

# **U.S. Supreme Court Decides Sinochem: A “Textbook” Forum Non Conveniens Dismissal May Be Ordered Without First Determining Jurisdiction**

The U.S. Supreme Court decided an important dispute involving the jurisdictional rules that apply in U.S. federal courts. In *Sinochem Int'l Co., Ltd. v. Malaysia International Shipping Corp.*, No. 06-102, Justice Ginsburg, writing for a unanimous court, held that "a district court has discretion to respond at once to a defendant's forum non conveniens plea, and need not take up first any other threshold objection," such as subject-matter jurisdiction over the dispute or personal jurisdiction over the parties.

Sinochem International Co. Ltd. complained in Chinese Admiralty Court that Malaysia International Shipping Corp. had backdated a bill of lading for steel coils loaded at a port in Fairless Hills, Pa., and taken to Huangpu, China. The shipping company sued in federal court in Philadelphia, saying it had suffered damages due to Sinochem's representations about Malaysia International and the seizure of the ship when it got to China. A U.S. District Court judge dismissed the case, saying China is the best forum for the dispute involving two non-American companies. A federal appeals court, in a 2-1 decision, said the lower court should have first determined whether it had jurisdiction over the case before dismissing on forum non conveniens grounds.

The Supreme Court reversed the Third Circuit's ruling. According to the Court, "dismissal for forum non conveniens reflects the court's assessment of a range of considerations, most notably the convenience of the parties." Because such a dismissal is a "non-merits ground," and requires only "a brush with the factual and legal issues of the underlying dispute, it does not "entail any assumption . . . of substantive law-declaring power" and may be made prior to any determination of its subject-matter or personal jurisdiction to decide the case. Rather than a strict ordering of non-merits determinations, a court has "leeway to choose among

threshold grounds for denying audience to hear a case on the merits." The Court went on to observe that "[t]his is a textbook case for immediate forum non conveniens dismissal," and that "[j]udicial economy is disserved by continuing litigation in the Eastern District of Pennsylvania."

This victory for Sinochem may have important consequences in future cases brought in U.S. courts against non-U.S. companies having little or no connection to the United States. Foreign companies will now be able to seek prompt dismissals on forum non conveniens grounds without first requiring the federal courts to make a conclusive inquiry into jurisdiction, which in many cases can be costly and prolonged. As the dissenting member of the Third Circuit's decision acknowledged, a contrary rule would "subvert a primary purpose of the forum non conveniens doctrine: protecting a [foreign] defendant from . . . substantial and unnecessary effort and expense."

Interestingly, though, the Court left for another day the important question of whether a court that conditions a forum non conveniens dismissal on a waiver of jurisdiction or limitations defenses in a foreign forum must first determine its own authority to decide the case. Because Malaysia here "faces no genuine risk that the more convenient forum will not take up the case" (because proceedings are currently underway in China), the issue was not before the court.

This case was previously blogged on this site, with links there to the argument and briefs. The official opinion released this morning is available [here](#). Early commentary on the decision appears at [Opinio Juris](#).