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Jurisdiction	U.S.A.
Tribunal	U.S. District Court for the Middle District of North Carolina
Date of the decision	28 February 2025
Case no./docket no.	1:23CV176
Case name	*Transportes Peñón Blanco S.A.P.I. de C.V. et al. v. Volvo Group North America, LLC et al.*

Recommendation of United States Magistrate Judge

This matter is before the Court on Defendants' Joint Motion to Dismiss. For the reasons that follow, the Court concludes that this case should be dismissed for lack of subject matter jurisdiction, because Plaintiffs failed to include necessary and indispensable parties, specifically the Mexican corporations with whom they contracted and whose employees are alleged to have made the negligent or fraudulent misrepresentations at issue, and adding them would destroy diversity. 1

I. Factual Allegations and Procedural Background

This case involves claims related to the sale of 105 Volvo trucks and Mack trucks to Plaintiff Transportes Peñón Blanco Sapi De C.V. («TPB»), which is a Mexican trucking corporation based in Mexico, with the financing for the purchases personally guaranteed by TPB's Owner and CEO, Plaintiff Gerardo Angel Tamez Tamez, a citizen and resident of Mexico. Plaintiffs are both citizens of Mexico for purposes of diversity jurisdiction. Plaintiffs ultimately purchased 83 Volvo trucks and 22 Mack trucks, but now contend that the trucks failed to meet Mexican industry standards and failed to perform as required and expected. 2

Plaintiffs allege that Defendants Volvo Group North America, LLC («Volvo North America») and Mack Trucks, Inc. («Mack») manufactured the trucks. According to the Amended Complaint, Defendant Volvo North America is a Delaware LLC headquartered in Greensboro, North Carolina, whose only member is Mack Trucks, Inc. Mack Trucks, Inc. is a Pennsylvania corporation also headquartered in Greensboro, North Carolina. Volvo North America and Mack are citizens of North Carolina, as well as Delaware and Pennsylvania respectively. 3

Plaintiffs allege that the trucks were sold by Volvo Group Mexico, S.A. de C.V. Inc. and its predecessors Volvo Distribuidora de Mexico SA de CV, and Volvo Industria de Mexico, S.A. de C.V (collectively, «Volvo Mexico»); and Highway Trucks S.A.P.I. de C.V («Highway Trucks»); with financing by VFS Mexico, S.A. de C.V., SOFOM, E.N.R. («Volvo Finance Mexico»), all Mexican corporate entities. These Mexican corporate entities are referred to collectively as the «Volvo Mexico entities.» 4

In the original Complaint, Plaintiff asserted federal jurisdiction based on federal question jurisdiction, alleging a breach of contract claim under the United Nations Convention on Contracts for the International Sale of Goods («CISG»). The Complaint describes a Proposal, attached to the original Complaint as Exhibit 2 in Spanish, as well as Purchase Orders, pursuant to which Plaintiffs agreed to purchase the Volvo trucks. Plaintiffs also raised factually-related claims for fraud, misrepresentation, and failure-to-warn, which Plaintiffs argued the Court could consider under supplemental jurisdiction because they formed the same case or controversy as the breach of contract claim under the CISG. Plaintiffs listed as Defendants both Volvo North America and Mack, but also included Volvo Mexico and Volvo Finance Mexico. 5

Upon consideration of an earlier motion to dismiss as to that original Complaint, the Court found that the CISG likely would not apply, because it appeared from the allegations that the contract at issue involved Mexican-based Plaintiffs and a Mexico-based seller (the Volvo Mexico entities). The Court further noted that: 6

> if Plaintiffs are seeking to hold Defendant Volvo North America responsible for activities of Volvo Mexico as a related company, Plaintiff would need to allege sufficient facts to support disregard of the corporate entity, but Defendant has not included such a claim or such factual allegations in the Complaint. See also *United States v. Bestfoods*, 524 U.S. 51, 69 (1998) («[I]t is entirely appropriate for directors of a parent corporation to serve as directors of its subsidiary, and that fact alone may not serve to expose the parent corporation to liability for its subsidiary's acts.»); *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 349 (4th Cir. 1998) (noting that under North Carolina law, «[a] corporate parent cannot be held liable for the acts of its subsidiary unless the corporate structure is a sham and the subsidiary is nothing but a 'mere instrumentality' of the parent» and that «[i]n order to find that a subsidiary is a mere instrumentality, North Carolina requires plaintiffs to show that the parent exercises control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own.» (internal quotations omitted)). Similarly, under federal common law, the corporate veil may be pierced «where (1) the shareholder dominates and controls the organization and (2) imposing such liability is needed to avoid injustice.» *Channing v. Equifax, Inc.*, No. 5:11–CV–293–FL, 2013 WL 593942, at *3 (E.D.N.C. Feb. 15, 2013) (citations and quotation marks omitted).

(Feb. 27, 2024 Order at 12–13.) The prior Order also noted that even if the Court accepted Plaintiffs' contention that the Mexican sellers and United States manufacturers acted as one, Plaintiffs had failed to address the fact that the sellers' place of business for purposes of the CISG is not the country where it is incorporated, but is instead its place of business, and the relevant place of business is «that which has the closest relationship to the contract and its performance.» (Feb. 27, 2024 Order at 14.) The Court therefore permitted Plaintiffs an opportunity to file an Amended Complaint to clarify the applicability of the CISG and the alleged relationship between the entities. In response, Plaintiffs filed the Amended Complaint at issue in the present Motion, dropping Volvo Mexico and Volvo Finance Mexico as named 7

defendants, alleging that Volvo Mexico and Volvo Finance Mexico acted as agents of Volvo North America and Mack, omitting any CISG claim, and basing federal subject matter jurisdiction on diversity of citizenship.

The Amended Complaint alleges that Volvo Mexico and Volvo Finance Mexico «worked in concert with Volvo NA and Mack to sell [ ] defective Trucks manufactured in the United States to Plaintiffs for use in Mexico.» The Amended Complaint alleges that Defendants induced Plaintiffs to purchase the trucks «directly and through their agents» Volvo Mexico, Volvo Finance Mexico, and Highway Trucks. 8

According to the Amended Complaint, negotiations for the sale of trucks began with in-person meetings taking place at TPB's facilities in Mexico in 2012. The meetings continued into early 2013 and included assurances and guarantees by Volvo Mexico's Managing Director Matthew Walsh. The Amended Complaint alleges that in early 2013, «José (Pepe) Díaz (Commercial Manager North Region), presented Plaintiffs with a formal proposal» for the sale of Volvo brand trucks. The Amended Complaint alleges that «Volvo Mexico ... presented the Proposal to Plaintiffs» on March 11, 2013. 9

Some time at or shortly after the end of March 2013, «José (Pepe) Díaz returned to TPB» and presented a «formal purchase order,» and Plaintiffs agreed to purchase a total of 80 Volvo trucks within three years on an ongoing basis. According to the Amended Complaint, the Purchase Order was «signed at TPB's office with Volvo employees Óscar de Vega and Carlos Carrera.» In total, Plaintiffs purchased 83 Volvo trucks and 22 Mack trucks during the course of the Purchase Orders at issue in this case. The first units were delivered in July 2013. 10

The Amended Complaint alleges that almost immediately after the first order, Volvo Mexico Director Walsh, Commercial Director de Vega, and Sales Director Carrera made representations about the «iShift» transmission to induce Plaintiffs to purchase trucks with the «Volvo powertrain iShift transmission and Volvo engine.» Plaintiffs allege that at a subsequent meeting at TPB in Mexico in 2014, there was some question regarding the prices for iShift transmissions on the trucks, and Volvo Mexico Director Walsh called «his boss Goran Nyberg,» who was «President of Volvo Trucks North America,» to discuss the price. The Amended Complaint alleges that Volvo Mexico Director Walsh then offered the iShift transmissions for the same price as manual transmissions, and TPB agreed and signed the Purchase Order for trucks with the iShift transmissions. In addition, as part of the ongoing relationship, the CEOs of Volvo Mexico from 2015–2019 visited TPB's facilities in Mexico, and invited Plaintiffs to visit US-based manufacturing facilities and to speak with «Goran Nyberg (President Volvo Trucks North America (2012–2018).» 11

However, according to the Amended Complaint, the trucks that were delivered did not comply with Mexican industry and regulatory standards. Specifically, the Amended Complaint notes that in Mexico, trucking companies will use a single truck to haul two trailers, one behind the other, with a maximum combined gross weight of 75.5 metric tons. The Amended Complaint alleges that Mexico Director Walsh, Commercial Director de Vega, and Commercial Manager Diaz represented to Plaintiffs that the trucks that were sold to Plaintiffs could operate in Mexico and would be able to pull two trailers at once. However, the Amended Complaint 12

alleges that the United-States-manufactured trucks «were not configured or capable of hauling fully loaded» trailers in this manner and that Defendants knew but failed to disclose this fact to Plaintiffs. The Amended Complaint alleges that because the trucks could not haul two trailers at once at the maximum allowed gross weight, attempts to do so put extreme strain on the engines and other mechanical features of the trucks, resulting in premature breakdown of the trucks in addition to ongoing underperformance by Mexican industry standards, all of which resulted in economic loss to Plaintiffs' business.

The Amended Complaint alleges that «Defendants» made repairs to the trucks when they broke down, though these repairs took place in «Volvo and Mack repair shops in Mexico» and were made by Volvo Mexico and overseen by its Aftermarket and Service Director, Paul Camacho. At some point Camacho visited TPB along with Volvo Mexico's CEO, and Camacho «told Plaintiffs that the trucks were failing because they were not configured or capable of hauling fully loaded, double-articulated trailers.» 13

The Amended Complaint alleges that after discovering the trucks' underperformance, Plaintiffs attempted to enforce a previously-agreed-upon buyback agreement, which was part of Plaintiffs' contract with Volvo Mexico, which guaranteed re-purchase of the trucks from Plaintiffs at a set price, but the CEOs of Volvo Mexico refused to honor the agreement. Plaintiffs then filed the present suit. Plaintiffs contend that they relied on the representations of Defendants and their agents in entering into the Purchase Agreements, and that Defendants deliberately misrepresented the specifications of the trucks in order to obtain permits and plates for the trucks to operate in Mexico. 14

Based on this conduct, Plaintiffs raise claims for fraud, misrepresentation, and failure to warn, purportedly based on Mexican tort law. As noted above, the Amended Complaint dropped the prior claim under the CISG, and now bases jurisdiction on diversity of citizenship, based on the presence of foreign entities on one side (the Mexico-based Plaintiffs) and U.S. entities on the other (Defendants Volvo North America and Mack). 15

Defendants move to dismiss the Amended Complaint in its entirety pursuant to the doctrine of *forum non conveniens* because Mexico is the more appropriate forum for this lawsuit and pursuant to Federal Rules of Civil Procedure 12(b)(7) and 19 for failure to join a necessary and indispensable party, specifically Volvo Mexico and Volvo Finance Mexico, and that adding these entitites would destroy complete diversity and thereby deprive this Court of subject matter jurisdiction. For the reasons set out below, the Court concludes that the Motion to Dismiss should be granted, based on the failure to join a necessary and indispensable party that would destroy diversity jurisdiction, and that this Court therefore lacks subject matter jurisdiction. As a result, the Court need not consider the alternative request based on *forum non conveniens.* 16

II. Discussion

Under Federal Rule of Civil Procedure 19, an entity is required to be joined, if feasible, where that entity «claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may ... as a practical matter impair or impede 17

the person's ability to protect the interest or ... leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.» Fed. R. Civ. P. 19(a)(1)(B). «Though a nonparty may formally claim an interest in an action, a 'court with proper jurisdiction may also consider *sua sponte* the absence of a required person and dismiss for failure to join.'» *Gunvor SA v. Kayablian*, 948 F.3d 214, 220 (4th Cir. 2020) (quoting *Republic of Philippines v. Pimentel*, 553 U.S. 851, 861 (2008)).

18 «If the party is necessary but joining it to the action would destroy complete diversity, the court must decide under Rule 19(b) whether the proceeding can continue in that party's absence.» *Id*. at 221 (internal brackets omitted) (quoting *Home Buyers Warranty Corp. v. Hanna*, 750 F.3d 427, 433 (4th Cir. 2014)). To determine whether the party is indispensable, the factors to be considered include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

19 Fed. R. Civ. P. 19(b). If, after considering these factors, the court deems the absent party to be indispensable, but the party would destroy complete diversity, the matter must be dismissed. *Gunvor*, 948 F.3d at 218–19, 221.

20 Alien citizenship of any kind on both sides of a controversy destroys diversity. See *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 580 n. 2 (1999) («The foreign citizenship of defendant Ruhrgas, a German corporation, and plaintiff Norge, a Norwegian corporation, rendered diversity incomplete.»); *Gunvor*, 948 F.3d at 221 (upholding dismissal under Rule 19 where the plaintiff was a citizen of Switzerland, the named defendants were United States citizens, and the indispensable party to be made a defendant was a citizen of the British Virgin Islands); *Gen. Tech. Applications, Inc. v. Exro Ltda*, 388 F.3d 114, 120 (4th Cir. 2004) (holding that «[t]he alien citizenship on both sides of the controversy destroys diversity» where a defendant and plaintiff were both from Colombia).

21 The decision of whether a party is necessary and indispensable «must be made pragmatically,» and the determination is entrusted to the sound discretion of the district court. See *Gunvor*, 948 F.3d at 219 («We review a district court's Rule 19 dismissal for abuse of discretion, reviewing the underlying findings of fact for clear error.»).

> When adjudicating a motion under Federal Rule of Civil Procedure 19, a district court asks first whether the nonjoined party is necessary under Rule 19(a) and then whether the party is indispensable under Rule 19(b). See *Nat'l Union Fire Ins. Co. v. Rite Aid of S.C., Inc.*, 210 F.3d 246, 249 (4th Cir. 2000). If the nonjoined party is necessary and indispensable to the action, but joinder would destroy subject matter jurisdiction, the court must dismiss the action. See *Owens-Illinois, Inc. v. Meade*, 186 F.3d 435, 440 (4th Cir. 1999). Dismissal, though «a drastic remedy that should be employed only sparingly,» is «required» if the nonjoined party «is both necessary and indispensable.» *Home Buyers Warranty Corp. v. Hanna*, 750 F.3d 427, 433 (4th Cir. 2014) (alteration and internal quotation marks omitted). That determination «must be made pragmatically, in the context of the 'substance' of each case, rather than by procedural formula.» *Provident Tradesmens Bank & Tr. Co. v. Patterson*, 390 U.S. 102, 119 n. 16, 88 S. Ct. 733, 19 L. Ed. 2d 936 (1968).

Gunvor, 948 F.3d at 218–19.

22 While the analysis of whether a party is indispensable is not mechanical and must be conducted in the light of the facts of each case, «a contracting party is the paradigm of an indispensable party.» *Id*. at 221 (internal quotation omitted); see also *Weatherford v. E.I Dupont de Neumours & Co.*, No. 4:22-cv-01427-RBH, 2023 WL 11015357, at *9 (D.S.C. Sept. 27, 2023) («Although framed by the multi-factor tests of Rule 19(a) & (b), a decision whether to dismiss must be made pragmatically, in the context of the substance of each case, rather than by procedural formula.» (internal quotation omitted)).

23 In considering this issue in the present case, the Court is guided by the Fourth Circuit's recent decision in *Gunvor SA v. Kayablian*, cited above. In *Gunvor*, the defendants, two United States citizens and their LLC, which was also a United States entity, approached the plaintiff, a Swiss corporation, about creating an oil purchasing deal using a subsidiary of the LLC, Nemsss, which was a British Virgin Islands corporation, and Nemsss's subsidiaries in Iraq. According to the complaint, Nemsss acted as a «middleman, enabling the flow of money from Gunvor to the Iraqi-based companies and facilitating the flow of fuel oil from the refinery back to Gunvor in exchange.» *Gunvor*, 948 F.3d at 219. The Fourth Circuit noted that, «[e]ven construing the agreement as a broader joint venture, Nemsss was its keystone.» *Id*. The complaint nevertheless identified Nemsss as a nonparty and sought to impose liability on the defendants for the nonparty subsidiaries' acts. *Id*. at 218. However, «[t]he complaint articulate[d] Gunvor's fundamental grievance: that it made the payments required by the [contracts] but did not receive the benefit of its bargain.» *Id*. at 219–20.

24 In short, the Fourth Circuit held that, because the contested contracts were with and required performance from Nemsss, it was a necessary and indispensable party. As described by the Fourth Circuit, the lower court found that «Nemsss would be a necessary and indspensable party, notwithstanding Gunvor's artful pleading to try to avoid that reality,» and the lower court «reasoned that the 'core' of the parties' arrangement was the agreement for Gunvor to purchase quantities of oil from Iraq, which Gunvor was to do through Nemsss.» *Id*. at 218 (internal quotation marks and ellipses omitted). The lower court went on to note «that these contracts are between Gunvor and Nemsss, not the individuals who are named as

defendants,» and the Fourth Circuit noted that «[b]ecause joining Nemsss, a foreign corporation, would destroy the diversity jurisdiction, the district court dismissed the complaint without prejudce.» *Id*. (internal quotation marks omitted). The Fourth Circuit affirmed, concluding that:

> Behind the smoke and mirrors of Gunvor's «artful pleading,» as the district court put it, Gunvor signed contracts with Nemsss and now seeks damages from the [defendants] for Nemsss's alleged failure to perform under those contracts. See *F&M Distribs., Inc. v. Am. Hardware Supply Co.*, 129 F.R.D. 494, 498 (W.D. Pa. 1990). Litigating this dispute would require the court to adjudicate Nemsss's rights and obligations under the Fuel Oil Contracts, and the outcome would turn on Nemsss's conduct pursuant to them. Consequently, «fairness dictates» that Nemsss «be given the opportunity to protect its separate and distinct interest as a party.» *Nat'l Union*, 210 F.3d at 251. Nemsss is therefore necessary under Rule 19(a)(1)(B)(i).

Gunvor, 948 F.3d at 221.

The Fourth Circuit went on to consider the factors under Rule 19(b) and, after determining that Nemsss was not just necessary but indispensable, upheld the dismissal on the grounds that the indispensable party would have destroyed diversity. *Id*. at 222. A similar result should attain here. **25**

The Court first notes that this case was initially brought under a theory of a «fundamental breach» of contract under the United Nations Convention on Contracts for the International Sale of Goods, and the original Complaint listed the Mexican entities as the contracting parties and as defendants. While the parties and claims have changed between the two complaints, the underlying facts have not. Thus, it is apparent that the claims sound primarily in a contract dispute between Plaintiffs and the Mexican entities. **26**

Moreover, even looking just at the Amended Complaint, the facts as alleged all involve employees and officers of the Mexican businesses making contractual assurances in Mexico, providing products in Mexico, repairing those products in Mexico, and continuing to discuss the terms of the contract in Mexico. While the claims in the Amended Complaint are not specifically for breach of contract as they were in the initial Complaint, the claims nevertheless revolve around contract negotiations and performance for which the Mexican parties were undoubtedly the keystone. The Amended Complaint alleges that Commercial Manager Diaz «presented Plaintiffs with a formal proposal with warranties extended to five (5) years or 500,000 miles and a four (4)-year guaranteed buyback program,» that a «Customer Proposal» was «prepared by Volvo Distribution [Volvo Distribuidora de Mexico, S.A. de C.V.] and Volvo Mexico, which presented the Proposal to Plaintiffs on March 11, 2013,» that Commercial Manager Diaz presented the formal purchase order to Plaintiffs, that the formal purchase order was signed by Plaintiffs and by Commercial Director de Vega and Sales Director Carrera, that the CEOs of the Mexico entities «refused to honor the agreement» as to the buyback, that Defendants' conduct «caused a fundamental breach of contract with Plaintiff TTB,» that Plaintiff TTB «was deprived of what it was entitled to expect,» and that Defendants were «[i]n breach» of their obligations to Plaintiffs. Thus, as in *Gunvor*, the core of this dispute **27**

involves Plaintiffs' contracts with Volvo Mexico, Volvo Financing Mexico, and Highway Trucks. As contracting parties, the Mexican entities are the paradigm of not just necessary parties, but indispensable parties. See *Gunvor*, 948 F.3d at 221–22. What was said in the contract negotiations, how that information was conveyed, the performance of the contract, and the nature of ongoing repairs, payments, and re-negotiations under the contract will all be crucial, and Volvo Mexico, Volvo Finance Mexico, and Highway Trucks' direct involvement in, and concern with, that contractual analysis render them necessary and indispensable.

Similarly, the Court notes that to the extent that the claims sound in tort, for fraudulent misrepresentation or negligent misrepresentation, all of the alleged misrepresentations specified in the Amended Complaint are alleged to have been made by officers or employees of the Mexican entities: Volvo Mexico Director Walsh, Commercial Director de Vega, Sales Director Carrera, Commercial Manager Diaz, and the CEOs of the entities. Thus, any finding of tortious conduct by these employees would impose liability on their employer(s), the Mexican entities. What the employees said, what they knew, and the facts surrounding the alleged misrepresentations will be crucial to the tort claims, and as their employers, with direct liability for such torts, the Mexican entities are necessary and indispensable. **28**

Moreover, with specific reference to the Rule 19 analysis, it is clear that these Mexican entities are both necessary and indispensable. **29**

First, under Rule 19(a), the Court finds Volvo Mexico and Volvo Finance Mexico to have an interest relating to this action and, as a practical matter, their absence may impair or impede their ability to protect that interest. As noted above, while a necessary party may directly state such an interest, a court may find such an interest *sua sponte.* See *Gunvor*, 948 F.3d at 220. Under the facts as alleged in the Amended Complaint, it is reasonably obvious that the parties to the contract, whose obligations under and potential liability arising from their performance will impact them directly, have an interest in this matter. Similarly, the individuals alleged to have made misrepresentations are employees of Volvo Mexico, and any finding of tortious conduct by its employees would impact Volvo Mexico directly. Plaintiffs' conclusory allegations that Volvo Mexico, Volvo Finance Mexico, and Highway Trucks were acting as agents of Volvo North America and Mack would not change the separate interests that these Mexican entities would continue to have on their own behalf. Additionally, when they were listed as defendants in this matter, Volvo Mexico and Volvo Finance Mexico appeared via counsel and filed motions seeking to protect their interests in conjunction with the other Defendants. Moreover, despite being strategically dropped as defendants, Volvo Mexico and Volvo Finance Mexico continue to be represented by counsel in this matter and continue to assert their interests here.[1] As in *Gunvor*, «fairness dictates» that they «be given the opportunity to protect [their] separate and distinct interest[s] as a party.» *Gunvor*, 948 F.3d at 221 (internal quotation omitted)). The Court thus finds that these Mexican entities have **30**

[1] For example, Volvo Finance Mexico, by Declaration of its Managing Director, contends that it reached a settlement agreement with Plaintiffs related to Plaintiffs' failure to pay, and that any further disputes or claims between it and Plaintiffs would be pursuant to the settlement agreement. Volvo Mexico, by Declaration of its General Counsel, presents copies of the Sales Agreements and Purchase Orders that it contends would control the claims against it. The Court has not considered the substance of these assertions, but they clearly reflect the assertion of an interest in this matter.

interests in this matter and that absent their participation those interests may not be adequately protected.

Next, under Rule 19(b), the Court finds that, weighing all factors, Volvo Mexico and Volvo Finance Mexico are indispensable parties. As just noted, as contracting parties and as employers of the individuals alleged to have engaged in misrepresentations, any judgment rendered in their absence would prejudice them to the extent it would find them liable for wrongful inducements, misrepresentations, breaches of the agreement, or failures to warn during the negotiation process, which they were a part of. 31

Relatedly, the Court finds no reasonable ability to lessen this prejudice. Because the Amended Complaint, whether artfully drafted or not, attempts to hold Defendants liable directly for the conduct of the Mexican entities, a ruling against that conduct that finds the named Defendants liable will likewise have an impact on the Mexican entities' ultimate liability. 32

While a judgment rendered in these entities' absence would appear to be adequate under the third factor in the sense that Defendants could hypothetically be held liable wholly for the conduct of the absent parties, failure to join the Mexican entities «could lead to parallel or subsequent litigation or indemnification actions, all of which could produce incomplete, inconsistent, and inefficient settlement of this dispute» which would in fact render the judgment inadequate under the Rule. See *Gunvor*, 948 F.3d at 222. 33

Finally, as to the fourth factor, Plaintiffs have an adequate remedy if the action were dismissed: bring suit in Mexico, where Plaintiffs are located, where the Mexican entities are located, where the relevant conduct occurred, and where the courts will have better knowledge of the intricacies of the Mexican tort law on which Plaintiffs purport to base their claims. 34

For these reasons, the Court finds that Volvo Mexico and Volvo Finance Mexico are necessary and indispensable parties whose joinder would destroy complete diversity jurisdiction in this case. Therefore, Defendants' Motion to Dismiss under Rule 12(b)(7) and Rule 19 should be granted and this matter should be dismissed. 35

III. Conclusion

IT IS THEREFORE RECOMMENDED that the Defendants' Motion to Dismiss be GRANTED under Federal Rules of Civil Procedure 12(b)(7) and 19 for failure to join an indispensable party whose joinder would destroy complete diversity jurisdiction in this case. 36