft Co.*, 454 U.S. at 254 n.22.

In light of our precedent, we cannot say that the district court's availability analysis was improper —

particularly where, as the court recognized, "the parties' Saudi Arabian attorneys dispute whether AdvanFort would have to sue each defendant in a different Saudi tribunal." *See AdvanFort*, 704 F. Supp. 3d at 676. Despite this disagreement, this was not a case where "the record before the court was so fragmentary that it [was] impossible to make a sound determination." *See El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 677 (D.C. Cir. 1996) (explaining that defendants "must provide enough information to enable the District Court to evaluate alternative forum") (internal citations omitted). Indeed, our review of the record demonstrates that Zamil provided detailed information in its expert's affidavit regarding the availability of the Saudi courts. *See, e.g.*, J.A. 323-24 (explaining that a claimant is allowed "to request that the [Board of Grievances] involve another party in the case"). Only after reviewing the evidence did the court decide to credit the opinion of Zamil's Saudi legal expert, who had explained that the Board of Grievances has the discretion to hear claims against both the Ports Authority and Zamil. We discern no instance in the court's analysis demonstrating that it "did not hold the defendants to their burden of persuasion" on this issue. *See Galustian*, 591 F.3d at 731.

Moreover, the district court correctly recognized that, in circumstances where "courts have denied motions to dismiss for forum non conveniens," those courts did so only "when dismissing the actions would split claims against domestic defendants from foreign defendants, thereby forcing plaintiffs to litigate in two different countries." *See AdvanFort*, 704 F. Supp. 3d at 676

(explaining that AdvanFort "cite[d] inapposite cases").[6] The court then reasoned that — unlike in the decisions it reviewed — "dismissing this action would not force AdvanFort to litigate in two different countries." *Id.* "[A]nd because together the Board of Grievances and the Commercial Court have jurisdiction to hear AdvanFort's claims against defendants," the Saudi courts are available "to resolve AdvanFort's claims against both defendants." *Id.* We cannot say, therefore, that the court's ruling constituted an abuse of its discretion. We thus agree that the Saudi courts provide an available alternative forum to litigate AdvanFort's claims.

2.

AdvanFort next argues that the district court erred in evaluating the Saudi courts' adequacy as an alternative forum. Specifically, AdvanFort contends that the court misconstrued its claims of judicial corruption and unfairness as "generalized" or "anecdotal," thereby disregarding the detailed evidence from its expert witness

[6] Our sister circuits appear to have routinely declined to find that an available forum exists in instances where a dismissal for forum non conveniens would result in the parties being "splintered" across different countries. *See DIRTT Env't Sols., Inc. v. Falkbuilt Ltd.*, 65 F.4th 547, 554 (10th Cir. 2023); *see also Associacao Brasileira de Medicina de Grupo v. Stryker Corp.*, 891 F.3d 615, 621 (6th Cir. 2018); *Fischer v. Magyar Allamvasutak Zrt.*, 777 F.3d 847, 867 (7th Cir. 2015).

supporting those claims. *See AdvanFort*, 704 F. Supp. 3d at 676-78. We find no merit to AdvanFort's contentions.

As with the other forum non conveniens factors, the burden is on the defendant to demonstrate that a foreign forum is adequate — or, in other words, that "all parties can come within that forum's jurisdiction, and the parties will not be deprived of all remedies or treated unfairly." *See Tang*, 656 F.3d at 249. We recognize, however, that "rare circumstances" exist "where the remedy offered by the other forum is clearly unsatisfactory." *See Piper Aircraft Co.*, 454 U.S. at 254 n.22. In those circumstances, "the other forum may not be an adequate alternative, and the initial requirement may not be satisfied." *Id.*

Initially, we observe that AdvanFort does not contest that the Saudi courts permit the litigation of this dispute. AdvanFort instead argues that the Saudi legal system is corrupt and thus incapable of adjudicating its dispute fairly. Although allegations such as those AdvanFort advances are not to be taken lightly, we must emphasize that an adequate forum need not be a perfect forum. *See, e.g.*, *Compania Naviera Joanna SA v. Koninklijke Boskalis Westminster NV*, 569 F.3d 189, 205 (finding adequate foreign forum despite differences in limitation-of-liability process).

Indeed, courts have recognized that a forum is not rendered inadequate merely because it applies less favorable substantive law, utilizes different adjudicatory procedures, or because of general allegations of corruption in the forum's judicial system. *See Compania*

*Naviera*, 569 F.3d at 202 ("[A] difference in the law in the two forums . . . is not sufficient to bar application of the *forum non conveniens* doctrine."); *see also Lockman Found. v. Evangelical All. Mission*, 930 F.2d 764, 768 (9th Cir. 1991); *Blanco v. Blanco Indus. de Venezuela*, 997 F.2d 974, 981-82 (2d Cir. 1993). And courts should be hesitant"to pass value judgments on the adequacy of justice and the integrity" of a foreign forum's judicial system based only on "conclusory" allegations or "sweeping generalizations." *See In re Arbitration Between Monegasque De Reassurances S.A.M. v. Nak Naftogaz of Ukraine.*, 311 F.3d 488, 499 (2d Cir. 2002). As such, "anecdotal evidence of corruption and delay provides [an] insufficient basis" for concluding that a foreign forum is inadequate. *See Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1179 (9th Cir. 2006). Plaintiffs must instead demonstrate that they would face serious obstacles to conducting litigation, such as "extreme amounts of partiality or inefficiency," or "a complete absence of due process or an inability of the forum to provide substantial justice to the parties." *See Leon v. Million Air, Inc.*, 251 F.3d 1305, 1312 (11th Cir. 2001); *Monegasque*, 311 F.3d at 499.

Our review of the record in this matter shows that the district court did not err in determining that AdvanFort's allegations were generalized or anecdotal, and therefore insufficient to sustain its claims that the Saudi courts are incapable of adjudicating its dispute. In assessing those allegations, the court reviewed numerous cases from other jurisdictions where plaintiffs advanced similar claims. Although AdvanFort argues that the court's

reliance on these cases — which it asserts are inapposite — is erroneous, we are satisfied that the court's thorough review of AdvanFort's allegations was both consistent and reasonable, considering the rulings of other courts and the nature of AdvanFort's claims.

We also identify no error in the district court's weighing of AdvanFort's prior Saudi litigation. *See AdvanFort*, 704 F. Supp. 3d at 676-77. The court was correct to point out that the reduction of damages totalling nearly one-third of those sought by Zamil in its countersuit "misaligns" with AdvanFort's claims that "the Saudi judicial system, as a whole, is corrupt and thus incapable of adjudicating disputes." *Id.* at 676. We therefore agree with the court that AdvanFort's allegations are not sufficient to sustain a determination that the Saudi judicial system is so corrupt or biased as to be an inadequate forum for litigating AdvanFort's complaint.

3.

"If the alternative forum is both available and adequate, the district court must weigh the public and private interest factors." *See Tang*, 656 F.3d at 249. That is, it must evaluate "the balance of conveniences" to determine if a "trial in the chosen forum would be unnecessarily burdensome for the defendant or the court." *See Piper Aircraft Co.*, 454 U.S. at 256 n.23. Before engaging with its analysis of the public and private interest factors, however, a court "must establish the appropriate level of deference owing to the [plaintiff's]

choice of forum." *See DiFederico v. Marriott Int'l, Inc.*, 714 F.3d 796, 802 (4th Cir. 2013). It is with this threshold inquiry that AdvanFort contends the district court initially erred by failing to determine the proper level of deference given to AdvanFort's choice of forum, the Eastern District of Virginia. It argues that, as a Virginia corporation bringing its claims in a Virginia court, it is entitled to increased deference.

AdvanFort is correct that ordinarily, "a citizen plaintiff's choice of forum is entitled to even greater deference when the plaintiff chooses her 'home forum.'" *See DiFederico*, 714 F.3d at 802-03 (quoting *Piper Aircraft Co.*, 454 U.S. at 255-56). But we have recognized that in circumstances where "the plaintiff is a corporation doing business abroad," it "should expect to litigate in foreign courts." *Id.* at 807. Indeed, where an American corporation engaged in "extensive foreign business . . . brings an action for injury occurring in a foreign country, many courts have partially discounted the plaintiff's United States citizenship." *Id.* (first quoting *Reid-Walen v. Hansen*, 933 F.2d 1390, 1395 (8th Cir. 1991); and then citing *Mizokami Bros. of Ariz., Inc. v. Baychem Corp.*, 556 F.2d 975, 978 (9th Cir. 1977)). In determining the deference applied to a plaintiff's choice of forum, we have recognized that a court should demonstrate through "affirmative evidence that [it] did in fact consider this heightened standard when it conducted its analysis." *Id.* at 803.

And that is precisely what the district court did here: Rather than merely implying that it gave less deference

to AdvanFort's choice of forum, the district court explicitly set forth its reasoning to "partially discount" the deference afforded to AdvanFort. *See AdvanFort*, 704 F. Supp. 3d at 678; *cf. DiFederico*, 714 F.3d at 803 (explaining that court's failure to provide "affirmative evidence" was abuse of discretion). The district court first explained that, although AdvanFort sued in its home forum, it had "elected to do business with Zamil in Saudi Arabia" and therefore "should expect to litigate in foreign courts." *See AdvanFort*, 704 F. Supp. 3d at 678. And so the court "partially discount[ed] AdvanFort's United States Citizenship." *Id.* We cannot say, therefore, that the court erred in applying our precedent in *DiFederico*, or by partially discounting the deference owed to AdvanFort's choice of forum.

After establishing the proper level of deference, the district court turned to evaluating the private interest factors at stake in this dispute. As we have acknowledged, "the forum non conveniens doctrine is ultimately concerned with convenience, not simply the locus of alleged wrongful conduct." *See Tang*, 656 F.3d at 252. To guide this inquiry, the Supreme Court has explained that a court should consider private interest factors such as the "relative ease of access to sources of proof," the "availability of compulsory process" and the "cost of obtaining the attendance" of witnesses, the possibility of viewing the premises, plus "all other practical problems that make trial of a case easy, expeditious and inexpensive." *See Piper Aircraft Co.*, 454 U.S. at 241 n.6; *see also Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

AdvanFort, however, contends that the court failed in its consideration of those factors. We disagree.

We are satisfied that the district court properly exercised its discretion in weighing the relevant factors, most notably by recognizing that "the relevant conduct occurred in Saudi Arabia," and thus "the parties will need to rely on physical and testimonial evidence located in Saudi Arabia, including Jeddah Shipyard employees, AdvanFort's marine expert, and physical evidence such as the vessel which remains in Saudi Arabia." *See AdvanFort*, 704 F. Supp. 3d at 678. The court also observed that it lacks the authority to compel the attendance of Saudi witnesses, which would "greatly undermin[e] a fact-finding effort" in Virginia. *See Tang*, 656 F.3d at 252. Moreover, because AdvanFort's claims "involves events spread over ten years at a Saudi Arabian shipyard — including allegations that Zamil allowed the vessel to be looted by third parties," the court found it "reasonable to expect that litigation of the case will involve third-party witnesses who are not under either party's control." *See AdvanFort*, 704 F. Supp. 3d at 678 (internal citations and alterations omitted). We discern no error with the court's findings. In sum, the court was well within its discretion in concluding that the private interest factors favored dismissal.

The same is true of the district court's assessment of the public interest factors in this case. We have explained that "pertinent public interest factors are the local interest in having localized controversies decided at home; the avoidance of complex comparative law issues; and the

unfairness of burdening citizens in an unrelated forum with jury duty." *See Tang*, 656 F.3d at 252 (citing *Piper Aircraft Co.*, 454 U.S. at 241 n.6). Because "this is a case about a ship in Saudi Arabia that was allegedly damaged by a Saudi company, in a shipyard in Saudi Arabia, pursuant to a contract to perform services in Saudi Arabia," the court correctly reasoned that the Saudi courts "seemingly would have a significant interest in hearing a dispute about a contract performed in Saudi Arabia." *See AdvanFort*, 704 F. Supp. 3d at 679. And it is true that, as the court recognized, the Commonwealth of Virginia's interests in this case "are minimal." *Id.*

We thus agree that, in the circumstances presented by this dispute — specifically, "where the controversy's contacts with the United States pale in comparison" to its foreign contacts — "jury duty ought not to be imposed upon the people of the United States nor should United States courts be clogged." *See AdvanFort*, 704 F. Supp. 3d at 679 (internal quotation marks omitted). Virginia residents "should therefore not be saddled with resolving" AdvanFort's dispute. *See Tang*, 656 F.3d at 252.

Moreover, there is little doubt that the court would likely "encounter complex issues" of Saudi Arabian law given the circumstances presented by AdvanFort's claims. *See AdvanFort*, 704 F. Supp. 3d at 679. Because "[t]he forum non conveniens doctrine exists largely to avoid such comparative law problems," we agree that dismissal is appropriate for that reason as well. *See Tang*, 656 F.3d at 252; *see also Piper Aircraft Co.*, 454 U.S. at 251 ("The doctrine of forum non conveniens . . . is designed

in part to help courts avoid conducting complex exercises in comparative law."). Put simply, the district court did not abuse its discretion by concluding that the public interest factors favor Saudi Arabia as the most appropriate forum.

C.

AdvanFort's final contention challenges the district court's denial of limited discovery regarding what it characterizes as "critical factual disputes relevant to forum non conveniens." *See* Appellant's Br. 62. More specifically, it sought discovery on the adequacy or fairness of the Saudi courts, as well as the location and language of witnesses and evidence.

Notably, the parties each presented detailed expert affidavits supporting their positions regarding the availability and adequacy of the Saudi courts. Those affidavits were a proper basis for resolution by the district court of Zamil's motion to dismiss because, as the Supreme Court has made clear, a forum non conveniens inquiry "does not necessarily require extensive investigation, and may be resolved on affidavits presented by the parties." *Van Cauwenberghe v. Biard*, 486 U.S. 517, 529 (1988).

Moreover, Zamil — which had the burden of showing that the Saudi courts were a more convenient forum — presented evidence regarding its witnesses and otherwise adequately demonstrated that the interests of convenience weighed in its favor. The district court,

therefore, had "enough information to enable [it] to balance the parties' interests" on those issues without ordering further discovery. *See Piper Aircraft Co.*, 454 U.S. at 258. In these circumstances, we are satisfied that there was no abuse of discretion in the court's decision to deny additional discovery, particularly where "[r]equiring extensive investigation would defeat the purpose of [the] motion." *Id.*

## IV.

Pursuant to the foregoing, the district court's dismissal of AdvanFort's complaint on the basis of the doctrine of forum non conveniens is affirmed.

*AFFIRMED*

*Appendix A*

THACKER, *Circuit Judge*, dissenting:

As an initial matter, I agree with the majority that the district court was not precluded from granting a forum non conveniens dismissal by virtue of the Ports Authority's default. But, as to the forum non conveniens analysis, I depart from the majority on a single -- but dispositive -- issue. Dismissal for forum non conveniens requires the existence of one alternate, adequate, and available forum. Because Saudi Arabia would require the case be split between two courts, I would vacate the forum non conveniens dismissal. Therefore, I respectfully dissent.

As the majority explains, "[a]t the outset of any forum non conveniens inquiry, the court must determine whether there exists *an* alternate *forum*." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981) (emphases supplied). "*[T]he* alternate *forum* must be available as to all defendants." *Galustian v. Peter*, 591 F.3d 724, 731 (4th Cir. 2010) (citation omitted) (emphases supplied). We have explained that a party seeking to demonstrate the availability of an alternative forum must "indicate what *court* provides the alternative forum" rather than "only suggest[ing] the *country*." *Kontoulas v. A.H. Robins Co., Inc.*, 745 F.2d 312, 316 (4th Cir. 1984) (emphases in original).

Here, Zamil argues that Saudi Arabia is an adequate and available alternative forum because "Saudi courts would have jurisdiction over both defendants." Ante at 15 (citation omitted). But, as we have indicated, simply

naming the *country* is inadequate. As AdvanFort's Saudi legal expert explained, the Saudi Board of Grievances is the court with "exclusive jurisdictions over administrative cases and lawsuits filed against government bodies" like the Ports Authority. J.A. 242. The Board of Grievances does not have authority over commercial entities like Zamil. AdvanFort's Saudi legal expert explained:

> Thus, if litigated in Saudi Arabia, AdvanFort's claims against the Saudi Ports Authority would have to be litigated before the Board of Grievances. However, the Board of Grievances' jurisdiction does not extend to commercial cases brought against non-government parties. Consequently, since AdvanFort's claims concern conversion, breach of bailment, negligence, and gross negligence, those claims against Zamil would have to be litigated before a different court: the Commercial Court. There is no forum in Saudi Arabia where AdvanFort could bring its claims against both Defendants.

J.A. 242.[*]

Zamil's legal expert did not meaningfully refute this claim. Instead, he offered only that the Board of Grievances "allows a claimant that has submitted a lawsuit" before it "to request that [it] involve another party in the case provided that the conditions required by

[*]Citations to the "J.A." refer to the Joint Appendix filed by the parties to this appeal.

the relevant law are met." J.A. 323. Thus, Zamil's expert claimed that AdvanFort's evaluation was "not entirely accurate" because the Board of Grievances could decide to allow the claims against Zamil to be heard there too. J.A. 324. Notably, however, Zamil's expert did not explain what the "conditions required by the relevant law" are, nor did he provide an analysis or opinion as to whether those requirements could be satisfied here.

The majority posits that "[o]ur precedent . . . does not go so far as to demand that a defendant must identify a *single* tribunal in a foreign jurisdiction where all claims brought by a plaintiff may be heard and resolved." Ante at 16. I disagree. We have explicitly recognized that it is insufficient for a party seeking forum non conveniens to identify only the country, rather than the specific court that would serve as the forum. *See Kontoulas*, 745 F.2d at 316. And as one of our sister circuits has explained, forum non conveniens "is not available as a tool to split or bifurcate cases" as that "fundamentally contradicts the 'central purpose' of *forum non conveniens* because it only increases the possibility of overlapping, piecemeal litigation that is inherently inconvenient for both the parties and the courts." *DIRTT Env't Solutions, Inc. v. Falkbuilt Ltd.*, 65 F.4th 547, 555 (10th Cir. 2023) (citations omitted).

Here, requiring AdvanFort to litigate its claims against Zamil and the Ports Authority in separate Saudi courts creates piecemeal litigation and increases the possibility of overlapping and inconsistent judgments. And it forces AdvanFort to incur the costs and

inconvenience associated with litigating not one, but two, cases in separate tribunals.

Given all of this, I would conclude that forum non conveniens is unavailable in this case because there is not a *single* alternative forum available to all defendants. I would vacate the district court's dismissal and allow AdvanFort to proceed on its claims in its home forum, the Eastern District of Virginia.

*Appendix B*

**APPENDIX B — OPINION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, FILED DECEMBER 1, 2023**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

No. 1:23-cv-906 (LMB/IDD)

ADVANFORT COMPANY,

*Plaintiff,*

v.

ZAMIL OFFSHORE SERVICES COMPANY; SAUDI PORTS AUTHORITY, a foreign sovereign State,

*Defendants.*

December 1, 2023, Decided;
December 1, 2023, Filed

**MEMORANDUM OPINION**

Brinkema, *District Judge.*

Before the Court is defendant Zamil Offshore Services Company's ("Zamil") Motion to Dismiss plaintiff AdvanFort's ("AdvanFort") Complaint based on *forum non conveniens* and lack of personal jurisdiction under

Fed. R. Civ. P. 12(b)(2) ("Motion to Dismiss"). [Dkt. No. 23].[1] More specifically, Zamil, a Saudi company that operates a local shipyard in Jeddah, Saudi Arabia, argues that the Court should dismiss the Complaint based on *forum non conveniens* because the Saudi courts, which are already familiar with the facts that underlie this dispute, are available, adequate, and more convenient in light of the public and private interests involved, including that all the relevant events occurred in Saudi Arabia and all the relevant evidence and witnesses (other than AdvanFort) are in Saudi Arabia. [Dkt. No. 24] at 2. Zamil also argues that the Court should dismiss the Complaint for lack of personal jurisdiction because Zamil, who has no United States offices or employees and has never repaired a ship in the United States, did not purposefully avail itself of the privilege of doing business in the Commonwealth of Virginia. Id.

AdvanFort opposes Zamil's Motion to Dismiss, arguing that the choice of its home forum is entitled to heightened deference, and Saudi Arabia is an inadequate and inappropriate forum. [Dkt. No. 34] at 9-10. AdvanFort also argues that the Court has personal jurisdiction over Zamil because it is "a global company that appears to employ individuals in the United States, and in Virginia

---

[1] Defendant Saudi Ports Authority was properly served pursuant to 28 U.S.C. § 1608(a)(3) by mailing documents to the Minister of Foreign Affairs at the address of the Saudi Ministry of Foreign Affairs in Riyadh, Saudi Arabia. *See* [Dkt. No. 33]. It has not yet filed a responsive pleading. Pursuant to§ 1608(d), because it was served on September 25, 2023, defendant Saudi Arabia Ports Authority should have filed a responsive pleading by Monday, November 27, 2023.

specifically" and because Zamil has purposefully availed itself of the privilege of conducting business in Virginia. *Id.* at 34-35. For the reasons that follow, Zamil's Motion to Dismiss will be GRANTED.[2]

## I. BACKGROUND

### A. Factual Allegations

According to the Complaint, in May 2012, AdvanFort, a Virginia-based company that deploys armed security vessels to protect oil tankers and other vulnerable ships against piracy, chartered a former British Navy vessel, the *Seaman Guard Virginia*, for a period of 36 months. [Dkt. No. I] at ¶ 23. In that same year, AdvanFort directed the *Seaman Guard Virginia* to depart the Port of Baltimore for the Red Sea. Id. at ¶ 28. Upon arrival in the Red Sea, the vessel perfonned anti-piracy services

---

[2] To the extent the Court "has any doubt as to whether [Zamil's] Motion should be denied," AdvanFort has filed a Motion for Limited Discovery on Personal Jurisdiction and *Forum Non Conveniens* and to Stay Motion to Dismiss of Zamil ("Motion for Limited Discovery") [Dkt. No. 38], requesting "that the Court stay its consideration to allow limited discovery targeted to the factual issues raised therein." [Dkt. No. 39] at 5. Zamil opposes the Motion, arguing that "the Court [] has the factual information it needs to resolve the legal questions in the motion to dismiss, based on controlling Fourth Circuit law, and allowing discovery would only further waste the parties' time and resources." [Dkt. No. 42]. Because the Court finds that this Complaint must be dismissed for *forum non conveniens*, AdvanFort's Motion for Limited Discovery will be denied.

pursuant to contracts that AdvanFort entered into with commercial fleets. *Id.*

In 2013, defendant the Saudi Ports Authority, which owns the Jeddah Islamic Port, entered into an agreement to partner with defendant Zamil to jointly and commercially operate a shipyard at the Jeddah Islamic Port for a period of ten years (hereinafter, "Jeddah Shipyard"). Id. at ¶¶ 30-31. That same year, the *Seaman Guard Virginia* needed routine maintenance and minor repairs. After seeing Zamil's advertisement in a magazine called *The Baltic Exchange* and reading about the company in The Maritime Executive Magazine, AdvanFort sought the services of Jeddah Shipyard. *Id.* at ¶¶ 39, 58.

On September 23, 2013, Jeddah Shipyard provided AdvanFort a quote, which included the corporate logos of both defendants, offering to perfonn basic maintenance services, including: hull cleaning; hull inspection; anchor and chain inspection and cleaning; seawater valves overhauling; and pipes and steel renewal for $46,550.00 and stated that the "[t]ime frame for [the] above defined works [would be] 12 days in nonnal stable conditions." *Id.* at ¶ 70. AdvanFort accepted the quote and wired $20,000.00 to Zamil from its Virginia bank account. *Id.* at ¶ 72.

On October 19, 2013, AdvanFort delivered the vessel to Jeddah Shipyard's dry dock in good condition. At the time of delivery, the vessel required only routine maintenance and minor repairs, *id.* at ¶ 74; however, at

some point in October 2013, Jeddah Shipyard proposed that electrical work be perfonned on the vessel. On October 21, 2013, AdvanFort approved the proposal. *Id.* at ¶ 77.

On October 27, 2013, a fire broke out on the vessel below deck.[3] *Id.* at ¶ 79. Hours after the fire, the Saudi government issued a report concluding that the fire was caused by an electrical short circuit in the living room.[4] *Id.* at ¶ 87. On December 15, 2013, the Director of Saudi Arabia's Maritime Administration released a report that attributed the cause of the fire to AdvanFort and the vessel's electrical system.[5] *Id.* at ¶ 89.

---

[3] AdvanFort spends much of its Complaint explaining how it believes that Zamil was negligent in its handling of electrical work and "because of the failures by Jeddah Shipyard to check for and remove combustible material prior to performing hot work, the work taking place on the deck ignited combustible materials underneath the deck." *Id.* at ¶ 84. Because AdvanFort already litigated and lost this issue in a Saudi court, this portion of the Complaint is not directly at issue in this action.

[4] AdvanFort disagrees with the Saudi government's report because it "did not consider the root cause of the supposed electrical short circuit, nor did it consider that the supposed short circuit could have been caused by the hot work that Jeddah Shipyard had been conducting on the vessel that day." *Id.* at ¶ 88.

[5] AdvanFort also challenges the Maritime Administration's report because it "contained supposed findings that were demonstrably false," including that "the hot work on the port side (the same side as the fire) had been completed before the fire occurred on October 27, 2013, and that the hot work on the day of the fire was on the opposite side of the fire (the starboard side), even though governmental investigators possessed the hot work permit, which expressly stated

*Appendix B*

According to the Complaint, on October 28, 2013, the day after the fire, AdvanFort received notice that Jeddah Shipyard intended to undock the vessel mid-repair, which would leave it vulnerable to water damage. *Id.* at ¶ 99. When AdvanFort wrote to Jeddah Shipyard demanding that it not undock the vessel, Jeddah Shipyard responded by requesting that AdvanFort sign a statement of responsibility for the fire, which AdvanFort refused to do. *Id.* Jeddah Shipyard then ceased performing any work on the vessel. *Id.* at ¶ 100.

On December 26, 2013, AdvanFort wrote to Zamil seeking prompt repair of the vessel's fire-related damage. *Id.* at ¶ 103. On January 25, 2014, Zamil wrote to AdvanFort "denying responsibility for the fire; accusing AdvanFort of causing the delay in the regular maintenance and scheduled repair by falsely claiming that AdvanFort had neglected to furnish spare parts; and, most egregiously, demanding payment from AdvanFort for purported damage suffered by Jeddah Shipyard as a result of the fire that Jeddah Shipyard had itself caused." *Id.* at ¶ 104. As a result, on April 14, 2014, AdvanFort commenced a civil action against Zamil in Saudi Arabia in the Third Commercial Circuit of the Jeddah Board of Grievances seeking $825,986.00 per month for damages caused by the fire. [Dkt. No. 1] at ¶ 105. Zamil filed a countersuit, which according to AdvanFort, "falsely claimed that the fire was somehow

---

that the hot work occurred on the forward port side of the vessel." *Id.* at ¶ 89. This, according to the Complaint, evinces that Jeddah Shipyard "influenced both reports by improper means." *Id.* at ¶ 90.

AdvanFort's fault and falsely asserted that any delay in repairing the vessel was attributable to AdvanFort's own supposed delay in furnishing spare parts." *Id.* at ¶ 106. Zamil sought $147,523.00 in berthing fees and $717,800.00 in repair costs.[6] *Id.* The Complaint alleges that, throughout the Saudi litigation, Zamil "sought to taint the legal process," by among other things, pressuring the captain of the *Seaman Guard Virginia*, Yurii Fedorenko, to change his testimony and making one of AdvanFort's witnesses fearful to testify "against the interests of the powerful Zamil family." *Id.* at ¶¶ 112, 119. At a hearing that took place on June 16, 2014, the Saudi court stated that it would appoint a marine expert in light of technical issues raised by the action; however, the Saudi court subsequently reversed course. *Id.* at ¶ 121. Instead, in April 2017, the Saudi court, without appointing a marine expert, issued a judgment dismissing AdvanFort's claims and awarding Zamil $40,000.00 in damages and unspecified berthing fees. *Id.*

---

[6] According to the Complaint, on December 8, 2014, Zamil Offshore, through its legal representative, offered to settle the dispute by wiring 10 million Saudi Royals (approximately US $2.7 million) to AdvanFort. Under the terms of the offer, however, AdvanFort had to: (a) agree that the fire was an "Act of God" and (b) "pay the guys" to have the Saudi Government's report revised to change the cause of the fire, on the basis of which Zamil Offshore would make a claim to its insurer. *Id.* at ¶ 108. AdvanFort understood the putative settlement offer to mean that Zamil would arrange a bribe to the relevant Saudi authorities, who, in exchange for payment, would amend their report regarding the cause of the fire. *Id.* at ¶ 109. AdvanFort refused the offer. *Id.* at ¶ 110.

On June 29, 2022, Zamil, through counsel, informed AdvanFort that "unless AdvanFort contacted Mr. Allastair Bisset," Zamil's General Manager, "regarding its plans to remove the *Seaman Guard Virginia* within 90 days of that letter, Zamil Offshore itself would take 'appropriate steps' to remove the *Seaman Guard Virginia* including disposing of the vessel. *Id.* at ¶ 124.

On September 4, 2022, AdvanFort's marine expert inspected the vessel and discovered that it "had been stripped bare and rendered inoperable." *Id.* at ¶ 127. According to the Complaint, the inspection revealed that Jeddah Shipyard had undertaken no meaningful efforts to preserve or protect the vessel or associated equipment. *Id.* at ¶ 132. Jeddah Shipyard employees informed the marine expert that the vessel had been removed from the water due to fears that it would sink and become a hazard to local navigation. *Id.* The inspection also revealed that the vessel "was stripped of all items of value," including among other things, engines, a speed boat, TVs, air conditioners, a washing machine, steering equipment, and anchors. *Id.* at ¶ 133. The Complaint concludes that Jeddah Shipyard wrongly, and without right, assumed ownership of the engines, along with all the other stripped parts, materials, and instruments. *Id.* at ¶ 139.

**B. Procedural History**

Recognizing that res judicata prohibits it from relitigating the cause of the 2013 fire, AdvanFort filed a

five-count civil action in this Court against both Zamil and the Saudi Ports Authority, alleging that it has been "denied use" of the vessel since the fire because of the deterioration of the boat's condition.[7] More specifically, the five-count Complaint alleges conversion (Count I), because Jeddah Shipyard lacked any right to assume authority over or to convert the Seaman Guard Virginia, its materials, instruments, engines, and parts, *id.* at ¶ 145; breach of a bailment - tort (Count II), because while under Jeddah Shipyard's control, the vessel was destroyed and rendered useless and valueless which was proximately caused by the negligence of Jeddah Shipyard, *id.* at ¶ 153; breach of a bailment - contract (Count III), because Jeddah Shipyard failed to redeliver the vessel as required by the parties' contract and, instead, only allowed AdvanFort to access the vessel when it had been stripped of all value, *id.* at ¶ 157; negligence (Count IV), because Jeddah Shipyard breached its duty to maintain the vessel in a workman-like manner consistent with industry standards when it stored the vessel without protection from the elements or security from theft, *id.* at ¶ 161; and gross negligence (Count V), because Jeddah Shipyard showed an utter disregard to caution amounting to a complete neglect of the Seaman Guard Virginia's safety by exposing it to the elements for extended periods of time and leaving it unprotected from theft, *id.* at ¶ 167. AdvanFort seeks an award of actual, compensatory, and consequential damages, including lost profits, and

---

[7] Notably, neither party explains why the vessel remained in the Jeddah Shipyard until 2023, especially given that the Saudi civil action terminated in 2017.

punitive damages; an order that Zamil disgorge all money and profits wrongfully obtained; and an award of attorney's fees and costs. Id. at 34-35.

On July 21, 2023, Zamil waived service [Dkt. No. 13], and on September 29, 2023, it filed the instant Motion to Dismiss [Dkt. No. 23], pursuant to the doctrine of *forum non conveniens* and under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction, to which AdvanFort has filed an opposition. [Dkt. No. 34]. Zamil has filed a reply to the opposition, [Dkt. No. 41], and oral argument has been held.

## II. DISCUSSION

District courts have discretion whether to first address objections to personal and subject matter jurisdiction, or to first consider dismissal for *forum non conveniens*. *Sinochem Int'l Co. v. Malaysia Int'l Shipping Com.*, 549 U.S. 422,432 (2007). Because this action will be dismissed based on *forum non conveniens*, Zamil's Fed. R. Civ. P. 12(b)(2) argument need not and, therefore, will not be addressed.

### A. Standard of Review

A *forum non conveniens* dismissal "den[ies] audience to a case on the merits," and "is a determination that the merits should be adjudicated elsewhere." *Sinochem*, 549 U.S. at 432 (2007). A civil action should be dismissed on the basis of *forum non conveniens* when an alternative forum is (i) available; (ii) adequate; and (iii) more

convenient in light of the public and private interests involved. *dmarcian, Inc. v. dmarcian Eur. BV*, 60 F.4th 119, 136 (4th Cir. 2023). The *forum non conveniens* doctrine is ultimately "concerned with convenience, not simply the locus of alleged wrongful conduct." *Jiali Tang v. Synutra Int'L, Inc.*, 656 F.3d 242, 252 (4th Cir. 2011).

**B. Analysis**

*1. Availability*

For a case to be dismissed based on *forum non conveniens*, an alternate forum must be available to all defendants. *Galustian v. Peter*, 591 F.3d 724, 731 (4th Cir. 2010). Zamil argues that, as a Saudi company, it is subject to suit in Saudi Arabia, and AdvanFort cannot claim otherwise because previously "it initiated litigation against Zamil Offshore in Saudi Arabia." [Dkt. No. 24]. Although it does not contest that Saudi courts would have jurisdiction over both defendants, AdvanFort argues that Saudi Arabia is nevertheless an unavailable forum because defendant Saudi Ports Authority has not yet appeared in this action and because AdvanFort's claims against defendants would have to be brought separately in Saudi Arabia-suit against Zamil would have to be brought in the Saudi Commercial Court and suit against the Saudi Ports Authority would have to be brought before the Saudi Board of Grievances. [Dkt. No. 34] at 15.

Neither of AdvanFort's arguments preclude the Court from finding that Saudi courts are available to hear this civil action. Merely because the Saudi Ports Authority

has not yet appeared in this action does not prevent the Court from dismissing this action based on forum non conveniens. Moreover, although the parties' Saudi Arabian attorneys dispute whether AdvanFort would have to sue each defendant in a different Saudi tribunal, *compare* [Dkt. No. 41-2] at 13.1.1, *with* [Dkt. No. 37] at 139, AdvanFort does not cite any legal authority for the proposition that a foreign country is not a convenient forum if a party's claims must be heard by different tribunals in that country. Instead, it cites inapposite cases in which courts have denied motions to dismiss for *forum non conveniens* when dismissing the actions would split claims against domestic defendants from foreign defendants, thereby forcing plaintiffs to litigate in two different countries. *See* [Dkt. No. 34] at 15 (citing *DIRTT Environmental Solutions, Inc. v. Falkbuilt Ltd.*, 65 F.4th 547,551 (10th Cir. 2023)). Unlike in *DIRTT*, because dismissing this action would not force AdvanFort to litigate in two different counties and because together the Board of Grievances and the Commercial Court have jurisdiction to hear AdvanFort's claims against defendants, the Saudi courts provide an available forum to resolve AdvanFort's claims against both defendants.

*2. Adequacy*

A foreign forum "is adequate when (1) all parties can come within that forum's jurisdiction, and (2) the parties will not be deprived of all remedies or treated unfairly, even though they may not enjoy the same benefits as they might receive in an American court." *Tang*, 656 F.3d at 249 (citation omitted). Zamil argues that the Saudi courts are

adequate because all parties can come within the Saudi courts' jurisdiction, as evinced by AdvanFort's past civil action against Zamil in Saudi Arabia, and AdvanFort will not be deprived of remedies in Saudi Arabia because it will be able to pursue claims that Zamil "breached a duty of care owed under the terms of a contract, or in the absence of a specific contract, under Islamic tort law." [Dkt. No. 24] at 13. Zamil also claims that AdvanFort has not established that it will be treated unfairly by the Saudi courts because it merely provides "anecdotal evidence of corruption and delay" which this district has found to be "an insufficient basis for concluding that a foreign court is an inadequate forum." *Conflict Kinetics, Inc. v. Goldfus*, 577 F. Supp. 3d 459, 464-65 (E.D. Va. 2021). AdvanFort does not challenge Zamil's claim that all parties can come within the Saudi courts' jurisdiction[8] and that AdvanFort would have a legal avenue to pursue its claims against defendants; rather, it claims that because "[t]he Saudi judiciary is controlled by the Saudi government, a defendant in this suit. and is marked by capriciousness, opacity. and discrimination," and because the United States Department of Treasury "regularly reports on [the Saudijudiciary's] abuses, observing that the judiciary 'has serious problems with ... independence,'" it is "extremely unlikely that the courts of Saudi Arabia would adjudicate

[8] Although the Saudi Ports Authority has not yet appeared in this matter. it also is a Saudi Arabian entity within the jurisdiction of the Saudi courts, and it is not entitled to sovereign immunity. *See* [Dkt. No. 24-1] at ¶ 4.1.4 ("Under Saudi law, there is no sovereign immunity granted to ministers, government employees, commercial public or private entities, or citizens.").

AdvanFort's claims in a fair and impartial manner." [Dkt. No. 34] at 8.

AdvanFort's argument that the Saudi judicial system, as a whole, is corrupt and thus incapable of adjudicating disputes fairly misaligns with the results of the parties' past litigation. In the parties' 2013 litigation in Saudi Arabia, although the court dismissed AdvanFort's claims, it awarded Zamil only $40,000.00 in repair fees-less than one-third of the $147,523.00 Zamil sought. Also, a court's administrative decision to change course and not "appoint a marine expert in light of the technical issues raised by th[is] case," [Dkt. No. l] at 1121, alone does not indicate that a court would "deprive[] [AdvanFort] of all remedies or treat [] [it] unfairly." *Tang*, 656 F.3d at 249.

Moreover, American courts have routinely found that Saudi courts are adequate fora and have dismissed cases on the basis of *forum non conveniens*. *See, e.g. Kamel v. Hill-Rom Co.*, 108 F.3d 799,803 (7th Cir. 1997) (affirming trial court's dismissal on the basis of *forum non conveniens*, including its finding that Saudi Arabia was an adequate forum); *Forsythe v. Saudi Arabian Airlines Corp.*, 885 F.2d 285, 290-91 (5th Cir. 1989) (same); *Ahmed v. Boeing Co.*, 720 F.2d 224,226 (1st Cir. 1983) (Breyer, J.) (same).

Courts have also "uniformly held that anecdotal evidence of corruption and delay provides an insufficient basis for concluding that a foreign court is an inadequate

forum." *Conflict Kinetics*, 577 F. Supp. 3d at 464-65.[9] For example, in *Alayan v. Permanent Mission of Saudi Arabia to the United Nations*, 2021 WL 1964078 (S.D.N.Y. May 17, 2021), the plaintiffs argued that the Saudi legal system was inadequate and "cite[d] allegations of human rights scandals, the detention of women's rights activists, and the murder of a Saudi Journalist[,]" as well as allegations that its process server "was turned away under the threat of arrest" and "was in fear of his life." *Id.* at *2. The court found the plaintiffs "arguments unavailing," explaining that they "rest mostly on general biases and danger within Saudi Arabia[,]" and cited other cases in which United States courts had found Saudi Arabia to be an adequate forum. *Id.* at *2-3.

Even more recently, in *CDM Smith Inc. v. Atasi*, the plaintiffs cited the same State Department "Human Rights Practices" reports that AdvanFort cites in its opposition to argue that the Saudi Labor Court was not an adequate forum, but the court in *CDM Smith* was unpersuaded. *See* 594 F. Supp. 3d 246, 256-57 (D. Mass. 2022) (finding Saudi Labor Court to be impartial and explaining that State Department Human Rights Reports are inapposite because they are focused on the Saudi criminal justice system, not the civil courts). Ultimately, "[c]ourts must be cautious before finding incompetence or

---

[9] This calculus does not change when the claim being brought is against a government-controlled entity, such as the Saudi Ports Authority. *See, e.g., Forsythe*, 885 F.2d at 290-91 (affirming finding that Saudi Arabia was an adequate forum even though defendant was a corporation wholly owned by the Saudi government).

corruption by other nation's judicial systems," *Alayan*, 2021 WL 1964078, at *2, and the type of generalized claims of corruption pressed by AdvanFort have been repeatedly held to be insufficient to establish inadequacy of a foreign sovereign's courts. For these reasons, AdvanFort fails to support its argument that the Saudi Board of Grievances and the Commercial Court are inadequate fora.

*3. Public and Private Interests*

i. Private Interest Factors

The factors pertaining to the private interests of litigants include (i) the relative ease of access to sources of proof, (ii) the availability of compulsory process to obtain the testimony of unwilling witnesses, (iii) the cost of obtaining testimony from willing witnesses, (iv) the possibility of viewing the premises, and (v) "all other practical problems that make trial of a case easy, expeditious and inexpensive." *Tang*, 656 F.3d at 249. Generally, if there is a "real showing of convenience by a plaintiff who has sued in his home forum [it will] normally outweigh the inconvenience the defendant may have shown;" however, this principle is inapplicable where "the plaintiff is a corporation doing business abroad." *DiFederico v. Marriott Int'l Inc.*, 714 F.3d 796, 804, 807 (4th Cir. 2013).

AdvanFort elected to do business with Zamil in Saudi Arabia, and therefore, it "should expect to litigate in foreign courts." As a result, the Court will "partially discount[] [AdvanFort's] United States Citizenship." *Id.*

Moreover, the private interest factors "plainly favor [the] foreign forum" and "favor dismissal on *forum non conveniens* grounds." *In re Disaster at Riyadh Airport, Saudi Arabia, on Aug. 19, 1980*, 540 F. Supp. 1141, 1147 (D.D.C. 1982); *Conflict Kinetics*, 577 F. Supp. 3d at 465. First, "the majority of the actionable conduct alleged in the complaint occurred in [Saudi Arabia], not the United States." *Conflict Kinetics*, 577 F. Supp. 3d at 465. Because the relevant conduct occurred in Saudi Arabia and because AdvanFort was not in Saudi Arabia when the alleged damage to the vessel took place, the parties will need to rely on physical and testimonial evidence located in Saudi Arabia, including Jeddah Shipyard employees, AdvanFort's marine expert, and physical evidence such as the vessel which remains in Saudi Arabia.[10] [Dkt. No. 1] at ¶ 137; *see In re Disaster at Riyadh Airport*, 540 F. Supp. at 1147 (finding that evidence in Saudi Arabia regarding alleged negligent maintenance of aircraft at Riyadh airport was "more important to the proceedings").

Finally, regarding the availability of both willing and unwilling witnesses, "[s]ignificant costs would be involved in transporting and accommodating [the] willing

---

[10] AdvanFort's claim that its "witnesses are located in the United States and this forum," [Dkt. No. 34] at 17, is lacking in support. AdvanFort states that unspecified "potential witnesses in this case are located in the United States, and specifically Virginia," [Dkt. No. 36] at 1 6, but it does not identify a single witness. It also claims that "employees who interacted with Zamil reside in the United States or in countries other than Saudi Arabia," *id.* at 14, but offers no further explanation of who those witnesses would be and what testimony they would offer.

witnesses ... from Saudi Arabia" because "more witnesses will have to travel farther distances if trial is held in the United States." *In re Disaster at Riyadh Airport*, 540 F. Supp. at 1148-49. Notably, given that this dispute involves events spread over ten years at a Saudi Arabian shipyard-including allegations that Zamil "allow[ed] the vessel to be looted" by third parties, [Dkt. No. 1] at ¶ 153—it is reasonable to expect that litigation of the case will involve third-party witnesses who are not under either party's control. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, at 258-59 (1981) (noting a lack of need to identify particular witnesses who are not available, especially if they are difficult to identify without "extensive investigation"). This Court would lack authority to compel the attendance at trial of any unwilling Saudi witnesses-a factor that favors the Saudi forum. *See Tang*, 656 F.3d at 252; *In re Disaster at Riyadh Airport*, 540 F. Supp. at 1148 ("[A] United States forum would likely be unable to require the attendance of those foreign witnesses having knowledge of either plaintiffs' damages.").

ii. Public Interest Factors

Public interest factors in a *forum non conveniens* inquiry include: "(l) the administrative difficulties flowing from court congestion; (2) the local interest in having localized controversies decided at home; (3) the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; (4) the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and (5) the unfairness of burdening citizens in an unrelated forum with jury duty."

*Tang*, 656 F.3d at 249. All of these factors weigh in favor of litigation in Saudi Arabia, and not in Virginia.

First, the Commonwealth of Virginia's interests in this case are minimal. Because this action is about a vessel in Saudi Arabia that was allegedly damaged by a Saudi company, with Saudi employees, in a Saudi shipyard in Saudi Arabia, both the Board of Grievances and Commercial Court "seemingly would have a significant interest in hearing a dispute about a contract performed in Saudi Arabia." *D & S Consulting. Inc. v. Kingdom of Saudi Arabia*, 961 F.3d 1209, 1214 (D.C. Cir. 2020). On the other hand, there is "little local interest" in a case involving an alleged tort arising from performance of a contract overseas. *Conflict Kinetics*, 577 F. Supp. 3d at 465. In situations where the "controversy's contacts with the United States pale in comparison to the controversy's foreign contacts," 'Jury duty ought not to be imposed upon the people of the United States nor should United States courts be clogged." *In re Disaster at Riyadh Airport*, 540 F. Supp. at 1152.

Moreover, *forum non conveniens* is appropriate in this action given that this Court would be tasked with applying Saudi law. A federal court sitting in Virginia and exercising diversity jurisdiction applies Virginia's choice-of-law rules, and under Virginia's *lex loci delicti* rule for tort claims, the federal court must apply the law of the place where "the last event necessary to make an actor liable for an alleged tort takes place." *DiFederico,* 714 F.3d at 807. For contract claims, questions arising from the performance of a contract are governed by the law of

the place of performance. *Equitable Tr. Co. v. Bratwursthaus Mgmt. Corp.*, 514 F.2d 565,547 (4th Cir. 1975). Under both rules, the place of performance and the place where the last alleged tortuous act took place is Jeddah, Saudi Arabia, and as such, this Court would be forced to apply Saudi law. *Piper Aircraft Co.*, 454 U.S. at 260 (explaining that "the need to apply foreign law point[s] towards dismissal").

## III. CONCLUSION

For the reasons stated above, the Court will dismiss the Complaint on the basis of *forum non conveniens* by an Order to be issued with this Memorandum Opinion.

Entered this 1st day of December, 2023.

*Appendix C*

**APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE FOURT CIRCUIT, DATED MAY 30, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1007

(D.C. No. 1:23-cv-00906-LMB-IDD)

ADVANFORT COMPANY,

*Plaintiff – Appellant*,

v.

ZAMIL OFFSHORE SERVICES COMPANY; SAUDI PORTS AUTHORITY, a foreign sovereign State,

*Defendants – Appellees*.

**ORDER**

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Thacker, and Senior Judge Floyd.

For the Court
/s/ Nwamaka Anowi, Clerk