



must demonstrate "with reasonable particularity" contacts between the defendant and the forum sufficient to support an exercise of personal jurisdiction. Mellon Bank (East) PSFS Nat'l Assoc. v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992).

A plaintiff may establish the existence of so-called general personal jurisdiction by showing that a defendant conducts a continuous and systematic part of its business in the forum. Fields v. Ramada Inn, 816 F. Supp. 1033, 1036 (E.D. Pa. 1993). Contacts are continuous and systematic if they are "extensive and pervasive." Id.

A plaintiff may establish so-called specific personal jurisdiction by showing that a defendant undertook some action by which it purposefully availed itself of the privilege of conducting activities within the forum and thus invoking the benefits and protections of the laws of the forum. Hanson v. Denckla, 357 U.S. 235, 253 (1958).<sup>1</sup> To invoke specific jurisdiction, a plaintiff's cause of action must arise from or relate to the defendant's forum related activities, such that the defendant should reasonably anticipate being haled into court in the forum. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n.8 (1984); Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980); North Penn Gas Co. v. Corning Natural Gas Corp., 897 F.2d 687, 690 (3d Cir.), cert. denied, 498

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<sup>1</sup> In this regard, the forum contacts of an agent may be attributable to his principal. See Grand entertainment Group v. Star Media Sales, 988 F.2d 476, 483 (3d Cir. 1993); Taylor v. Phelan, 912 F.2d 429, 433 (10th Cir. 1990)

U.S. 847 (1990). A determination of whether sufficient minimum contacts exist essentially involves an examination of the relationship among the defendant, the forum and the litigation. Shaffer v. Heitner, 433 U.S. 186, 204 (1977).<sup>2</sup>

Plaintiffs have not made or attempted to make a prima facie showing of personal jurisdiction. Rather, they contend that with appropriate discovery they believe they can establish personal jurisdiction over each defendant. A court does have discretion to allow discovery when considering a motion to dismiss for lack of personal jurisdiction. See, e.g., Marine Midland Bank NA v. Miller, 664 F.2d 899, 904 (2d Cir. 1981). The court will permit the parties to conduct limited discovery on matters relevant to the presence or absence of personal jurisdiction as to each defendant in this district. Insofar as defendants' motion is predicated upon Rule 12(b)(2), it will be denied without prejudice to renew at the close of that discovery.

The court can discern no basis of record for venue pursuant to 28 U.S.C. § 1391(a). Where a defendant is a corporation, however, venue is proper in any district in which the corporate defendant would be subject to personal jurisdiction at the time the action is commenced or within which its contacts

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<sup>2</sup> Of course, personal jurisdiction may also be obtained by consent. See 42 Pa.C.S.A. § 5301(a)(2)(ii). It appears that at least one defendant has designated an agent in Pennsylvania for service of process. A defendant who obtains a certificate of authority to do business in Pennsylvania and designates an in-state registered agent to accept service would be subject to personal jurisdiction here. See Eagle Traffic Control, Inc. v. James Julian, Inc., 933 F. Supp. 1251, 1256 (E.D. Pa. 1996).

would be sufficient to subject it to personal jurisdiction if that district were a separate state. See 28 U.S.C. § 1391(c); Di Mark Mkt., Inc. v. Health Serv. & Indem. Co., 913 F. Supp. 402, 408 (E.D. Pa. 1996). Since the court will permit limited discovery on matters relevant to personal jurisdiction, it is appropriate to permit the parties that same opportunity with regard to venue.<sup>3</sup> Although overlooked by plaintiffs, the court also notes that as to defendant Westin Brisas, venue would likely be proper under § 1391(d) as it appears that this defendant is an alien corporation. See 28 U.S.C. § 1391(d); Wright, Miller & Cooper, Fed. Practice & Procedure: Jurisdiction 2d, § 3810 at 96 (1986); Presidential Motor Yacht Corp. v. President Marine, Ltd., 753 F. Supp. 7, 10 (D.D.C. 1990); Velcro Group Corp. v. Billarant, 692 F. Supp. 1443, 1449 (D.N.H. 1988); Mowrey v. Johnson & Johnson, 524 F. Supp. 771, 774 (W.D. Pa. 1981).<sup>4</sup> Thus, insofar as defendant's motion is predicated upon Rule 12(b)(3) it

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<sup>3</sup> The burden generally is on the movant to demonstrate that venue is improper. See Myers v. American Dental Ass'n., 695 F.2d 716, 724-25 (3d Cir. 1982), cert. denied, 462 U.S. 1106 (1983). Particularly where the propriety of venue turns on the existence of personal jurisdiction, however, a sound argument can be made for imposing the burden on the proponent of venue. See id. at 731-32 (Garth, J., concurring and dissenting); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3826 at 259 (1986); Emjayco v. Morgan, Stanley & Co., Inc., 901 F. Supp. 1397, 1400 (C.D. Ill. 1995); Banque de la Mediterranee-France v. Therger, Inc., 780 F. Supp. 92, 94 (D.R.I. 1992).

<sup>4</sup> A plaintiff's reliance on an unavailing venue provision does not preclude the court from determining whether venue is proper under any applicable provision. See Neufeld v. Neufeld, 910 F. Supp. 977, 986 & n.13 (S.D.N.Y. 1996).

will be denied without prejudice to renew at the close of the discovery period.

Plaintiff represents that defense counsel has now agreed to accept service on behalf of two of the three defendants and that plaintiffs are in the process of properly effecting service of process on the Mexican defendant. Therefore, insofar as it is predicated upon Rule 12(b)(4) and (5), the court will deny defendants' motion without prejudice to renew should adequate service not be properly and promptly effected.<sup>5</sup>

Title 28 U.S.C. § 1404(a), involving the transfer of a case for the convenience of the parties and witnesses or in the interest of justice, contemplates that venue is proper in the transferor court. Where venue is improper, the alternative to dismissal under Rule 12(b)(3) is a transfer pursuant to 28 U.S.C. § 1406(a). Therefore, defendants' alternative Motion to Transfer will be denied without prejudice to renew once the issues of personal jurisdiction, venue and service are finally resolved.

**ACCORDINGLY**, this                    day of November, 1997, **IT IS HEREBY ORDERED** that, consistent with the forgoing, plaintiff shall promptly effect proper service on any defendant not yet so served; the parties shall have until December 19, 1997 to complete discovery on matters relevant to personal jurisdiction

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<sup>5</sup> In so stating, the court does not imply agreement with plaintiffs' statement that "the applicable two year statute of limitation will not expire until January 18, 1998." The court has no occasion at this juncture to determine whether the laws of Pennsylvania, Mexico or some other jurisdiction govern this case under pertinent choice of law principles.

and venue; and, defendants' Motions to Dismiss and to Transfer are **DENIED** without prejudice to renew at the close of such discovery period, at which time a revised scheduling order will be issued.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**