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RECENT TRENDS IN INTERNATIONAL PRODUCT LIABILITY LITIGATION

THE UNITED STATES COURTS COLLECTIVELY ARE BECOMING THE "WORLD'S COURTHOUSE."

Attracted by the high quality and efficiency of U.S. courts, the increasing willingness of U.S. courts to exercise jurisdiction over international disputes, and the perception that larger damage awards and punitive damages may be available in U.S. courts, non-U.S. litigants are filing cases in U.S. courts with increasing frequency. U.S. companies named as defendants traditionally reacted to such lawsuits by filing motions to dismiss in favor of the non-U.S. courts based on the doctrine of *forum non conveniens*. However, changed conditions in many countries have now made such motions much more difficult or, worse, ill-advised.

Corporate litigants (particularly product manufacturers and distributors with operations in many different countries) and their lawyers need to recognize and understand the unique opportunities and challenges of international litigation in the 21st century. As such corporations navigate this changed litigation environment, they should be well versed in the many procedural challenges, and the strategies for overcoming those challenges, that could affect the ultimate outcome of the litigation. This article will focus on a few of the challenges that have gotten increasing attention by the courts in recent years: key considerations in deciding where to sue or be sued, challenges of cross-border discovery, and frequently overlooked tools for managing parallel proceedings in non-U.S. and U.S. courts.

WHERE TO SUE OR BE SUED

When a U.S.-based company finds itself defending against claims brought in the U.S. by residents of another country for events that allegedly occurred there, the company's first reaction may be (and historically often has been) to seek dismissal of the case in favor of the courts of that country, based on the doctrine of *forum non conveniens*. The reasons for that reaction may have included the perception that the non-U.S. legal system almost always was more attractive for a defendant than the U.S. system because the non-U.S. system often did not recognize legal theories such as collective actions or strict liability that are more common in the U.S.; did not permit large damage awards or punitive damages; did not allow wide-ranging discovery; or did not permit contingency-fee agreements with plaintiffs' counsel.

As recent experience has shown, however, litigating can be extremely difficult in a faraway court without a truly functioning judiciary; in the judicial system of an autocratic regime where transparency or independence are lacking due to rampant politicization or corruption; where the ability to conduct meaningful discovery into the non-U.S. plaintiffs' claims is limited; and/or where laws are enacted specifically to disadvantage nonresident companies. Thus, a U.S. company may prefer (as many now do, given their other options) to defend against non-U.S. claims brought in the United States, where the company will have greater assurance of having, at the very least, the benefit of due process, familiar rules and procedures, broader discovery rights, and an independent judiciary. Similar considerations must factor into a U.S.-based company's decision about where to bring suit as the plaintiff if it is presented with the option to sue a non-U.S.-based defendant in either a U.S. or non-U.S. jurisdiction.

A rigorous comparative analysis of these factors should be undertaken for each case because the legal, judicial, and political climate can and will vary dramatically from country to country, between regions or other subdivisions within a country, and even within the same country from year to year. Of course, such an analysis cannot be divorced from an independent and careful assessment of the many other factors on which any case turns—the nature of the case, the identities of the parties, the specific court and judge, the law that will apply, and so on. The key legal issues addressed in this article, including forum selection, discovery challenges, and parallel proceedings, should be assessed with these considerations in mind.

Forum Non Conveniens. Most practitioners likely are familiar with the *forum non conveniens* doctrine, addressed by the U.S. Supreme Court in the seminal case of *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). Under this doctrine, a U.S. court may dismiss a case pending before it if the moving party can show that an adequate alternative forum exists and that the balance between the private interests of the parties and the public interests favors the alternative forum.[1] In considering the private interests of the litigants, the courts take into account such factors as the location of documentary and other evidence, the residency of the witnesses, and the need for translators. In assessing the public interests, the courts consider such factors as the burden on local court dockets and jurors, the familiarity of the court with applicable law, and the citizenship and residency of the parties.[2]

Yet even if the balance of interests favors an alternative forum, U.S. courts will not dismiss a case if the alternative forum is inadequate. To determine adequacy, courts will analyze such factors as whether the proposed alternative venue has a functioning and fair court system and whether the plaintiff would have a remedy under the foreign law.[3]

A U.S. court may stay, rather than dismiss, the case under the *forum non conveniens* doctrine. A stay allows the U.S. court to retain jurisdiction while sending the case to the alternative forum to be litigated. If the alternative forum proves to be inadequate, the U.S. court can resume trial of the case.[4]

Practitioners should be aware of recent case law holding that a district court can dispose of an action based on *forum non conveniens*, even before considering subject-matter or personal jurisdiction, when considerations of convenience, fairness, and judicial economy so warrant.[5] Thus, where counsel anticipates a lengthy, intensive, and expensive discovery battle on personal jurisdiction, for example, he or she should consider bringing an early motion to stay or dismiss based on *forum non conveniens*, even before obtaining a determination on personal jurisdiction.[6]

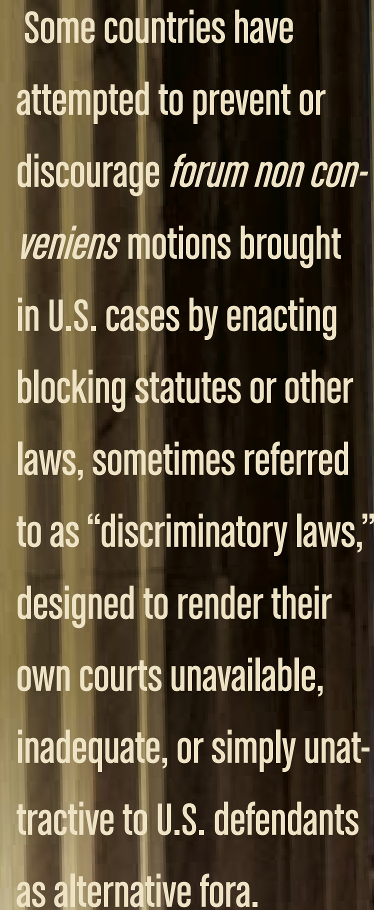
Blocking Statutes or "Discriminatory Laws" Can Prevent Parties From Seeking a Change of Forum. Some countries have attempted to prevent or discourage *forum non*

conveniens motions brought in U.S. cases by enacting blocking statutes or other laws, sometimes referred to as "discriminatory laws," designed to render their own courts unavailable, inadequate, or simply unattractive to U.S. defendants as alternative fora. Blocking statutes are designed to deprive the non-U.S. court of jurisdiction over a dispute once a case involving that dispute has been filed in a U.S. court, thus eliminating the non-U.S. court as an alternative available forum in the event that a later *forum non conveniens* motion is brought. For example, a blocking statute typically provides that, if a citizen of Country X files a lawsuit in any court outside Country X, then the courts of Country X shall lose, or shall be barred from exercising, jurisdiction over that dispute forever. Without an alternative forum to hear the dispute, so the theory goes, a U.S. court cannot dismiss the suit on *forum non conveniens* grounds.

Ecuador enacted a blocking statute in 1998, known as Law 55, which provides that if a suit involving an Ecuadorian plaintiff is filed outside Ecuadorian territory, the national competence and jurisdiction of Ecuadorian courts shall be extinguished. Several other Latin American countries have enacted similar statutes.[7] Even these blocking statutes, however, are not always successful.[8]

Other countries opt for "discriminatory laws" rather than blocking statutes to discourage U.S. *forum non conveniens* dismissals. For example, in 2001, Nicaragua enacted Special Law 364, which specifically applied to claims of sterility due to alleged exposure to the pesticide 1,2-dibromo-3-chloropropane, or "DBCP." By its terms, that law imposed a host of onerous conditions upon U.S. companies that sought to defend themselves in DBCP cases refiled in Nicaraguan courts after *forum non conveniens* dismissal of the cases in the United States. Among other things, Special Law 364 requires U.S.-based corporate defendants that had manufactured or allegedly used DBCP on banana plantations in Nicaragua to post a US$100,000 bond per plaintiff as a prerequisite to defending the case. (Claims by thousands of Nicaraguan DBCP plaintiffs are pending.)

In addition, Special Law 364 repeals applicable statutes of limitations and creates summary proceedings called "3-8-3." These proceedings require that the complaint be answered within three days, that all evidence be submitted within the next eight days, and that a verdict be rendered three days



later. Special Law 364 also creates an irrefutable presumption of causation if the plaintiff can produce two laboratory tests stating that he is sterile or has a substantially reduced sperm count, even in the face of birth certificates or other evidence of post-exposure children; it establishes a minimum damage award of US$100,000 per plaintiff and allows for only limited appeals.

Perhaps not surprisingly, the Nicaraguan plaintiffs in one of the first suits brought under Special Law 364 obtained a US$97 million judgment against the U.S.-company defendants and then sought to enforce that judgment in a Florida court. Evaluating the judgment obtained under Special Law 364, the district court declared that the judgment was unenforceable under the Uniform Foreign Money-Judgments Recognition Act because, among other things, the Nicaraguan court lacked jurisdiction over the U.S. defendants, and the irrefutable presumption of causation in Special Law 364 and the unfair targeting of U.S. companies violated due process and Florida public policy.[9]

Discriminatory laws such as Special Law 364 can create serious pitfalls for unsuspecting or uninformed U.S. defendants. For this reason, now more than ever, a U.S. corporate defendant that previously might have moved to stay or dismiss on *forum non conveniens* grounds should carefully examine the current legal, judicial, and political landscape in the country hosting the potential alternative forum before reactively pursuing any such motion. A U.S. company finding itself at the receiving end of a "discriminatory law" such as Nicaragua's Special Law 364, after having obtained a *forum non conveniens* dismissal in the U.S., may have a difficult time arguing later that the non-U.S. court did not constitute an adequate alternative forum after all, unless the company can point to circumstances that changed substantially between the time of the dismissal and the application of any such "discriminatory law" against the company; *e.g.*, the "discriminatory law" did not exist at the time of the *forum non conveniens* dismissal.

Foreign Law May Apply Even if the Case Remains Pending in a U.S. Court. Even parties that opt to have non-U.S. disputes heard in U.S. courts face unique challenges. For example, one potential difficulty with litigating an international dispute before a U.S. court is that the court may need to apply foreign law to one or more issues involved in the case—law with which the U.S. court may have little to no familiarity. So, how is a U.S. court to become educated on this foreign law?

Rule 44.1 of the Federal Rules of Civil Procedure suggests a mechanism for importing foreign law into a domestic case: "In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence." Rule 44.1 allows the court to hear each party's foreign-law experts, or to appoint its own expert, to obtain a better understanding of the foreign law at issue.

The importance of finding knowledgeable and experienced experts to help educate the court on foreign-law issues cannot be overstated. This point is well illustrated by a recent case involving a bridge in Panama that had collapsed during construction.[10] The construction company's assignee filed a product liability suit in Florida against the manufacturer of the concrete blocks used in the bridge's construction. The block-manufacturer defendant argued that the litigation should be dismissed because applicable Panamanian law did not recognize strict liability at the time of the bridge collapse and did not allow a court to impose liability against the manufacturer of the component parts. Invoking Rule 44.1, the parties submitted to the court competing affidavits of foreign-law experts regarding the interpretation of Panamanian product liability law and its application to the issues in the case. Ultimately, the court agreed that Panamanian law should apply; sided with the block manufacturer's expert, whom the court found to have "superior experience in civil matters such as those at issue in this case"; and dismissed the action.[11]

A trial court's interpretation of foreign law is treated as a ruling on a question of law and is therefore subject to full review on appeal.[12] Upon review, the appellate court has full authority to interpret the applied foreign law after considering *any* information that might be relevant.[13] Thus, at both the trial- and appellate-court levels, a party would do well to devote the time and resources necessary to select highly qualified foreign-law experts if foreign law is potentially applicable in a case pending in a U.S. court.

STRATEGIES FOR OVERCOMING THE CHALLENGES OF CROSS-BORDER DISCOVERY

Another challenge faced by corporate defendants that find themselves defending against product liability or other personal-injury claims brought in the U.S. by plaintiffs resident in other countries is that formal discovery as to such plaintiffs may be much more limited, cumbersome, and costly. Although a plaintiff residing outside the United States who files a product liability or other personal-injury suit in the U.S. generally would be subject to a deposition, written discovery, and a physical examination, the court could place conditions upon even these basic discovery tools that would make them much more difficult, drawn out, and expensive for the defendant. For example, taking into account the economic differences of the parties and other logistical issues, some U.S. courts have required U.S.-based-company defendants to bear the cost of traveling to the home countries of non-U.S.-resident plaintiffs to take depositions and/or conduct physical or mental examinations of the plaintiffs there. These costs can include the travel expenses of deposition officers, court-certified interpreters, videographers, and/or experts.

The courts have recognized other limits to such discovery. The United States Supreme Court has held that, under the principles of international comity, U.S. courts must exercise "special vigilance" to ensure that non-U.S. litigants or witnesses are not subjected to unnecessary or unduly burdensome discovery that might disadvantage them relative to U.S. litigants or witnesses.[14] American courts are directed to give "most careful consideration" to their objections to discovery and to accord "due respect for any special problem confronted by the foreign litigant on account of its nationality or the location of its operations, and for any sovereign interest expressed by a foreign state."[15] Determining whether a particular discovery request is reasonable or abusive must be done by the trial court on a case-by-case basis, taking into account the facts of each case and the non-U.S. interests at stake.[16]

Discovery against non-U.S. litigants can also be obtained using the discovery procedures set forth in certain treaties, such as the Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Convention"), to which the United States and more than 40 other countries are signatories. Another such treaty is the Inter-American Convention on Letters Rogatory, to which the United States, Spain, and many Latin American countries are parties.

Under the Hague Convention, a party in the U.S. can petition a U.S. court to send letters rogatory, along with translations of whatever documents or information are being requested, through official government channels to a "central authority" in another signatory country, using the procedures specified by that "central authority" to obtain the information sought from the party resident in that other country. But these discovery procedures can be time-consuming and cumbersome; obtaining a response to a discovery request processed through the Hague Convention can take many months. In addition, some signatories to the Hague Convention severely limit discovery rights. For example, in certain countries, depositions taken for use in foreign courts are viewed as violative of the countries' sovereignty and are prohibited; government authorities may detain and arrest persons taking depositions within such countries for use in the courts of other countries.

Notably, the Hague Convention's discovery procedures are permissive. American courts have discretion to determine whether principles of international comity require a party to conduct discovery in accordance with the Hague Convention or whether that party may resort to regular discovery methods instead.[17] The non-U.S. litigant bears the burden of persuading the court that the Hague Convention's discovery procedures must be used.[18]

The potential difficulties with discovery aimed at a non-U.S.-based party are compounded when a party to U.S. litigation seeks to take discovery of a nonparty residing outside the United States. In this instance, the Hague Convention can be particularly helpful because there may not be an alternative discovery method available to obtain testimony, information, or documents from a non-U.S. witness who is not otherwise subject to personal jurisdiction in the U.S. The Hague Convention's procedures are the same for both litigants and nonlitigants residing in a signatory country. Where the non-U.S. witness resides in a country that is not a signatory to the Hague Convention or any other such treaty, the lawyer's opportunity to conduct meaningful discovery to seek out the truth, such as to corroborate the claims of a plaintiff

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residing outside the U.S., can be significantly impeded. Of course, the lawyer must proceed in accordance with the laws of the witness's country. If the witness is willing to sit for a deposition, in either the U.S. or his or her home country (assuming there is no law prohibiting it), then the problem is easily solved. When the witness is unwilling, however, the options are very few. Sometimes parties can use letters rogatory, wholly apart from any treaty rights, in the courts of the unwilling witness's home country to obtain some type of discovery, such as a deposition or "judicial confession" of the witness. These are simply requests to the non-U.S. government, asking it to appoint a deposition officer and to order the witness to appear and testify before such officer.[19] The party seeking the letters rogatory typically makes a motion to the local court, requesting their issuance. But the circumstances under which such discovery is permitted vary widely by country, are often very limited, and in some cases simply do not exist.

Parties seeking discovery of U.S.-based witnesses and documents for use in non-U.S. proceedings have it much easier. Congress enacted 28 U.S.C. § 1782 precisely to provide federal-court assistance to parties seeking to gather evidence to be used before non-U.S. courts and other tribunals.[20] Under Section 1782, upon request of a non-U.S. tribunal or of "any interested person" (which includes parties to a non-U.S. proceeding), a federal district court may order a person within the district to "give his or her testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal." The court will consider several discretionary factors when ruling on a Section 1782 request: (1) whether the person from whom discovery is sought is a participant in the non-U.S. proceeding or a non-participant outside the non-U.S. tribunal's jurisdictional reach; (2) the nature of the non-U.S. tribunal, the character of the proceedings, and whether the non-U.S. court would be receptive to U.S. assistance; (3) whether the request is a concealed attempt to circumvent the policies of another country; and (4) whether unduly burdensome or intrusive requests should be rejected or narrowed.[21] Section 1782 can be an invaluable discovery tool for parties, including U.S. companies, that find themselves litigating in non-U.S. courts or before international tribunals and seek relevant evidence located in the United States for use in those non-U.S. proceedings.

MANAGING PARALLEL PROCEEDINGS IN NON-U.S. AND U.S. COURTS

The phrase "parallel proceedings" in international litigation typically refers to the pendency of similar claims between the same parties in the courts of different countries. The situation can arise, for example, in a dispute between a product manufacturer and its distributor, where the product manufacturer contends that it is owed money for a product shipment from the distributor, and the distributor claims that the products shipped were defective. Or the situation can arise in a dispute between a plaintiff claiming he was injured due to a defective product and a product manufacturer contending the claim is barred by a prior settlement and release. If the parties reside in different countries or the events underlying the claims arose in different countries, then one party arguably could file suit in one country while the other party seeks to file suit in a different country, each hoping to obtain a judgment in the courts of the country believed to be most favorable to the party or the claim. A party also might choose to commence parallel proceedings in the hope of being first to obtain a judgment that can then be used to bar the second claim under res judicata, to gain leverage or put pressure on the other party to settle the claim, or to obtain discovery in one forum that it is not entitled to obtain in the other. As the global economy expands, so does the opportunity for international disputes and hence the risk of parallel litigation.

The doctrines of international comity, international abstention, and anti-suit injunction are valuable tools that can be used to help U.S. companies effectively fend off unwanted parallel proceedings, often involving a U.S. court and one or more non-U.S. courts. The doctrines of international comity and international abstention can be used to halt U.S. proceedings in favor of parallel non-U.S. litigation. One court recently waded through the somewhat esoteric distinction between these related doctrines:

> The doctrine of international comity can be applied retrospectively or prospectively. When applied retrospectively, [U.S.] courts consider whether to respect the judgment of a foreign tribunal or to defer to parallel foreign proceedings. . . . When applied prospectively, [U.S.] courts consider whether to dismiss or stay a domestic action based on the interests of our government, the foreign government and the international community in resolving the dispute in a foreign forum.[22]

In other words, once the court of one country has rendered a final decision in a dispute between the parties, the doctrine of international comity can be invoked to bar any subsequent litigation of the same or similar claims between the parties in the courts of another country (assuming the decision accords with fairness and due process and does not violate the public policy of the second country). This retrospective application of the doctrine is based upon the notion that the judicial decisions of one country should be accorded due respect by the courts of another country, out of recognition for the need to maintain good international relations and ensure reciprocity for the decisions of courts in both countries. American courts have held that there is a strong presumption in favor of recognizing the executive, legislative, and judicial acts of other nations.[23]

Parties seeking to invoke the doctrine often enlist the assistance of the State Department or non-U.S. ministries to provide an amicus brief or letter of support for due recognition of a particular legislative enactment or court decision, citing the potential negative implications of any failure to recognize the enactment or decision. Although such support can be persuasive, it is not binding on a U.S. court.[24]

Parties also may seek to stay or dismiss a U.S. action in favor of parallel proceedings pending in a non-U.S. court by invoking the doctrine of "international abstention." International abstention involves a prospective application of the doctrine of international comity. "Applied prospectively, federal courts evaluate several factors, including the strength of the United States' interest in using a foreign forum, the strength of the foreign governments' interests, and the adequacy of the alternative forum."[25] Other courts have specified the factors to be considered in determining whether to dismiss or stay a U.S. action under the doctrine of international abstention as follows: the similarity of the parties and issues involved in the non-U.S. action, the promotion of judicial efficiency, the adequacy of relief available in the alternative forum, the issues of fairness to and the convenience of non-U.S. witnesses, the possibility of prejudice to any of the parties, and the temporal sequence of the filing of the actions.[26]

The factors to be considered for dismissal or stay of a U.S. proceeding do not differ markedly between the doctrine of international abstention and the doctrine of *forum non conveniens*.[27] However, the doctrine of *forum non conveniens* can be invoked even if there is no parallel non-U.S. proceeding, whereas international abstention presupposes a parallel non-U.S. proceeding. If there is no parallel non-U.S. proceeding, a party can rely only on the doctrine of *forum non conveniens*; if there is a parallel non-U.S. proceeding, a party can rely on both doctrines.[28]

A party seeking to achieve the converse of international abstention, *i.e.*, to halt parallel proceedings in non-U.S. courts in favor of an ongoing U.S. court action, should consider seeking an anti-suit injunction from the U.S. court. An anti-suit injunction is a U.S. court order that enjoins a person subject to the court's jurisdiction from pursuing litigation in a non-U.S. court.[29] Notably, this injunction is aimed at the party over whom the U.S. court has jurisdiction, not at the non-U.S. court. Any failure to comply could be punishable as a contempt of court.

Before a U.S. court will consider issuing an anti-suit injunction, the party seeking the injunction must establish three threshold requirements: (1) the U.S. court must have personal jurisdiction over the party to be enjoined; (2) the parties must be the same in both cases; and (3) the resolution of the case before the enjoining court must be dispositive of the action to be enjoined.[30]

Once the threshold requirements have been met, U.S. courts will consider various factors to determine whether an anti-suit

injunction should issue. However, the weight, if any, that a court will accord these factors will depend upon the circuit in which the court sits.

The Courts of Appeal for the Third, Sixth, and D.C. Circuits follow a strict standard based on principles of comity, under which the courts generally resist "meddling" in the proceedings of another court.[31] Under this standard, a court will refrain from issuing an anti-suit injunction unless one of two factors can be shown: the non-U.S. action threatens the jurisdiction of the enjoining court (such as when a proceeding is *in rem*, since res judicata alone will not protect the first court's jurisdiction), or a party is attempting to evade an important public policy of the forum. Duplication of issues or even a party's intent to vex, annoy, or harass the other party does not justify interfering in an action in a non-U.S. court. Rather, courts observing the strict comity-based standard will allow parallel litigation to proceed in both fora until judgment is obtained in one court, which then may be pled as res judicata in the other court.

Although the Court of Appeal for the First Circuit generally tends toward the strict standard, it looks to the "totality of the circumstances," applying a rebuttable presumption against an anti-suit injunction, which "may be counterbalanced by other facts and factors particular to a specific case."[32]

The Courts of Appeal for the Fifth, Seventh, and Ninth Circuits follow a more liberal standard under which the court may consider the vexatiousness, oppressiveness, or inconvenience of the non-U.S. litigation.[33] These courts hold that an anti-suit injunction is appropriate where the non-U.S. litigation would frustrate a policy of the forum issuing the injunction, threaten the issuing court's jurisdiction, or be vexatious or oppressive. It is also appropriate when adjudication in separate actions would result in delay, inconvenience, expense, inconsistency, or a race to judgment.

The Court of Appeal for the Second Circuit takes a middle-ground approach, placing greater weight on comity than the liberal standard, while considering a variety of equitable factors in determining whether to issue an anti-suit injunction. These factors include whether the non-U.S. litigation would frustrate a public policy in the enjoining forum, be vexatious, threaten the issuing court's jurisdiction, result in prejudice to other equitable considerations, or result in delay, inconvenience, expense, inconsistency, or a race to judgment.[34]

Comity and anti-suit injunctions can help ensure that once a corporation obtains a favorable judgment in one forum, it does not have to relitigate the issue in other venues. Anti-suit injunctions also can help consolidate all litigation into a preferred forum when related claims are being pursued in two fora. While circuits apply the anti-suit-injunction factors in different ways, anti-suit injunctions can enhance a company's ability to manage parallel proceedings effectively in both U.S. and non-U.S. courts.

CONCLUSION

International product liability litigation will continue to evolve in the 21st-century global economy. When U.S. companies with a worldwide presence face international litigation, they should choose their venues carefully and ensure that they are using all available tools to obtain and defend against cross-border discovery. They also should have at the ready several tools, often overlooked, to fend off unwanted parallel litigation in both the U.S. and non-U.S. tribunals. As the global economy continues to expand and U.S. product manufacturers and sellers find themselves embroiled in international litigation, whether in U.S. courts, the courts of other nations, or both, these companies will need to stay abreast of the ever-changing tools available to handle that litigation effectively and economically. By doing so, companies can go back to exploring successful business opportunities in the global market, while minimizing the risks attendant to today's—and tomorrow's—international litigation. ■

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[1] *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 476 (2d Cir. 2002); *see also Gulf Oil*, 330 U.S. at 508–09.
[2] *See*, *e.g.*, *Delgado v. Shell Oil Co.*, 890 F. Supp. 1324, 1355–58 (S.D. Texas 1995).
[3] *See*, *e.g.*, *Delgado*, 890 F. Supp. at 1355–58.
[4] *See Ministry of Health v. Shiley Inc.*, 858 F. Supp. 1426, 1442 (C.D. Cal. 1994) (holding that the court would stay the case on *forum non conveniens* grounds in favor of trial in Canada, subject to certain conditions, while retaining jurisdiction to make further orders as might be appropriate); *see also Delgado*, 890 F. Supp. at 1375 (holding that if the Guatemalan court dismissed the action for lack of subject-matter jurisdiction, the plaintiff could return to the U.S. court and resume the case as if it had never been dismissed for *forum non conveniens*).
[5] *See Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422 (2007).
[6] *Cf. Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083 (9th Cir. 2009) (holding that *Sinochem* does not restrict the ability of federal appellate courts to review whether the district court had subject-matter jurisdiction prior to ruling on the *forum non conveniens* motion).
[7] *See* Decree Number 34-97 (1997) (Guatemala); Law in Defense of the Procedural Rights of Nationals and Residents (Honduras); and Article 40 of the Statute of Private International Law (Venezuela).
[8] *See Aguinda*, 303 F.3d at 480 (2d Cir. 2002) (case dismissed on *forum non conveniens* grounds despite Ecuador's blocking statute, which was found to be unconstitutional and not retroactive by Ecuador's own Constitutional Court).
[9] *See Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1351–52 (S.D. Fla. 2009).
[10] *Pycsa Panama, S.A. v. Tensar Earth Tech., Inc.*, 625 F. Supp. 2d 1198 (S.D. Fla. 2008).
[11] *See id.* at 1227, fn. 18.
[12] Fed. R. Civ. Proc. Rule 44.1.
[13] *See U.S. ex rel. Saroop v. Garcia*, 109 F.3d 165, 167 (3d Cir. 1997) (holding that "[i]nterpretations of foreign law are subject to plenary review and may be resolved by reference to any relevant information").
[14] *Société Nationale Industrielle Aérospatiale v. United States Dist. Court*, 482 U.S. 522 (1987).
[15] *Id.* at 546.
[16] *Id.* at 545 (recognizing that some types of discovery requests are "much more intrusive than others").
[17] *Société Nationale*, 482 U.S. at 536. *See also* Fed. R. Civ. Proc. Rule 28.
[18] *See*, *e.g.*, *American Home Assur. Co. v. Société Commerciale Toutelectric*, 104 Cal. App. 4th 406, 428 (2002).
[19] See Fed. R. Civ. Proc. Rule 28(b)(3); 28 U.S.C. § 1781.
[20] *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004).
[21] *See Intel Corp.*, 542 U.S. at 264–65.
[22] *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1238 (11th Cir. 2004).
[23] See, *e.g.*, *In re Board of Directors of Telecom Argentina, S.A.*, 528 F.3d 162 (2d Cir. 2008) (op. by Sotomayor, J.) (affirming recognition of an Argentine bankruptcy court's decision and holding that comity did not require the debtors to receive the same distribution in non-U.S. proceedings as in U.S. proceedings).
[24] *See Patrickson v. Dole Food Co.*, 251 F.3d 795, 803 (9th Cir. 2001) (holding that while a court can consider the views of another government, "it is quite a different matter to suggest that courts—state or federal—will tailor their rulings to accommodate the expressed interests of a foreign nation that is not even a party").
[25] *Ungaro-Benages*, 379 F.3d at 1238.
[26] *See*, *e.g.*, *Evergreen Marine Corp. v. Welgrow Int'l, Inc.*, 954 F. Supp. 101, 103 (S.D.N.Y. 1997); *Abdullah Sayid Rajab Al-Rifai & Sons W.L.L. v. McDonnell Douglas Foreign Sales Corp.*, 988 F. Supp. 1285, 1289 (E.D. Mo. 1997); *National Union Fire Ins. Co. of Pittsburgh v. Kozeny*, 115 F. Supp. 2d 1243, 1246 (D. Colo. 2000).
[27] *Ungaro-Benages*, 379 F.3d at 1238.
[28] *See* John Fellas, "Strategy in International Litigation," in *International Litigation 2010*, at 213 (PLI Litig. & Admin. Practice, Course Handbook Ser. No. H-826, 2010).
[29] *See Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11, 16 (1st Cir. 2004).
30 *See In re Complaint of Rationis Enters., Inc. of Panama v. AEP/Borden Indus.*, 261 F.3d 264 (2d Cir. 2001); *China Trade and Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33, 35–36 (2d Cir. 1987).
31 *See*, *e.g.*, *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 926–27 (D.C. Cir. 1984); *Gau Shan Co. v. Bankers Trust Co.*, 956 F.2d 1349 (6th Cir. 1992); *Compagnie des Bauxites de Guinea v. Insurance Co. of N. America*, 651 F.2d 877 (3d Cir. 1981), *cert. denied*, 457 U.S. 1105 (1982).
32 *See Quaak*, 361 F.3d at 19.
33 *See*, *e.g.*, *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 626–27 (5th Cir. 1996); *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425 (7th Cir. 1993); *Seattle Totems Hockey Club, Inc. v. National Hockey League*, 652 F.2d 852 (9th Cir. 1981), *cert. denied*, 457 U.S. 1105 (1982).
34 *See Ibeto Petrochem. Indus. Ltd. v. M/T Beffen*, 475 F.3d 56, 64–65 (2d Cir. 2007).