October 2006 Round-Up: Private International Law Decisions in United States Courts

Three recent decisions from the U.S. federal courts present some interesting issues for this site's readership. The first case of interest comes from the Second Circuit Court of Appeals, often a bellwether for private international law matters. In Royal Sun Alliance Ins. Co. of Canada v. Century Int'l Arms, Inc., a unanimous panel led by Judge Lynch reversed a dismissal entered by the district court because of a parallel proceeding underway in Canada. Tightening the court's abstention doctrine, the panel held that "[T]he existence of a parallel action in an adequate foreign jurisdiction must be the beginning, not the end, of a district court's determination of whether abstention is appropriate. . . . [Beyond] the mere existence of an adequate parallel action, . . . additional circumstances must be present – such as a foreign nation's interest in uniform . . . proceedings – that outweigh the district court's general obligation to exercise its jurisdiction." On remand, the court ordered the district court to consider granting "a measured temporary stay [that] need not result in a complete forfeiture of jurisdiction, . . .[a]s a lesser intrusion on the principle of obligatory jurisdiction." Such an action, in the court of appeals' eyes, "might permit the district court a window to determine whether the foreign action will in fact offer an efficient vehicle for fairly resolving all the rights of the parties, [which should] normally should be considered before a comity-based dismissal is entertained."

Second, a deepening split of authority was presaged in an unpublished decision of the District of New Jersey. In Rogers

v. Kasahara, plaintiff utilized the Article 10(a) of the Hague Service Convention to serve process on Japanese defendants via "postal channels." The Eighth and Fifth Circuits adhere to a "strict constructionist" view of the convention, and hold that the meaning of the word "send" in Article 10(a) does not include "serve"; that is, they permit the sending of judicial documents by mail, but only after service of process was accomplished by some other means. The Second and Ninth Circuits, however, hold in accordance with the bulk of international consensus that the meaning of "send' in Article 10(a) includes "serve," allowing postal channels to be utilized absent a specific objection by the signatory state. The District of New Jersey, recognizing further discordance within its home circuit (i.e. the Third), followed the latter approach and denied a motion to dismiss for the failure to properly serve the foreign defendants. A copy of this decision will be posted when one becomes available.

Lastly, notwithstanding the lively academic debate and his own protestations to the contrary, Seventh Circuit Judge Richard A. Posner decided that U.S. courts must sometimes accord precedential effect to foreign law. In Carris v. Marriott Int'l, Inc., a plaintiff filed suit in Illinois as a result of breaking his leg while jet skiing in the Bahamas. A unanimous panel applied the "most significant relationship" analysis, and concluded that Bahamian law applied to the dispute, despite Plaintiff's argument – disputed in its correctness by Judge Posner – that his primary recourse under the "apparent authority" doctrine of English common law, was not available in Bahamian courts.