

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

JAMES JOHNSON

\* NO:11-2773

\*

VERSUS

\* SECTION: R

\* JUDGE SARAH S. VANCE

PPI TECHNOLOGY SERVICES, L.P.

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PSL, LTD, TRANSOCEAN, LTD.,

\* MAGISTRATE: 3

AND AFREN, PLC

\* JUDGE DANIEL E. KNOWLES

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**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO**  
**PPI TECHNOLOGY SERVICES' MOTION TO DISMISS**

Plaintiff herein James "Butch" Johnson was shot in his knee by Nigerian rebels who had boarded the HIGH ISLAND 7 on November 8, 2010 while the rig operated off of the coast of Nigeria. Several rebels were allowed to board the rig due to the complete lack of security and protection for the rig at the time of the incident. Mr. Johnson was employed by defendant herein PPI Technology Services, Limited as a drilling supervisor working aboard the rig at the time of the incident. The rig was owned by Transocean and under contract to Afren.

Mr. Johnson was shot with an AK-47 rifle. Due to the bullet wound, he was airlifted off of the rig and ultimately brought to a hospital in London, England where he spent more than five months undergoing extensive surgeries and rehabilitation. Osteomyelitis ultimately set in causing an infection in the bone of his leg. He underwent a massive skin and muscle transplant from muscle which was taken off of his right upper back and grafted to his knee and leg in an effort to replace the lost tissue due to the large bullet wound. He continues with medical treatment at this time and has significant physical and emotional disabilities associated with the incident and gunshot to his leg.

PPI Technology has filed a motion to dismiss this action. PPI Technology first asserts that it was not the employer of Mr. Johnson at the time of his injury and thus cannot be sued under the Jones Act. Alternatively, PPI argues that this Court should apply the doctrine of forum non conveniens and dismiss this matter in favor of requiring Mr. Johnson to litigate this case in Nigeria. For the following reasons, PPI Technology's motion to dismiss should be denied in its entirety.

**I. SUMMARY OF ARGUMENT:**

PPI Technology hired plaintiff and controlled all of his activities including his day-to-day activities while he was employed by the company. Mr. Johnson never met any individual who worked for the "PSL" entity. The "contract" Mr. Johnson signed with the "PSL" entity upon which PPI Technology now relies was essentially a payroll sham presumably for tax benefits that PPI Technology conceived and presented to plaintiff after PPI Technology had already hired plaintiff. The evidence below will show that in truth there is no entity known as "PSL" which actually conducts any type of activities which could in any way resemble an operating corporation. Rather, "PSL" exists simply on paper in the office of a Belize agency which creates and facilitates 'International Business Corporations' for U.S. and other foreign corporations seeking to gain tax advantages offered by Belize. 'PSL' is simply the offshore account of PPI Technology which presumably allows PPI to receive tax benefits from running its payroll through an offshore account located in Belize.

PPI Technology's request for this Court to dismiss this matter and require plaintiff to litigate in Nigeria is grossly unreasonably and somewhat amazing. Setting aside the known danger of Nigeria and the practical impossibilities that plaintiff, a resident of Mississippi, could actually litigate this case in Nigeria, PPI Technology appears to be ignoring the fact that plaintiff

was shot in the leg by hostile Nigerian rebels. To suggest that plaintiff is physically and mentally capable of voluntarily returning to Nigeria to litigate this case against his American employer is simply unreasonable. Furthermore, even assuming that Nigeria was available to plaintiff as a possible forum for this case, both the private and public interests greatly weigh in favor of this Court retaining jurisdiction over the matter.

## **II. FACTUAL BACKGROUND:**

The sworn affidavit of James Johnson sets forth the background of his hiring by PPI Technology.<sup>1</sup> Mr. Johnson's first contact with PPI Technology occurred while he was working in the Middle East in early 2010. At that time a contact of his gave him the name of a Mr. John Arriaga, and his contact told him that Mr. Arriaga was hiring drilling supervisors for a company called PPI Technology Services located in Houston, Texas. The phone number that was supplied to Mr. Johnson was from the Houston, Texas area code of (713).<sup>2</sup> Mr. Johnson then phoned Mr. Arriaga and discussed the drilling supervisor position which was available. During the conversation Mr. Arriaga informed Mr. Johnson that Mr. Johnson would need to speak to a Mr. Gallan Williams, who also worked for PPI Technology Services. Mr. Arriaga said that Mr. Williams would be the individual responsible for supervision of the work done by the new drilling supervisor.<sup>3</sup> Mr. Johnson subsequently learned that Mr. Gallan Williams held the position of Vice-President for Contracts Administration for PPI Technology Services and he worked out of the Houston, Texas office.<sup>4</sup>

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<sup>1</sup> Attached hereto as Exhibit No. 1 please find sworn affidavit of James Johnson.

<sup>2</sup> Please see Exhibit 1, Paragraph I.(1).

<sup>3</sup> Please see Exhibit 1, Paragraph I.(3).

<sup>4</sup> Attached as Exhibit 2 please find home page from PPI Technology Services' website indicating "our team" including Mr. Gallan Williams. Attached as Exhibit No. 3 please find biographical information of Mr. Gallan Williams from website of PPI Technology Services.

Mr. Johnson has produced numerous emails which confirm his sworn affidavit concerning his initial hiring process by PPI Technology.<sup>5</sup> Mr. John Arriaga sent an initial email to Mr. Johnson on March 6<sup>th</sup>, 2010 at 11:49 a.m. in which Arriaga states, "As I mentioned, *we* are looking for rig supervisors and directional drilling managers." This email is signed "John Arriaga – Project Coordinator, PPI Technology Services" and lists two 713 area code phone numbers. The email address comes from "jarriaga@ppitech.net".<sup>6</sup> On March 8, 2010, at 1:10 p.m. Mr. Arriaga sent another email to Mr. Johnson stating "I am going to have you call Gallan Williams our Super on the project tomorrow ... he is not available today. His cell is 713.705.0765." <sup>7</sup>

Mr. Johnson subsequently spoke with Galan Williams and Mr. Williams informed Mr. Johnson that he had been hired by PPI Technology Services in the position of drilling supervisor. Mr. Williams then instructed Mr. Johnson to deal with an individual named Sandra Birkline who worked for PPI Technology Services in Houston, Texas in regard to the details of his transportation to Nigeria, which PPI would arrange and pay for such.

Mr. Johnson then spoke to Ms. Birkline on multiple occasions. Each of these phone conversations took place while Ms. Birkline worked out of the PPI Technology Services' office in Houston, Texas. During one of the conversations between Ms. Birkline and Mr. Johnson, Ms. Birkline informed Mr. Johnson that he would need to sign a "consulting agreement" as part of the regular employment process. She forwarded this contract to Mr. Johnson for his signature. By email dated March 9, 2010 she sent the "PSL contract" to Mr. Johnson. Significantly, she wrote in her email "as I explained on the phone PSL is our international entity that we run all *our*

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<sup>5</sup> Attached as Exhibit No. 4 please find 38 pages of emails printed by Mr. Johnson. These emails relate to his initial hiring with PPI, the control of his day-to-day activities as well as PPI's actions following his injury.

<sup>6</sup> Please see Exhibit No. 4, page 1a, emphasis added.

<sup>7</sup> Please see Exhibit 4, Page 1b.

international guys through"<sup>8</sup> Before sending the email with the "PSL contract" to Mr. Johnson, Ms. Birkline had informed Mr. Johnson on the phone that the "PSL contract" was required strictly for tax purposes because, as she stated, "we just run all our people through Belize."

Over the next few days Mr. Johnson's air travel to Nigeria was arranged for by Ms. Birkline and PPI Technology Services. Numerous emails were sent back and forth documenting that PPI Technology Services purchased the airline ticket for Mr. Johnson.<sup>9</sup> Additionally, PPI Technology Services, through Ms. Birkline, assisted Mr. Johnson in obtaining his Nigerian STR visa. By email dated March 10, 2010, Ms. Birkline requested numerous items from Mr. Johnson so that PPI Technology Services could arrange for his travel/work visa.<sup>10</sup>

Once Mr. Johnson arrived in Nigeria, his overnight transportation in Lagos was arranged for and paid for by PPI Technology Services. He did not pay any out-of-pocket expenses for the hotel nor did he arrange for or pay for his travel from the hotel to the heliport which transferred him to the rig on each hitch.<sup>11</sup> In order for Mr. Johnson to communicate while he was employed by PPI Technology Services, the company issued him an intra-company email address with his own PPI Technology Services email address. By email dated March 19, 2010, Sandra Birkline emailed Mr. Johnson informing him that a "PPI email address had been set up for him at 'jjohnson@ppitech.net'".<sup>12</sup>

Once Mr. Johnson arrived on the rig, he was under the constant supervision and control of PPI Technology Services employees. His direct supervisors were Gallan Williams and Jack Rankin. Mr. Johnson has explained in his affidavit that at least twice a day (and often more) he was required to send written reports regarding the drilling data from the well to either Gallan

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<sup>8</sup> Please see Exhibit 4, Pages 3 and 4. (emphasis added.)

<sup>9</sup> Please see Exhibit 4, Page 5.

<sup>10</sup> Please see Exhibit 4, Page 7-8. Plaintiff is uncertain at this time the employer name used by PPI Technology when it obtained the work visa for Mr. Johnson.

<sup>11</sup> Please see affidavit of Mr. Johnson, Exhibit 1, Paragraphs II.(6) through II.(8).

<sup>12</sup> Please see Exhibit 4, Page 15.

Williams or Jack Rankin. This data detailed the drilling activities during the past 24-hour period. He would then have daily, multiple phone conversations with these individuals regarding the data in the reports. Significantly, Mr. Johnson was always instructed by them on what action needed to be taken in regard to the drilling of the well. These instructions included all details regarding the well including weight of the drilling mud, condition of the drilling bit and/or need to change out the drilling bit, the running of the casing, all aspects of cementing the casing and all other general aspects of drilling the well.<sup>13</sup>

Mr. Johnson estimates that he spoke to Mr. Ron Thomas at least 15 to 20 times before his injury and while Mr. Johnson was working aboard the rig in Nigeria. Mr. Thomas is an engineer, a co-founder of PPI and its President.<sup>14</sup> During this time Mr. Thomas was working out of the PPI Technology Services office in Houston, Texas. All of these conversations dealt with the drilling operations aboard the rig. Mr. Thomas was particularly interested in ensuring that the casing procedures were performed exactly as he had prescribed in written drilling plans which he had created. Mr. Thomas made it clear to Mr. Johnson and other PPI Technology employees that they must follow his drilling plans.<sup>15</sup>

Finally, in regard to his day-to-day activities, Mr. Johnson did not make any independent decisions in regard to the drilling aspects of the well without being instructed to do so by Mr. Williams, Mr. Rankin or Mr. Thomas. Mr. Johnson states that it would have been grounds for immediate termination if he were to have been making decisions in regard to the drilling of the well without being told to do such by one of these PPI Technology employees.<sup>16</sup>

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<sup>13</sup> Please see affidavit of Mr. Johnson, Exhibit 1, Paragraph III.(9).

<sup>14</sup> Attached as Exhibit 5 please find bio of Mr. Thomas from PPI website.

<sup>15</sup> Please see affidavit of Mr. Johnson, Exhibit 1, Paragraph III.(11).

<sup>16</sup> Please see affidavit of Mr. Johnson, Exhibit 1, Paragraph III(10).

As one simple example of the day-to-day control that PPI Technology Services' employees exercised over Mr. Johnson on a daily basis, plaintiff submits an email from Jack Rankin (PPI Technology supervisor) from May 10, 2010 at 3:33 a.m. Mr. Rankin sent this email to Mr. Johnson and two other individuals. The email dealt with obtaining fuel from the Odinakachi fuel barge which was available to provide fuel at that time. Mr. Rankin gave specific instructions to Mr. Johnson and the other individuals that "I want you guys to take every liter of fuel anyone will give you and as fast as you can at all times."<sup>17</sup> This email is a simple example of the direct instructions and daily communications that Mr. Johnson received from fellow PPI Technology Services employees.

In regard to payment of wages while working for PPI Technology Services, Mr. Johnson was required to fill out basic time sheets each month. However, PPI Technology Services controlled the manner in which these time sheets were to be completed by Johnson and other PPI drilling supervisors. By email dated December 16, 2010, Mr. Rankin provided a lengthy email to numerous individuals providing details on the method by which the time sheets were to be completed. Significant for purposes of the motion before this Court, Mr. Rankin states in the email, "Most of you guys are near *another PPI guy*, sometimes in the same room with them, ask them for help or assistance. If you have any issues, contact Gallan or myself and we can help."<sup>18</sup>

Furthermore, in regard to payments made to Mr. Johnson, PPI Technology Services apparently continued to bill for his services even following his injury. Numerous emails from PPI Technology Services establish that Mr. Johnson's time sheets were submitted by PPI

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<sup>17</sup> Please see Exhibit 4, Page 22.

<sup>18</sup> Please see Exhibit 4, Pages 32 through 35. (emphasis added.)

presumably to its customer in order that Mr. Johnson would receive payment while he was recovering from his injury.<sup>19</sup>

Even after Mr. Johnson's injury occurred, PPI Technology Services individuals continued to communicate with him on a regular basis regarding all aspects of his employment. Mr. Ron Thomas visited Mr. Johnson while he was in the hospital in London.<sup>20</sup> Additionally, following his injury Mr. Johnson began to communicate on a fairly regular basis with general counsel for PPI Technology Services, Mr. Scott Kirkland.<sup>21</sup> Mr. Johnson estimates that he communicated approximately 10 to 15 times with Mr. Kirkland following his injury. Mr. Kirkland told Mr. Johnson that PPI Technology Services "would sue" if it needed to in order to make sure that Mr. Johnson's medicals were covered by its insurance.<sup>22</sup> Indeed, it was Mr. Scott Kirkland who informed Mr. Johnson that his full salary was being terminated in September 2011.

At no time did Mr. Johnson ever have contact with anyone who he knew to be employed by the "PSL" entity. Mr. Johnson was never given any contact name or information for anyone working for "PSL." The single and only time that Mr. Johnson ever heard the term "PSL" was during his phone conversation with Sandra Bircline when she said that PPI Technology Services ran its employees' payroll through Belize for tax purposes.<sup>23</sup> Mr. Johnson knew of himself and all other PPI drilling supervisors who worked with him in Nigeria simply as "PPI" employees. He viewed himself as a typical employee of the company and reported on a daily basis, multiple times, to his supervisors. His supervisors had the right to terminate him if he did not follow their specific instructions which were given to him on a daily basis. He did not provide his own travel to Nigeria nor did he arrange for his own hotel and/or transportation once he arrived in Nigeria.

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<sup>19</sup> Please see Exhibit 4, Pages 29 through 31.

<sup>20</sup> Please see affidavit of Mr. Johnson, Paragraph IV.(16).

<sup>21</sup> Attached as Exhibit 6 please find biographical information from PPI Technology Services' website on Mr. Scott Kirkland.

<sup>22</sup> Please see affidavit of Mr. Johnson, Exhibit 1, Paragraph IV.(15).

<sup>23</sup> Please see affidavit of Mr. Johnson, Exhibit 1, Paragraph V.(19).



The email address he used to communicate on a daily basis with his supervisors was provided to him by his employer PPI Technology Services.

**III. MR. JOHNSON WAS EMPLOYED BY PPI TECHNOLOGY SERVICES AND NOT 'PSL':**

**1). PSL Is A Shell Corporation With No Involvement In This Matter-**

The address listed for "PSL" is 35 Barrack Street, Third Floor in Belize City, Belize. This address is actually the office of Cititrust International Ltd. which creates and maintains for U.S. and other foreign corporations what are known as Belize 'International Business Corporations.'<sup>24</sup> The Cititrust web site explains that Belize allows for the formation of such "International Business Corporations" solely for the purposes of obtaining tax advantages.<sup>25</sup> Mr. Johnson submits that there is actually no "PSL" office located on the third floor of 35 Barrack Street. Instead, it is merely the offices of Cititrust serving as the agent for service for the entity created only on paper known analysis "PSL".

The "contract" upon which PPI Technology Services attempts to rely in having this court dismiss this matter was countersigned by what appears to be an entity called "SR Peter Management, Ltd.". Mr. Johnson is uncertain as to who or what this entity is that countersigned the PSL "contract". To the extent that PPI has submitted the contract to the court and is now attempting to rely it as a binding document, Plaintiff calls upon PPI to disclose to the court the name of such individual who purportedly counter-signed the PSL contract and also to provide detailed information about such individual including their employer, job title and job description.

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<sup>24</sup> Attached as Exhibit 7 please find newsletter for Cititrust listing its address. The address cannot be found on its website.

<sup>25</sup> Attached as Exhibit 8 please find referenced website material from Cititrust.

It is speculated that this "management" LTD is a management service provided by Cititrust as outlined on its web site.<sup>26</sup>

In short, Mr. Johnson submits that PSL is an entity which exists only on paper. It was a shell corporation formed in Belize strictly for the purposes of avoiding payroll taxes by PPI Technology Services. There is no evidence before this Court to suggest that PSL has any assets or operates itself as an ongoing entity. Rather, Mr. Johnson has submitted evidence to the Court indicating that the third floor of 35 Barrack Street is actually the offices of Cititrust. While undersigned counsel is well aware of traditional 'payroll employers', at least such entities typically have an office staff and/or employees of the entity that hire and manage such employees who then work for others. In this case all hiring aspects of Mr. Johnson were done by PPI in Houston and all management of his work and employment details were also handled by PPI. The question remains, what exactly did 'PSL' supposedly do in this case?

2). **Mr. Johnson Was Employed By PPI Technology Services-**

Mr. Johnson was a direct employee of PPI Technology Services. Indeed, the entity "PSL" cannot in any true fashion be said to have employed Mr. Johnson as there is little, if any, proof that the entity actually exists.

Even assuming that PSL operated as Mr. Johnson's payroll employer, the overwhelming evidence in this case indicates that PPI Technology Services was his actual employer. Under the Jones Act, Mr. Johnson can have two Jones Act employers. This is especially true when an entity such as PPI Technology Services exercises day-to-day control over all of his activities. PPI Technology Services was operating as his true, borrowing employer.

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<sup>26</sup> Attached as Exhibit 9 please find Cititrust website information indicated that is also provides "management" services of the international business corporations which it creates for its foreign clients.

i) **Johnson Was A Direct Employee Of PPI Technology Services:**

Mr. Johnson first urges this Court that it should disregard the PSL 'contract'. There is simply no evidence that the PSL entity, even assuming its existence, had anything to do with the employment of Mr. Johnson. He did not apply for employment with any person known to be employed by PSL nor did PSL or any of its employees make a conscious decision to hire Mr. Johnson. At least in the traditional payroll-employer cases there is an actual entity which interviews, hires and arranges for the employment of the individuals. In this case the PSL entity is a fiction created entirely by PPI Technology Services after it had already hired Mr. Johnson. It is important to remember that Mr. Johnson had actually been told he was hired by Mr. Gallan Williams before Sandra Birkline forwarded him the PSL contract. This certainly establishes an independent employment relationship between Mr. Johnson and PPI Technology Services irrespective of what his signature on the PSL contract means.

In Corsair v. Stapp Towing Company, Inc., 228 F. Supp.2d 795 (S.D. Tex. 2002), Judge Kent addressed a preprinted form similar to the PSL form plaintiff signed after becoming employed by PPI Technology Services. The form in Corsair stated that plaintiff declared himself to be an independent contractor employed by the defendant and as such plaintiff was instructing the defendant not to withhold any federal income tax withholding or Social Security taxes. Judge Kent recognized that the Jones Act protected seafaring workers against all manner of contracts and agreements which undertake to lessen or avoid the strict responsibilities imposed by Congress upon the employer of seamen.<sup>27</sup> Judge Kent held that the form was "void as a matter of public policy." Mr. Johnson urges this Court to similarly declare the PSL contract void as a matter of public policy under the logic of Corsair and Stevens. Since the PSL contract clearly is a form being used by PPI Technology Services to avoid its obligations under the Jones

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<sup>27</sup> 228 F. Supp.2d at 798-799 (quoting Stevens v. Seacoast Company, 414 F.2d 1032, 1038 (5th Cir. 1969)).

Act and indeed serves no other purpose, such PSL contract should not be recognized by this Court.

ii) **PPI Technology Services Was Certainly The Borrowing Employer Of Mr. Johnson-**

The factors set forth in Ruiz v. Shell Oil Company, 413 F2d 310, 312 (5<sup>th</sup> Cir. 1969) should be considered by the court to determine the existence of a borrowed-servant relationship.

Specifically, Ruiz notes the following factors which have been given great weight:

- (1) Who has control over the employee and the work he is performing, beyond mere suggestion of details or cooperation?
- (2) Whose work is being performed?
- (3) Was there an agreement, understanding, or meeting of the minds between the original and the borrowing employer?
- (4) Did the employee acquiesce in the new work situation?
- (5) Did the original employer terminate his relationship with the employee?
- (6) Who furnished tools and place for performance?
- (7) Was the new employment over a considerable length of time?
- (8) Who had the right to discharge the employee?
- (9) Who had the obligation to pay the employee?<sup>28</sup>

Regardless of whether or not the PSL contract form is valid, the Ruiz factors weigh overwhelming in favor of finding that plaintiff was the borrowed servant/employee of PPI.

Plaintiff was hired by PPI Technology Services before he entered into the contract with PSL. In other words, setting aside the PSL contract, plaintiff was still hired by PPI Technology Services by Mr. Gallan Williams. Sandra Birkline clearly acknowledged such when she continuously communicated with plaintiff and arranged for his travel to Nigeria. PPI

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<sup>28</sup> Ruiz, 413 F2d at 312-313.

Technology Services set up an email account for plaintiff and it arranged for his travel to Nigeria, hotel stay and transportation to the rig. Once plaintiff got to the rig he was then given his day-to-day instructions by PPI Technology employees, i.e. Galan Williams (a Vice-President) and Jack Rankin. He was required to send these same employees at least two daily reports in regard to the rig activities. The affidavit of Mr. Johnson establishes that his day-to-day activities were controlled by PPI Technology Services employees. The emails provided to this Court also establish such. The decision to hire Mr. Johnson was made by Mr. Gallan Williams and Mr. Johnson has indicated that he could have been terminated at any time by PPI Technology employees who acted as his supervisors. Following his injury PPI Technology employees visited him in the hospital and arranged for his medical treatment. Regardless of whatever role the PSL entity played in this case, the above facts show that a borrowed servant employment relationship was established between plaintiff and PPI Technology Services. Plaintiff can have two Jones Act employers for purposes of the Jones Act. See Spinks v. Chevron Oil Company, 507 F2d 216, 224 (Fifth Cir. 1975) and Guidry v. South Louisiana Contractors, Inc., 614 F2d 447 (Fifth Cir. 1980). Even assuming Johnson to be an employee of PSL, he was additionally an employee of PPI Technology Services.

Under each Ruiz factor, PPI Technology Services was acting as the borrowing employer of plaintiff throughout his assignments to Nigeria. There is no evidence in the record to suggest that PSL ever communicated with plaintiff or required anything on his part in exchange for its purported employment of plaintiff. Rather, all activities conducted in this case were done so between plaintiff and PPI Technology Services employees.

Several cases within this District have recognized a borrow servant relationship based on far less evidence. In Dennis v. Calm C's, Inc., 2011 WL 3898045 (E.D. La. 2011) Judge Lemelle

denied summary judgment on the borrowed employee status of plaintiff. Judge Lemelle went through each of the factors and noted that many of them, although not all, weighed in favor of establishing a borrowed employment relationship between plaintiff and Weeks. Judge Lemelle ultimately concluded that based upon the totality of the evidence the factors supported a finding that plaintiff was a borrowed servant of Weeks Marine thus attaching potential Jones Act liability to defendant Weeks Marine.<sup>29</sup> In Matias v. Taylors International Services, 2010 WL 3923884 (E.D. La. 2010) Judge Africk denied defendant's motion for summary judgment holding that there were genuine issues and material fact as to whether or not the defendant employed the plaintiff under the borrowed employer theory. Judge Africk relied upon the Ruiz factors and cited with approval that "a third person who borrows a worker may become the employer if the borrowing employer assumes sufficient control over the worker." Judge Africk also noted that control of the employee was the critical issue, citing Volyrakis v. M/V Isabelle, 668 F2d 863, 866 (Fifth Cir. 1982). Even though an individual had testified that he did not exercise any supervisory capacity over plaintiff, plaintiff's deposition testimony to the contrary created an issue of fact as to who actually supervised his work activities. In other words, plaintiff's deposition testimony alone that he was supervised by employees of the defendant appeared to create an issue of material fact.

**IV. PPI'S MOTION TO DISMISS UNDER FORUM NON CONVENIENS SHOULD BE DENIED:**

Mr. Johnson submits that Nigeria is not an available jurisdiction to him in this case. As PPI Technology acknowledges, it is defendant's burden to show that Nigeria is an available forum to plaintiff. PPI has not done so.

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<sup>29</sup> 2011 WL 3898045 at \*3.

Additionally, even assuming Nigeria is an available forum, the forum of this Court is clearly best suited for this litigation. Both the private interests and the public interest overwhelmingly weigh in favor of this Court retaining jurisdiction of this case.

1) **PPI Has Not Shown That Nigeria Is An Available Forum To Plaintiff:**

PPI Technology has acknowledged that it is their burden to show that Nigeria exists as a potential forum for Mr. Johnson. In attempting to do so, PPI cites this Court to several cases. All of these cases are greatly distinguishable from the facts of this case. Not one of the cases cited by PPI Technology involved an American citizen attempting to file claims against an American corporation in Nigeria. Because PPI has failed to meet its initial burden to show that Nigeria is an available forum for plaintiff in this matter, plaintiff submits that the private versus public interests do not need to be considered.

In BFI Group Divino Corporation v. JSC Russian Aluminum, 298 Fed. Appx. AD 7 (C.A. 2nd N.Y.) a California corporation filed suit in Nigeria arising out of the Nigerian government's failure to award it a contract which it had bid on against defendant JSC Russian Aluminum. This same plaintiff also filed suit in the United States District Court for the Southern District of New York. The Second Circuit held that Nigeria did provide an adequate forum for plaintiff to litigate its claim. Indeed, the entire claim arose out of bids by the plaintiff and defendant for the purchase of a Nigerian government-owned company. Obviously the facts of this case are totally distinguishable from those of BFI Group Divino Corporation.

In Chiazor v. Transworld Drilling Company, 648 F2d 1015 (Fifth Cir. 1981) the lower court had dismissed claims by Nigerian plaintiffs for the death of a Nigerian oil worker which occurred off the coast of Nigeria. The Fifth Circuit specifically noted that the individual had received medical care while in Nigeria and most of the witnesses were also located in Nigeria.

The court significantly noted that the drilling rig had been permanently stationed off the coast of Nigeria since 1964. Most significantly, the Fifth Circuit acknowledged that the overwhelming preponderance of the factors in the case favored the application of Nigerian law rather than American law as governing the employment and the accident in question. The court relied heavily, if not solely, upon the fact that Nigerian law would ultimately need to be applied in the case, and the case involved a Nigerian plaintiff.

United Bank for Africa PLC v. Coker, 2003 WL 22741575 (Southern District New York 2003) involved claims of a Nigerian Bank suing its former New York branch manager alleging violation of RICO claims as well as other claims. Significantly, the court noted that an earlier filed suit had already been commenced by the manager against the bank in Nigeria. The court placed great importance on the fact that the misconduct had been alleged against not only the Nigerian bank but also the Nigerian State Security Service, an arm of the Nigerian state. Again, such facts are in no way similar to the facts before this court.

Abdullahi v. Pfizer, Inc., 2005 WL 1870811 (S.D.N.Y. 2005) involved a class action being brought on behalf of Nigerian residents who were filing suit against Pfizer for alleged violation of International Law in regard to medication which had been provided to the Nigerian plaintiffs. All of the actions took place in Nigeria and the entire class of plaintiffs was Nigerian citizens.

Not one of the above cases cited by PPI actually recognizes that an American citizen suing an American corporation would be able to do so in Nigeria. Unless and until PPI can show that Mr. Johnson has an actual remedy available to him in Nigeria, PPI has not met its initial burden for this court to consider the private and public interests in the choice of available forums.



2) **Even If Nigeria Is Available As A Forum, This Court Is Clearly Best Suited To Hear This Litigation:**

The plaintiff attaches hereto the sworn affidavit of Professor Okechukwu Oko.<sup>30</sup> Professor Oko is an expert in Nigerian law and the Nigerian judicial system. The affidavit is self-explanatory and documents the impossibility of Mr. Johnson bringing suit in Nigeria in regard to this claim. In Costinel v. Tidewater, 2011 WL 446297, Judge Barbier recognized Professor Oko as an expert in Nigerian law and, indeed, relied upon the opinion of Professor Oko in determining that plaintiff, a Romanian seaman who had filed suit in the United States, did not have a remedy in Nigeria.

In considering the private interests, each of these weighs significantly in favor of hearing this matter in this forum. In this Court there is ease of access to sources of proof. More specifically, Mr. Johnson's medical providers can be deposed under the Federal Rules of Civil Procedure. Mr. Johnson has the ability to obtain deposition testimony from witnesses who may be unable to attend trial, and such depositions will be recognized by this Court and presented to the jury. Mr. Johnson lives in Mississippi and the main witnesses are American citizens, mostly residents of Mississippi, working for Transocean and/or its related entity Global Santa Fe Offshore Services. All of the 'proof' Mr. Johnson needs to prove his claim is likely to be located in the United States in the form of witness testimony and post incident documentation which is likely to be located in Houston. To the extent the rig is relevant, it may be photographed as is customary in such cases. Unless PPI plans on calling the Nigerian rebel gunmen as witnesses at trial, plaintiff certainly does not intend to do so.

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<sup>30</sup> Attached hereto as Exhibit 10 please find Sworn Affidavit of Professor Okechukwu Oko, an expert in Nigerian law and its legal process.

This Court allows for the compulsory process of making witnesses attend and provide testimony at trial. Both plaintiff and defendants in this case can compel witnesses to provide testimony. In Nigeria, Professor Oko explains that there is simply no way to ensure that witnesses are compelled to provide testimony. Moreover, the idea of requiring plaintiff to file his claim in a Nigerian court only to then attempt to enforce a Nigerian subpoena (assuming such exists) in the United States is unreasonable.

In this Court there are few other practical problems that make trial of this case difficult or expensive. In contrast, the idea of litigating this claim in Nigeria presents overwhelming practical problems. Not only will it be impossible to obtain and present evidence in court, but it will be an extensively delayed process and grossly expensive for both parties.<sup>31</sup>

In regard to the public interests, this forum is greatly favored over the Nigerian judicial system. This Court has a significant "local interest" in having this trial proceed in the United States. In contrast, Nigeria has absolutely no interest in litigating a dispute between an American citizen and his American employer. If anything, Nigeria would presumably be extremely hostile to this claim given that rebels from the Delta region caused the injury to Mr. Johnson.

In regard to familiarity with the applicable law, obviously this court is well versed in Jones Act and maritime law. In contrast, it is unknown whether a trial judge in Nigeria would have any working knowledge of the Jones Act and maritime law.

Finally, there are no foreseen problems in the application of the Jones Act and maritime law to this matter by this forum. In contrast, Mr. Johnson could foresee numerous problems in Nigeria attempting to apply Jones Act and maritime law to his claims. Nigeria simply has no

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<sup>31</sup> As an aside, PPI has not even consented to process in Nigeria. Certainly PPI would object to process and adjudication against itself in Nigeria, thus further proving to this Court that Johnson truly does not have a remedy available to him in Nigeria against PPI.

interest in presiding over a dispute between Mr. Johnson and his American defendant employer and presumably its application of the Jones Act and maritime law would reflect such.

Plaintiff directs this Court to the recent case of Costinel. In Costinel Judge Barbier addressed the Jones Act claims of a Romanian citizen which had been filed in the United States Eastern District arising out of injuries he sustained off the coast of Nigeria. Judge Barbier concluded that Nigeria essentially was not an available forum in which the Romanian citizen could have pursued his remedies. Certainly as an America citizen suing an American corporation, Mr. Johnson would have as much difficulty seeking justice through Nigeria as would Costinel.

### **CONCLUSION**

The PSL entity in this case is a fiction created by PPI Technology Services to operate as an offshore accounting entity presumably to avoid payroll taxes. Mr. Johnson was hired by Gallan Williams, an employee and Vice-President of PPI Technology Services, to work for PPI Technology Services. All of Johnson's subsequent actions took place between him and PPI Technology Services employees, including at times its President, Ron Thomas. As mentioned previously, in the typical payroll employer situation at least there is an operating entity that directs the employee where to report for work. In this case, the PSL entity was entirely passive and never interacted in any form or fashion with plaintiff. The single basis for claiming that PSL had anything to do with this case is the PSL 'contract' that Sandra Bircline required plaintiff to sign only after she told plaintiff that "we run all our employees through Belize".

At a minimum, Mr. Johnson has set forth abundant facts to establish that he was the borrowed employee by PPI Technology Services. Every one of the Ruiz factors weigh heavily in

his favor including, most importantly, PPI Technology Services' day-to-day control over his daily activities.

In regard to PPI Technology's motion under Forum Non Conveniens, Mr. Johnson is the last person in the world who should be required to litigate his claim in Nigeria, even assuming such a jurisdiction was available to him in this matter. Mr. Johnson was shot with an AK-47 by young rebels in Nigeria. The suggestion that he return to that country in order to litigate his dispute with his American employer is unrealistic at best. Even assuming Nigeria was available to Mr. Johnson as a possible jurisdiction for this case, the private and public interest factors overwhelmingly weigh in favor of this Court retaining jurisdiction of the case. The affidavit of Professor Oko as well as the previous decision of *Constalier* outline the practical impossibilities which would be faced in attempting to litigate this case in Nigeria.

For all such reasons, PPI Technology Services' motion to dismiss should be denied.

Respectfully Submitted:

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served on all counsel of record by electronic means or depositing same in the U.S. Mail, postage prepaid and properly addressed this 20<sup>th</sup> day of March, 2012.