

Forum Non Conveniens in US Courts

On May 1, 2009, the United States Court of Appeals for the Seventh Circuit issued a noteworthy opinion in the consolidated cases of *Abad v. Bayer Corp.* and *Pastor v. Bridgestone/Firestone*. These consolidated appeals raise interesting issues regarding the application of the forum non conveniens doctrine in US courts.

In the *Abad* case, Argentinian plaintiffs filed products liability actions against American manufacturers for injuries sustained in Argentina. Plaintiffs alleged that they (a group of hemophiliacs or their decedents) were infected with the AIDS virus because the defendant manufacturers of the clotting factor that hemophiliacs take to minimize bleeding failed to eliminate the virus from the donors' blood from which the clotting factor was made. The *Pastor* case was a wrongful-death suit growing out of a fatal auto accident in Argentina with a car equipped with tires manufactured by Bridgestone/Firestone. In both cases, defendants moved the district court for dismissal under forum non conveniens and the district court dismissed the case in favor of the courts in Argentina. On appeal, the Seventh Circuit, with Judge Richard Posner writing, applied the abuse of discretion standard and thus affirmed.

This opinion is interesting for at least three reasons. First, appellants pressed the argument on appeal that federal district courts have the "virtually unflagging obligation . . . to exercise the jurisdiction given them." *Colorado River Conservation District v. United States*, 424 U.S. 800, 817 (1976). See slip op. at 2-3. The court rejected that argument in favor of an abuse of discretion standard of review, which affords district courts substantial leeway in deciding to send international civil cases to a foreign forum.

Second, the court reaffirmed the discretion of district courts in applying the *Gulf Oil* factors, but with an interesting twist: Judge Posner recognized that *Gulf Oil* represented an accommodation of state interests in an international world. In his words, "[a]nd so the plaintiffs . . . argue that the United States has a greater interest in the litigation than Argentina because the defendants are American companies, while the defendants argue that Argentina has a greater interest than the United States because the plaintiffs are Argentines. *The reality is that neither*

country appears to have any interest in having the litigation tried in its courts rather than in the courts of the other country; certainly no one in the government of either country has expressed to us a desire to have these lawsuits litigated in its courts." Slip op. at 10 (emphasis added). Has the Seventh Circuit opened the door for such submissions? Should litigants, therefore, now seek to have governments file statements of interest in forum non conveniens cases? If so, one is left to wonder how such a submission will matter and whether US courts will defer to them.

Finally, this case and others reported recently on this site confirm that forum non conveniens is being used frequently in international litigation in US courts. With the Supreme Court's recent decision in *Sinochem* (holding that district courts may determine forum non conveniens questions before ascertaining jurisdiction), are we seeing an increased usage of forum non conveniens in international civil cases? If so, is this a good thing?

At bottom, the doctrine of forum non conveniens in the United States continues to evolve.