

Time Is Not on Your Side: Timeliness of Forum Non Conveniens Motions in the Eighth Circuit

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Background

This case involved the death of a six-year-old boy, I.E. Hersh, who died when he touched an exposed electrical wire at a Hardee's restaurant in Amman, Jordan. I.E.'s parents sued the defendants in the U.S. District Court for the Eastern District of Missouri, and after 18 months of litigation, the defendants moved to dismiss the case on *forum non conveniens* grounds.

The Court's Analysis

The Eighth Circuit, without adopting any formal rule, and in the absence of a specific rule mandating the timeline for filing a motion to dismiss on *forum non conveniens* grounds, found that the defendants' motion was untimely. The Eighth Circuit surveyed its sister circuits' approaches in determining whether this type of motion has been timely filed. When analyzing this type of motion, a court generally considers certain private and public interest factors to determine whether the motion should be granted or denied. The Fifth Circuit views timeliness of filing as a private interest factor to consider. The Third Circuit views timeliness of filing as a private *and* public interest factor. The Sixth Circuit views timeliness as an independent hurdle a movant must conquer. As for how the Eighth Circuit views timeliness, that is yet to be known. Here, in summary fashion, the Eighth Circuit stated that "Hardee's knew the facts providing the basis for its motion to dismiss from the outset of the case. This is true whether we view timeliness as an independent inquiry or as an interest factor." *Hersh*, 995 F.3d at 665.

The Takeaway

Because the Eighth Circuit declined to adopt a specific approach to addressing the timeliness of a motion to dismiss on *forum non conveniens* grounds, this issue is surely to present itself at the court again. Regardless, parties should file this type of motion early in a case.