



For Immediate Release

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Paper Examines Judicial Use of Anti-Suit Injunctions to Protect U.S. Business

While the advantages for U.S. companies to do business abroad are clear, the potential dangers are less obvious. U.S. companies frequently find themselves named in lawsuits brought in foreign jurisdictions by their foreign partners where an agreement was in place which selected a U.S. forum for exclusive resolution of disputes. As a new Washington Legal Foundation paper relates, thanks to a series of federal court rulings, these forum selection clauses are finding vindication through anti-suit injunctions, particularly in international contracts.

This WLF WORKING PAPER, ***Anti-Suit Injunctions: Protecting U.S. Businesses in Overseas Markets*** was authored *pro bono* by **Michael Diaz, Jr.**, managing partner with the law firm Diaz, Reus, Rolff & Targ, and **Carlos F. Gonzalez**, also a partner with the law firm, both based in Miami.

Courts apply anti-suit injunctions to stop a party from commencing or continuing a lawsuit in a foreign forum. Mr. Diaz and Mr. Gonzalez note that these injunctions can also be used to force a party to produce evidence located abroad for use in domestic litigation; to cease certain overseas practices; and to force a party to litigate in a contractually designated forum. The authors discuss two approaches offered by the circuit courts displaying a difference in balancing concerns of comity. Courts following the restrictive approach will only issue injunctions when it is necessary to either protect the forum's jurisdiction or when U.S. interests significantly outweigh considerations of international comity. The more liberal approach places far less weight on issues of comity. However, courts on both sides of the comity debate concede that comity concerns must "yield in favor of protecting the parties' agreed to forum for resolving their disputes."

The WORKING PAPER also offers an extensive analysis of the use of anti-suit injunctions to vindicate choice-of-forum selection clauses in international contracts. Although the federal Circuit Courts diverge on the standard to be applied in issuing these injunctions, the courts do agree that the injunctions should be granted to enforce the forum selection clauses in these international contracts.

The paper confirms the importance of enforcing the forum selection clause to the courts and identifies a 2006 circuit court ruling that the issuance of an anti-suit injunction would be appropriate regardless how much deference a court gave to the notion of comity. Participants in the debate agree that no matter what approach is used, "the existence of a forum selection clause presents a special circumstance the

favors action by the U.S. courts to protect the contractually agreed to forum and the corresponding jurisdiction.”

Copies of this educational paper, WLF WORKING PAPER, Number 152 (November 2007), can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.

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